UNITED NATIONS

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-01-47-PT
	Date:	25 July 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: 25 July 2003

PROSECUTOR

v.

ENVER HADŽIHASANOVIĆ
AMIR KUBURA

DECISION ON "JOINT DEFENCE REQUEST FOR CERTIFICATION OF THE 'DECISION ON JOINT DEFENCE ORAL MOTION FOR RECONSIDERATION OF "DECISION ON URGENT MOTION FOR *EX PARTE* ORAL HEARING ON ALLOCATION OF RESOURCES TO THE DEFENCE AND CONSEQUENCES THEREOF FOR THE RIGHTS OF THE ACCUSED TO A FAIR TRIAL"' DATED 18 JULY 2003"

The Office of the Prosecutor:
Mr. Ekkehard Withopf

Counsel for the Accused:
Ms. Edina Rešidović and Mr. Stéphane Bourgon for Enver Hadžihasanović
Mr. Fahrudin Ibrišimović and Mr. Rodney Dixon for Amir Kubura

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TRIAL CHAMBER II 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 SEIZED of the "Joint Defence Request for Certification of the 'Decision on Joint Defence Oral Motion for Reconsideration of "Decision on Urgent Motion for *Ex Parte* Oral Hearing on Allocation of Resources to the Defence and Consequences Thereof for the Rights of the Accused to a Fair Trial'" Dated 18 July 2003", filed jointly by the defence for Enver Hadžihasanović and Amir Kubura ("Joint Defence") on 22 July 2003 ("Joint Request"), whereby the Joint Defence requests the Trial Chamber to certify its "Decision on Joint Defence Oral Motion for Reconsideration of 'Decision on Urgent Motion for *Ex Parte* Oral Hearing on Allocation of Resources to the Defence and Consequences Thereof for the Rights of the Accused to a Fair Trial'" ("Impugned Decision"), with a view to allowing the matter to be raised before the Appeals Chamber by way of an interlocutory appeal pursuant to Rule 73 (B) of the Rules of Procedure and Evidence ("Rules"),

RECALLING the Impugned Decision, in which the Trial Chamber denied the urgent motion for being "***inadmissible*** as it seeks a ruling by this Chamber which this Chamber can not give," [1]

NOTING that this decision has not stopped the Joint Defence to file an Oral Motion during the status conference on 9 July 2003, in which the very same issue was brought again to the attention of the Chamber,

NOTING that in its Impugned Decision, the Trial Chamber reiterated the inadmissible character of the issue before it, stressed that the submissions of the Joint Defence "form either a repetition of earlier submissions or are nothing but self-created new facts" and considered "any future submissions of a similar character as the present Oral Motion as frivolous",

NOTING that, notwithstanding such clear language, the Joint Defence now seeks certification of the Impugned Decision,

CONSIDERING that the underlying question relating to the various filings is whether the Defence has sufficient time and resources to prepare the case for their clients in, in the words of the Defence, a professional, reasonable and ethical way,

CONSIDERING that the Trial Chamber fails to see how a seemingly unstoppable series of filings on an issue already declared inadmissible may contribute to the proper preparation of the Defence case,

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[1] *Emphasis added.*

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CONSIDERING that the Joint Defence Request fails to meet the standards, set out in Rule 73B for a decision to be certified,
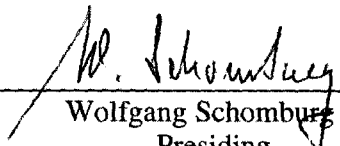
CONSIDERING FURTHERMORE the present Joint Defence Request frivolous,

FOR THE FOREGOING REASONS

PURSUANT TO Rules 54 and 73 (B) of the Rules,

DENIES the Joint Request.

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

Wolfgang Schomburg
Presiding

Dated this 25th day of July 2003,
At The Hague
The Netherlands

[Seal of the Tribunal]

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