



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

Case No. IT-00-41-PT
Date: 30 August 2002
Original: English

IN THE TRIAL CHAMBER

Before: Judge Liu Daqun, Presiding
Judge Amin El Mahdi
Judge Alphons Orié

Registrar: Mr. Hans Holthuis

Decision of: 30 August 2002

THE PROSECUTOR

v.

PAŠKO LJUBIČIĆ

**DECISION ON RULE 73 REQUEST FOR CERTIFICATION OF THE DECISION ON
ENVER HADŽIHASANOVIĆ, MEHMED ALAGIĆ AND AMIR KUBURA'S JOINT
MOTION FOR ACCESS TO CONFIDENTIAL SUPPORTING MATERIAL
TRANSCRIPTS AND EXHIBITS**

The Office of the Prosecutor:
Mr. Mark Harmon

Defence Counsel:
Mr. Tomislav Jonjić
Ms. Edina Residović
Ms. Vasvija Vidović
Mr. Fahrudin Ibrisimović

TRIAL CHAMBER I (the “Trial Chamber”) of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (the “Tribunal”);

BEING SEISED of “Rule 73 Request for Certification of the Decision on Enver Hadžihasanović, Mehmed Alagić and Amir Kubura’s Joint Motion for Access to Confidential Supporting Material Transcripts and Exhibits,” filed by the Defence for the accused Enver Hadžihasanović (the “Defence”) on 17 July 2002 (the “Application for Certification”);

NOTING the “Decision on Enver Hadžihasanović, Mehmed Alagić and Amir Kubura’s Joint Motion for Access to Confidential Supporting Material Transcripts and Exhibits,” dated 28 June 2002 (the “Impugned Decision”), whereby the concerned parties were granted access to the confidential supporting material in the present case subject to the orders and protective measures imposed by the Trial Chamber;

NOTING the “Prosecution’s Response to Hadžihasanović’s Request for the Certification” filed on 23 July 2002 (“ the Prosecution’s Response”);

CONSIDERING that pursuant to Rule 73 (B) of the Rules of Procedure and Evidence (“the Rules”), the Trial Chamber may certify an interlocutory appeal during trial from a decision that involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings; that pursuant to Rule 73 (C), requests for certification shall be filed within seven days of the filing of the impugned decision;

CONSIDERING that the Defence first submits that it only received the Impugned Decision on 10 July 2002, having been away from its office since 26 June 2002; that by interpreting the time-limits in the appropriate spirit of the Rules, the Trial Chamber should deem the Application for Certification to have been filed within the seven-day time-limit set out in the Rules; that, should the Chamber consider the filing as late, it should consider it as validly filed in accordance with Rule 127 (A) (ii);

CONSIDERING that the Defence further argues that: (i) the Impugned Decision imposes measures for the protection of the victims and witnesses which will impede the legitimate defence investigations, delay proceedings and unnecessarily increase the burden on all parties involved; and (ii) since the measures imposed will significantly affect the fair and expeditious conduct of the proceedings, the resolution of this question by the Appeals Chamber will materially advance the proceedings;

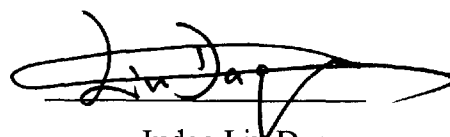
NOTING that the Registry has confirmed that the Impugned Decision was faxed to the lead counsel of Enver Hadžihasanović on 28 June 2002 and that the transmission report was successful; that the Impugned Decision was also put in her locker on that same day;

FINDING that the seven-day time-limit set out in Rule 73(C) in this case expired on 5 July 2002; that the Defence should have taken the necessary measures to keep informed and to monitor the reception of the decisions rendered in this case that could affect its client; that it has failed to establish “good cause” under Rule 127(A) to justify this late filing; that thus the Trial Chamber does not consider the reasons given by the Defence to justify this late filing to be sufficient;

PURSUANT to Rule 73 of the Rules of Procedure and Evidence;

HEREBY DENIES the Application for Certification.

Done in both English and French, the English text being authoritative.



Judge Liu Daqun,
Presiding Judge

Dated this 30th day of August 2002

At The Hague

[Seal of the Tribunal]