



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-99-37-PT

Date: 16 July 2003

Original: English

IN THE TRIAL CHAMBER

Before: Judge Richard May, Presiding
Judge Patrick Robinson
Judge O-Gon Kwon

Registrar: Mr. Hans Holthuis

Decision of: 16 July 2003

PROSECUTOR

v.

**MILAN MILUTINOVIĆ
DRAGOLJUB OJDANIĆ
NIKOLA ŠAINOVIĆ**

**DECISION ON DEFENCE REQUEST FOR CERTIFICATION OF APPEAL AGAINST
THE DECISION OF THE TRIAL CHAMBER ON MOTION FOR ADDITIONAL FUNDS**

The Office of the Prosecutor

**Mr. Geoffrey Nice
Ms. Cristina Romano**

Counsel for the Accused

**Mr. John Livingston, Mr. Radoje Stefanović and Mr. Miladin Papić for Milan Milutinović
Mr. Tomislav Višnjić, Mr. Peter Robinson and Mr. Vojislav Selžan, for Dragoljub Ojdanić
Mr. Toma Fila, Mr. Vladimir Petrović and Mr. Zoran Jovanović, for Nikola Šainović**

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 (“International Tribunal”),

BEING SEISED of a “General Ojdanić’s Request for Certification to Appeal Decision on Motion for Additional Funds” (“Application”), filed by the defence of Dragoljub Ojdanić (“Defence”) on 11 July 2003, seeking certification from the Trial Chamber for interlocutory appeal of its decision denying the Defence request for additional funds to complete the pre-trial stage (“Decision”),¹

NOTING that the Defence argues in support of its Application that the Decision will have a drastic effect on the fair and expeditious conduct of the trial for the following reasons:

- (a) trial preparation will remain suspended until additional funds are allocated,
- (b) the Defence will not be prepared at trial to challenge the Prosecution’s evidence,
- (c) the Defence may be forced to forego cross-examination of Prosecution’s witnesses and appeal his conviction on the ground that the accused did not receive a fair trial,
- (d) the Defence will not be able to review and, therefore, stipulate or agree to the admission of evidence from the *Milošević* trial,
- (e) Counsel may be ethically required to withdraw from representing a client whom they cannot adequately defend,
- (f) the Registry’s decision not to allocate additional funds, affirmed by the Trial Chamber, creates an inequality of arms that will affect the outcome of the trial,
- (g) consideration of this issue by the Appeals Chamber will materially advance these proceedings, and will provide guidance to the Registry and other Trial Chambers,

NOTING the “Request for Leave to File an *Amicus Curiae* brief” on this matter, filed on 14 July 2003 by the President of the Association of Defence Counsel practicing before the International Tribunal, seeking leave to file an “Amicus Curiae Brief of the Association for Defence Counsel Practicing Before the International Criminal Tribunal for the Former Yugoslavia in Support of Defence Request for Certification of the Decision on Motion for Additional Funds” (“*Amicus Curiae* Brief”), in accordance with Rule 74 of the Rules of Procedure and Evidence (“Rules”), and the Information on the Submission of Amicus Curiae Briefs,²

¹ *Prosecutor v. Milutinović et al.*, “Decision on Motion for Additional Funds”, Case No. IT-99-37-PT, 8 July 2003.

² IT/122, 27 March 1997.

NOTING the following submissions in the *Amicus Curiae* Brief:

- (a) the issue to be decided is whether the work performed by the Defence team thus far was necessary and reasonable,
- (b) the situation resulting from the Trial Chamber Decision is not unique and that similar problems are arising in other cases before the Tribunal,
- (c) the existing Registry legal aid policy affects the ability of Defence counsels to properly and effectively prepare their cases for trial, thus affecting the expeditious conduct of the proceedings before the Tribunal,

NOTING that Rule 73 (B) requires two criteria to be satisfied before the Trial Chamber can exercise its discretion to certify a decision for interlocutory appeal: (1) that the issue would significantly affect the fair and expeditious conduct of the proceedings or outcome of the trial, *and* (2) an immediate resolution of the issue may, in the opinion of the Trial Chamber, materially advance the proceedings,

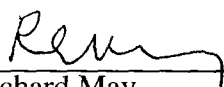
CONSIDERING that questions relating to the legal representation of an accused may affect the conduct of a trial, and have implications for the statutory rights of the accused,

CONSIDERING that this issue has not been determined by the Appeals Chamber and, as submitted in the *Amicus Curiae* Brief, similar applications are anticipated in other cases, the Trial Chamber considers that immediate resolution of this issue would materially advance the proceedings,

PURSUANT TO Rule 73 (B) of the Rules,

HEREBY GRANTS THE APPLICATION FOR CERTIFICATION ON APPEAL

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


 Richard May
 Presiding

Dated this sixteenth day of July 2003
 At The Hague
 The Netherlands

[Seal of the Tribunal]

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