



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-00-41-PT
Date: 3rd February 2003
Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. Hans Holthuis

Decision of: 3rd February 2003

PROSECUTOR

v.

PAŠKO LJUBIČIĆ

**DECISION ON THE ACCUSED'S APPLICATION FOR LEAVE TO APPEAL
THE TRIAL CHAMBER'S DECISION OF 23 JANUARY 2003 ON JUDICIAL
NOTICE OF ADJUDICATED FACTS**

Office of the Prosecutor

Mr Mark B. Harmon

Counsel for the Accused

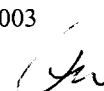
Mr Tomislav Jonjić

THIS TRIAL CHAMBER (“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 International Tribunal”),

BEING SEISED of the “Application for Leave to Appeal the 23rd January 2003 ‘Decision on Prosecution’s Motion for Judicial Notice of Adjudicated Facts’”, filed by the Accused on 28th January 2003 (“the Application” and “the Decision”), in which the Accused pursuant to Rule 73(B) of the Rules of Procedure and Evidence (“the Rules”) requests the Chamber to grant him certification to appeal the Decision, and in support of which the Accused submits the following:

- (a) That the Trial Chamber failed to assess the Defence’s claim that taking notice of the adjudicated facts in question compromises the right of the Accused to defend himself on those points where the interests of the Accused do not coincide with the interests of the accused in the cases from which the adjudicated facts are derived, and that in the present case different and partly opposed interests are involved; and,
- (b) That in view of the fact that the Accused has admitted that in the period covered by the Amended Indictment he was the commander of the 4th HVO Military Police Battalion and that, at the same time, he was the highest ranking military police officer in Central Bosnia, the allegations related to operations of the military police, of which the Trial Chamber took judicial notice, directly undermine the presumption of the Accused’s innocence,

CONSIDERING that subparagraph 73(B) of the Rules states that decisions on all motions are without interlocutory appeal save with certification by the Trial Chamber, which may grant such certification if the decision 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;



REITERATING the Trial Chamber's opinion, set out in the Decision, that it appears to the Chamber that none of the adjudicated facts in question tend to incriminate the accused in respect of the offences alleged in the Amended Indictment;

CONSIDERING that the Prosecution must prove by evidence led at trial, and beyond reasonable doubt, each element of an offence charged in the Amended Indictment (unless the Accused concedes one or more such elements) if the Accused is to be convicted of that offence;


REITERATING the principle, also set out in the Decision, that judicial notice of an adjudicated fact does not mean that that fact cannot be qualified or refuted by evidence led at trial, and that although there is a very real interest in judicial economy, the Trial Chamber will be particularly alert to any unforeseen injustice flowing to the Accused from notice of adjudicated facts, and will be quick to reverse it if need be;

CONSIDERING, therefore, that the Accused, in his Application, has not raised an issue in respect of the Decision 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,

HEREBY,

DENIES the Accused's application for certification.

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


Liu Daqun
Presiding

Dated this third day of February 2003
At The Hague
The Netherlands

[Seal of the Tribunal]

