



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 No. IT-94-2-PT  
Date: 17 January 2003  
Original: English

**IN TRIAL CHAMBER II**

**Before:** Judge Wolfgang Schomburg, Presiding  
Judge Florence Ndepele Mwachande Mumba  
Judge Carmel Agius

**Registrar:** Mr. Hans Holthuis

**Decision of:** 17 January 2003

**PROSECUTOR**

v.

**DRAGAN NIKOLIĆ**

**DECISION TO GRANT CERTIFICATION TO APPEAL THE  
TRIAL CHAMBER'S "DECISION ON DEFENCE MOTION  
CHALLENGING THE EXERCISE OF JURISDICTION BY THE  
TRIBUNAL"**

**The Office of the Prosecutor:**

Mr. Upawansa Yapa

**Counsel for the Accused:**

Mr. Howard Morrison  
Ms. Tanja Radosavljević

**TRIAL CHAMBER II** (“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 (“Tribunal”):

**BEING SEISED OF** the “Motion for Certification and relief under the Provisions of Rule 73 and 127 of the Rules of Evidence and Procedure”, filed on behalf of the Accused Dragan Nikolić (“Accused”) on 14 January 2003 which requests certification under Rule 73 of the Rules of Procedure and Evidence of the Tribunal (“Rules”) and seeks relief under Rule 127 (“Request”);

**NOTING** the “Decision on Defence Motion Challenging the Exercise of Jurisdiction by the Tribunal” filed on 9 October 2002 in which the Trial Chamber dismissed the Defence Motions<sup>1</sup> challenging the legality of the Accused’s arrest (“Impugned Decision”);

— **NOTING** the “Notice of Appeal from the Judgement, pursuant to Rule 108 of the Rules of Evidence and Procedure, of Trial Chamber II dated the 9th day of October 2002 concerning the Defence Motion Challenging the Exercise of Jurisdiction by the Tribunal” filed on behalf of the Accused on 7 November 2002 against the Impugned Decision (“Notice of Appeal”);

**NOTING** the “Motion under Rule 127 and Contemplating Rules 72 and 108 concerning the Notice of Appeal from the Judgement or Decision, pursuant to Rule 108 of the Rules of Procedure and Evidence, of Trial Chamber II dated the 9th day of October 2002 concerning the Defence Motion Challenging the Exercise of Jurisdiction by the Tribunal as filed on the 7th November 2002” filed by the Accused on 8 November 2002 (“Rule 127 Motion”), in which the Accused requests to vary the time limits to allow the Notice of Appeal to stand under Rule 72 of the Rules of Procedure and Evidence of the Tribunal (“Rules”), if that were the applicable provision;

— **NOTING** the “Prosecution Response to the Two Defence Documents filed on 8 November 2002 purporting to be a Notice of Appeal pursuant to Rule 108 and a Motion for Extension of Time under Rule 127 Respectively” filed on 18 November 2002, in which the Prosecution submits that

- (i) the appeal cannot be based upon Rule 108;

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<sup>1</sup> *Motion for Relief Based Inter Alia Upon Illegality of Arrest Following Upon the Prior Unlawful Kidnapping and Imprisonment of the Accused and Co-related Abuse of Process Within the Contemplation of Discretionary Jurisdictional Relief Under Rule 72, 17 May 2001 and Motion to Determine Issues as Agreed Between the Parties and the Trial Chamber as Being Fundamental to the resolution of the Accused’s Status Before the Tribunal in Respect of the Jurisdiction of the Tribunal under Rule 72 and Generally, the Nature of the Relationship Between the OTP and SFOR and the Consequences of any Illegal Conduct Material to the Accused, His Arrest and Subsequent Detention, 29 October 2001 (“Defence Motions”).*

- (ii) the appeal should instead be brought under Rule 72 (B) (i), as the Impugned Decision was rendered in response to a motion challenging jurisdiction;
- (iii) in the event the Trial Chamber should decide that the Defence Motion does not amount to a motion challenging jurisdiction, the appeal should be brought under Rule 72 (B) (ii);

**NOTING** the “Decision on Notice of Appeal”, issued by the Appeals Chamber on 9 January 2002 (“Appeals Decision”), in which the Appeals Chamber dismissed the Notice of Appeal and the Rule 127 Motion arguing that

- (i) Rule 72 cannot provide a basis for appeal as the Impugned Decision was not rendered on a motion challenging jurisdiction;
- (ii) the appeal against the Impugned Decision should have been filed by the Accused under Rule 73;
- (iii) the Accused may seek from the Trial Chamber any extension of time necessary for him to apply for certification under Rule 73 (B);

**NOTING** the “Prosecution’s Response to the Defence Motion for Certification and Relief under the Provisions of Rules 73 and 127 of the Rules of Procedure and Evidence” filed on 17 January 2003, in which the Prosecution requests the Trial Chamber to deny the grant of certification, asserting that the Accused has not justified his Request;

**CONSIDERING** that under Rule 127 (A) (ii) any act can be recognized as validly done after the expiration of time prescribed by the Rules, as is thought just, on good cause being shown;

**CONSIDERING** that the extension of time for filing the Request is necessary in order for the Accused to comply with the Appeals Decision and to file a certification request pursuant to Rule 73 (B);

**FINDING** that good cause for an extension of time has been shown;

**CONSIDERING** that under Rule 73 (B) the Trial Chamber may grant a certification provided that

- (i) the Impugned Decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial;
- (ii) the Trial Chamber is of the opinion that an immediate resolution by the Appeals Chamber may materially advance the proceedings;

**CONSIDERING** that the Impugned Decision would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial;

**FINDING** that the criteria regarding certification under Rule 73 (B) have been satisfied;

**CONSIDERING** that, the relevance of a decision by the Appeals Chamber on the Impugned Decision notwithstanding, the Trial Chamber at the same time attaches great importance, in the light of the period the Accused has already spent in pre-trial detention, to continue the pre-trial preparations in this case and to start the trial at the earliest possible time this year (envisaged at June 2003);

**FOR THE FOREGOING REASONS**

**PURSUANT TO** Rule 73 (B) and Rule 127 (A) (ii);

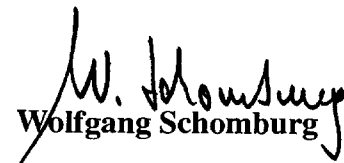
**HEREBY REGOGNIZES** the Request as being validly filed and **GRANTS** the Request.

Done in French and English, the English version being authoritative.

Dated this 17<sup>th</sup> day of January 2003,

At The Hague

The Netherlands

  
Wolfgang Schomburg

**Presiding Judge**

**[Seal of the Tribunal]**