



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-95-9-T  
Date: 28 February 2003  
Original: English

**IN TRIAL CHAMBER II**

**Before:** Judge Florence Ndepele Mwachande Mumba, Presiding  
Judge Sharon A. Williams  
Judge Per-Johan Viktor Lindholm

**Registrar:** Mr. Hans Holthuis

**Order of:** 28 February 2003

**THE PROSECUTOR**

v.

**BLAGOJE SIMIĆ  
MIROSLAV TADIĆ  
SIMO ZARIĆ**

**DECISION ON JOINT DEFENCE REQUEST FOR RULE 73 CERTIFICATION  
(PROCEDURE UNDER RULE 71 FOR DEPOSITIONS)**

**The Office of the Prosecutor:**

Mr. Gramsci Di Fazio  
Mr. Philip Weiner  
Mr. David Re

**Counsel for the Accused:**

Mr. Igor Pantelić and Mr. Srdjan Vuković for Blagoje Simić  
Mr. Novak Lukić and Mr. Dragan Krgović for Miroslav Tadić  
Mr. Borislav Pisarević and Mr. Aleksandar Lazarević for Simo Zarić

**THIS 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 “Joint Defense Request for Rule 73 Certification” (“Motion”), filed by the Defence of Blagoje Simić, Miroslav Tadić and Simo Zarić (“Defence”) on 6 February 2003, in which the Defence requests the Trial Chamber to grant certification to file an appeal pursuant to Rule 73 of the Rules of Procedure and Evidence of the Tribunal (“Rules”), against the Trial Chamber’s ruling rejecting a request for cross-examination of Defence Witnesses by co-accused,

**NOTING** the arguments of the Defence in their Motion, *inter alia*, that:

- (i) The accused is entitled to examine, or have examined, witnesses on his behalf and those witnesses against him, in accordance with Article 21(4)(e) of the Statute,<sup>1</sup>
- (ii) That cross-examination and re-examination by other defence counsel of co-accused witnesses is allowed in a joinder case,<sup>2</sup>
- (iii) Procedural guarantees outlined in the Rules for *viva voce* witnesses, apply equally to witnesses giving depositions in accordance with Rule 71,<sup>3</sup>
- (iv) A fair trial would be jeopardised if defence counsel are prevented from cross-examining witnesses of other co-accused,<sup>4</sup>

**NOTING** 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,

**NOTING** that this Trial Chamber in its Oral Decision denying the Defence Oral Motion on 31 January 2003, held that there was no reason to vary the procedure for deposition taking set out by the Trial Chamber, and the time limits already granted,

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<sup>1</sup> Motion, para.2.

<sup>2</sup> Motion, para.3.

<sup>3</sup> Motion, para.4.

<sup>4</sup> Motion, para.5.

**NOTING** Article 20 of the Statute of the Tribunal, which requires that the Trial Chamber shall conduct fair and expeditious trial proceedings with full respect for the rights of the accused,

**NOTING** Article 21(e) of the Statute guarantees the accused the right to examine, or to have examined, the witnesses against him and witnesses on his behalf,

**NOTING** that Rule 82 (A) provides that "In joint trials, each accused shall be accorded the same rights as if such accused were being tried separately,"

**CONSIDERING** that the Defence of joint accused, namely Blagoje Simić, Miroslav Tadić and Simo Zarić, have been permitted to cross-examine *viva voce* witnesses brought on behalf of, or against other co-accused, where they have deemed it in the interests of their accused's case,

**CONSIDERING** that the evidence admitted pursuant to Rule 71 is not new evidence, and that statements made during depositions contain only evidence that has been admitted previously during *viva voce* testimony of witnesses, where a full right to cross-examination has already been given to the Defence of each accused, for witnesses brought for or against other co-accused,

**CONSIDERING** that the Defence requested in its Oral Motion a general right of cross-examination of witnesses of other co-accused, and failed to introduce any specific arguments to the Trial Chamber to demonstrate the need for cross-examination of any particular witness, for any identified reason(s), and that the Motion requests cross-examination for an unspecified number of witnesses,<sup>5</sup>

**FINDING** therefore that the Oral Decision does not involve any issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and that the Defence has failed to show that the accused will suffer any prejudice in case certification for appeal is not granted,

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<sup>5</sup> During the Oral Request Mr Pantelic referred to the fact that on many occasions the witness brought on behalf of other co-accused may be considered as a so-called hostile witness to the other Defence team. However, the Defence failed to provide any further particulars as to any potential hostile witnesses for the deposition procedure (T.14947, 14948).

**PURSUANT TO** Rule 73 (B) of the Rules,

**HEREBY DENIES** the Motion.

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



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Judge Florence Ndepele Mwachande Mumba  
Presiding Judge

Dated this twenty eighth day of February 2003  
At The Hague  
The Netherlands

[Seal of the Tribunal]