



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

Case: IT-00-41-PT
Date: 13 December 2002
Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr Hans Holthuis

Decision of: 13 December 2002

PROSECUTOR
v.
Paško LJUBIČIĆ

**DECISION ON THE DEFENCE'S REQUEST FOR CERTIFICATION TO APPEAL THE
20TH NOVEMBER 2002 "DECISION ON DEFENCE COUNSEL'S REQUEST FOR
TRANSLATION OF ALL DOCUMENTS"**

Office of the Prosecutor:
Mr. Mark Harmon

Counsel for the Defence:
Mr. Tomislav Jonjić

TRIAL CHAMBER I (“the 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 SEIZED OF the Defence Counsel’s Application for Leave to Appeal the 20th November 2002 “Decision on Defence Counsel’s Request for Translation of All Documents”, filed on 22 October 2002 (“the Application”);

NOTING that the Defence claims: (1) that the impugned Decision of 20th November 2002 (“the Decision”) does not respond to the request made by the Defence in its motion of 19 September 2002 (“the Motion”) to have *disclosure material and evidence admitted for trial* translated into BCS (Bosnian, Croatian or Serb)¹ and does not provide a “*principled and final solution* of the issue of translation of documents” as requested by the Defence in the Motion;² (2) that the Chamber did not consult the Registrar prior to rendering the Decision;³ and finally (3) that the Decision wrongfully gives priority to the Accused’s right to an expeditious trial over the Accused’s right to use his language in the proceedings.⁴

NOTING that the Decision lays out the general principles that apply in relation to the right of the Accused during the pre-trial and trial stages to receive material in a language understood by him or her under Article 21 of the Statute and Rule 66(A) and (B) of the Rules of Procedure and Evidence (“the Rules”) and in accordance with the mainstream practice of the Tribunal;

NOTING that the Decision found that the Prosecutor had complied with its obligations under the present state of the law;

CONSIDERING that the question of translation of documents *beyond* the general principles lined out in the Decision is a matter to be decided by each Chamber in relation to *particular* documents on a case-by-case basis, for which reason this question cannot be dealt with in “a principled and final” manner as required by the Defence;

¹ See paragraph 5 of the Application.

² See paragraphs 6 and 9 of the Application.

³ See paragraph 8 of the Application.

⁴ See paragraph 12 of the Application.

NOTING that the Defence may at all times seek the Chamber's support for translation of specific documents beyond what is required, in which cases the Chamber's decisions may be subject to appeal;

CONSIDERING that the Registry's position on the matter is of importance to the administrative and financial implications of the translation of documents, but that consulting the Registry is not a legal requirement under the Statute or the Rules;

CONSIDERING that the balance between the Accused's right to an expeditious trial on the one hand and his right to use his own language on the other must take into account all relevant circumstances, including the requirement that at least one of the Defence Counsels is presumed to be fluent in one of the official languages of the Tribunal;

CONSIDERING that, pursuant to Rule 73 (B) of the Rules, the Trial Chamber may certify an interlocutory appeal 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;

FINDING that the Decision does not meet the criteria set out above and that the Application for Certification fails to show that the Accused will suffer any prejudice in case certification for appeal is not granted;

FOR THE FOREGOING REASONS,

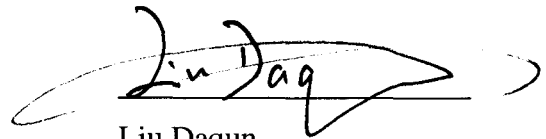
PURSUANT to Rule 73 of the Rules of Procedure and Evidence,

REJECTS the Application.

Done this thirteenth day of December, 2002

At The Hague,

The Netherlands.

A handwritten signature in black ink, appearing to read 'Liu Daqun', written over a horizontal line. The signature is stylized and includes a large flourish on the right side.

Liu Daqun

Presiding Judge, Trial Chamber

[Seal of the Tribunal]