



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

Case No. IT-02-65-PT
Date: 25 January 2005
Original: ENGLISH

IN THE TRIAL CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge O-Gon Kwon
Judge Iain Bonomy

Registrar: Mr. Hans Holthuis

Decision of: 25 January 2005

PROSECUTOR

v.

**ŽELJKO MEJAKIĆ
MOMČILO GRUBAN
DUŠAN FUŠTAR
DUŠKO KNEŽEVIĆ**

**DECISION ON KNEŽEVIĆ'S MOTION FOR CERTIFICATION FOR INTERLOCUTORY
APPEAL OF "DECISION ON PROSECUTION'S MOTION TO AMEND CONSOLIDATED
INDICTMENT SCHEDULES A THROUGH F, THE RULE 65 TER WITNESS
SUMMARIES, AND THE PRE-TRIAL BRIEF INCIDENT SUMMARIES"**

The Office of the Prosecutor:

Ms. Ann Sutherland
Mr. Michael Mc Vicker

Counsel for the Accused:

Mr. Jovan Simić, for Željko Mejačić
Mr. Branko Lukić, for Momčilo Gruban
Mr. Theodore Scudder and Mr. Dragan Ivetić, for Dušan Fuštar
Ms. Slobodanka Nedić, for Duško Knežević

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 (“the International Tribunal”),

BEING SEISED of a confidential “Knežević’s Request for Certification” filed by the Accused Knežević on 23 December 2004 pursuant to Rule 73(B) seeking certification to appeal against the Trial Chamber’s “Decision on Prosecution’s Motion to Amend the Consolidated Indictment Schedules A Through F, the Rule 65 *ter* Witness Summaries, and the Pre-Trial Brief Incident Summaries” issued on 17 December 2004” (“Request for Certification”),

NOTING the “Prosecution’s Response to Knežević’s Request for Certification” filed by the Office of the Prosecutor on 7 January 2005, in which it opposes the Request for Certification on the basis that Knežević has not satisfied the requirements of Rule 73(B), and requests the Trial Chamber to deny the application,

CONSIDERING that Rule 73(B) requires that two criteria be satisfied before the Trial Chamber can exercise its discretion to certify a decision for interlocutory appeal: (1) 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,

NOTING Knežević’s submission that the first condition set out in Rule 73(B) is met for the following reasons:

- (a) the Trial Chamber erred in accepting, albeit implicitly, that the amendment does not raise new charges against Knežević or Fuštar;¹
- (b) the Trial Chamber erred in its reading of the *Krnojelac* Appeal Judgement;²
- (c) in the exercise of its discretion to allow the amendment, the Trial Chamber did not give reasons;³ and

¹ Request for Certification, paras 5-6.

² *Prosecutor v. Krnojelac*, Case No. IT-97-25-A, Judgement, 17 September 2003, para. 138; Request for Certification, para. 8.

(d) the parties were not afforded the opportunity to make oral submissions,⁴

NOTING the submission that the second condition under Rule 73(B) is met in this instance because the case is ready for trial and “granting leave to amend the indictment will cause increasing the number of witnesses at the trial, longer duration of the trial and delay of commencement of the trial”, so that “an immediate resolution of this matter will materially advance the proceedings”,⁵


CONSIDERING that, in so far as the first criterion is concerned, while the Request for Certification sets out in some detail the potential grounds of appeal, none of the arguments advanced demonstrates that the Trial Chamber’s Decision of 17 December 2004 involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial,

CONSIDERING that while there might be something to be said for the proposition that the decision might affect the outcome of the trial (on which the Trial Chamber expresses no concluding view), nevertheless, there is no foundation in the submission that by “granting leave to amend the indictment will cause increasing the number of witnesses at the trial, longer duration of the trial and delay of commencement of the trial”;⁶ therefore, the Request for Certification fails to establish the second cumulative criterion of Rule 73(B),

PURSUANT TO Rule 73(B) of the Rules of Procedure and Evidence of the International Tribunal,

HEREBY DENIES THE REQUEST FOR CERTIFICATION ON APPEAL

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



Patrick Robinson
Presiding

Dated this twenty-fifth day of January 2005
At The Hague
The Netherlands

[Seal of the Tribunal]

³ Request for Certification, para. 12.

⁴ *Ibid.*, para. 11.

⁵ Request for Certification, para. 20.

⁶ No date has yet been set for trial in this case and a Prosecution motion is pending pursuant to Rule 11 *bis* for the case to be referred to the State Court in Bosnia and Herzegovina.