

**UNITED  
NATIONS**



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-03-68-T  
Date: 13 February 2006  
Original: English

**IN TRIAL CHAMBER II**

**Before:** Judge Carmel Agius, Presiding  
Judge Hans Henrik Brydensholt  
Judge Albin Eser

**Registrar:** Mr. Hans Holthuis

**Decision of:** 13 February 2006

**PROSECUTOR**

v.

**NASER ORIĆ**

**DECISION ON URGENT DEFENCE REQUEST FOR  
CERTIFICATION OF THE TRIAL CHAMBER'S DECISION  
ON DEFENCE MOTION TO EXCLUDE INTERVIEW OF THE  
ACCUSED PURSUANT TO RULES 89(D) AND 95**

**The Office of the Prosecutor:**

Mr. Jan Wubben  
Ms. Patricia Sellers Viseur  
Mr. Gramsci di Fazio  
Ms. JoAnne Richardson  
Mr. José Doria

**Counsel for the Accused:**

Ms. Vasvija Vidović  
Mr. John Jones

**TRIAL CHAMBER II** (“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 “Urgent Request for Certification of the Trial Chamber’s Decision on Defence Motion to Exclude Interview of the Accused Pursuant to Rules 89(D) and 95” (“Request for Certification”), filed by counsel for Naser Orić (“Defence” and “Accused”, respectively) on 9 February 2006;

**NOTING** the Trial Chamber’s “Decision on Defence Motion to Exclude Interview of the Accused Pursuant to Rules 89(D) and 95” (“Impugned Decision”) issued on 7 February 2006, in which the Trial Chamber denied a motion submitted by the Defence to exclude from evidence the record of what appears to be a suspect interview with the Accused (“Interview”), that motion being made on grounds that this Interview allegedly is unreliable due to flawed interpretation, incomplete or erroneous transcription, incompetent counsel, consultation of other sources by the Accused, aggressive questioning and abuse of process by the Office of the Prosecutor (“Prosecution”);

**NOTING** that with respect to incomplete or erroneous transcription, the Trial Chamber in the Impugned Decision explicitly held that “[...] the Trial Chamber sees no reason to exclude the Interview from evidence due to deficient transcription; instead, it will rely on the English transcript taking into account what has been submitted in the Motion”;<sup>1</sup>

**NOTING** the “Prosecution Response to the Defence Urgent Request for Certification of the Trial Chamber’s Decision on Defence Motion to Exclude Interview of the Accused Pursuant to Rules 89(D) and 95” (“Response”), filed on 10 February 2006, in which the Prosecution submits that the Request for Certification does not meet the requirements of Rule 73(B) of the Tribunal’s Rules of Procedure and Evidence (“Rules”) and consequently, the Request for Certification should be denied;

**NOTING** the Defence submissions, in the Request for Certification, that the Trial Chamber in the Impugned Decision erred in law, first, by not having issued “appropriate orders to enable a definitive, accurate version of the alleged record” of the Interview to be compiled,<sup>2</sup> second, by making findings and rejecting all other Defence complaints regarding the Interview based on the

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<sup>1</sup> Impugned Decision, para. 25.

<sup>2</sup> Request for Certification, para. 14.

erroneous transcript,<sup>3</sup> third, by overly relying on the lack of complaint by the Accused when finding that he was adequately represented<sup>4</sup>;

**NOTING** the Defence submission that, considering that the Defence has rested its case and judgement deliberations by the Trial Chamber are imminent, the question whether the Interview shall remain part of the evidence in this case constitutes an issue which would significantly affect the fair and expeditious conduct of, and materially advance, the proceedings;<sup>5</sup>

**NOTING** Rule 73(B) of the Rules, which sets out two cumulative criteria to be satisfied before the Trial Chamber can exercise its discretion to certify a decision for interlocutory appeal:

- i) the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial; and
- ii) for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings;

**FINDING**, in the exercise of the Trial Chamber's discretion whether to grant certification, that the Impugned Decision does not involve an issue that would "significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial", particularly because the Trial Chamber, in the Impugned Decision, with respect to translation and interpretation issues, held that it will take into account the Defence submissions, which have remained uncontested by the Prosecution;<sup>6</sup>

**FINDING** that the remaining alleged errors in law put forward by the Defence go to the substance of the Impugned Decision, rather than to the criteria to be satisfied for certification to be granted;

**FINDING FURTHER** that considering the present stage of the case, the second of the two cumulative criteria provided for in Rule 73(B) of the Rules is also unfulfilled;

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<sup>3</sup> Request for Certification, paras 17-20.

<sup>4</sup> Request for Certification, paras 21-22.

<sup>5</sup> Request for Certification, para. 23-25.

<sup>6</sup> In the Impugned Decision, the Trial Chamber made it clear how it will be eventually dealing with the submissions of the Defence relating to the various incorrect and/or incomplete translations in the English transcript of the Interview and during the Interview itself. In fact, when in para. 25 of the Impugned Decision the Trial Chamber affirmed that it "sees no reason to exclude the Interview from evidence due to deficient transcription; instead, it will rely on the English transcript taking into account what has been submitted in the Motion", this followed two basic considerations, namely that a) "the Trial Chamber acknowledges that there are various instances in which the current English transcript does not completely reflect what was being said during the Interview", and b) "the Prosecution on the other hand, has not denied that the examples of corrected English transcript provided in the Motion are an accurate reflection of what was being said during the Interview". Similarly, in para. 24 of the Impugned Decision, the Trial Chamber after stating that the translation errors situation had crystallised, concluded by affirming that it "will give due consideration to the parts where the Accused appears to have received incorrect translation" during the Interview.

**FOR THE FOREGOING REASONS**

**PURSUANT TO** Articles 20 and 21 (2) of the Statute of the Tribunal and to Rule 73(B) of the Rules;

**HEREBY DENIES** the Request for Certification.

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

Dated this thirteenth day of February 2006

At The Hague

The Netherlands



**Carmel Agius**  
**Presiding Judge**

**[Seal of the Tribunal]**