



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-04-74-T  
Date: 23 June 2006  
Original: ENGLISH  
French

**TRIAL CHAMBER III**

**Before:** Judge Jean-Claude Antonetti  
Judge Árpád Prandler  
Judge Stefan Trechsel

**Registrar:** Mr Hans Holthuis

**Decision of:** 23 June 2006

**THE PROSECUTOR**

v.

**Jadranko PRLIĆ**  
**Bruno STOJIC**  
**Slobodan PRALJAK**  
**Milivoj PETKOVIĆ**  
**Valentin ĆORIĆ**  
**Berislav PUŠIĆ**

**DECISION ON PROSECUTION REQUEST FOR CERTIFICATION FOR  
APPEAL OF DECISION OF 25 MAY 2006 ON LEAD COUNSEL'S  
ASSIGNMENT OF MR ORSAT MILJENIĆ AS *PRO BONO* CO-COUNSEL  
FOR THE ACCUSED PETKOVIĆ**

**The Office of the Prosecutor:**

Mr Kenneth Scott  
Mr Daryl Mundis

**Counsel for the Accused:**

Mr Michael Karnavas and Ms Suzana Tomanović for Jadranko Prlić  
Ms Senka Nožica and Mr Peter Murphey for Bruno Stojić  
Mr Božidar Kovačić and Ms Nika Pinter for Slobodan Praljak  
Ms Vesna Alaburić for Milivoj Petković  
Mr Tomislav Jonjić for Valentin Ćorić  
Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

**TRIAL CHAMBER III** (“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 SEIZED OF** the “Prosecution Request for Reconsideration or Certification for Appeal of the Trial Chamber’s ‘Décision relative à la désignation par le Conseil principal de Monsieur Orsat Miljenić en qualité de co-conseil non rémunéré à la Défense de l’Accusé Petković’ dated 25 May 2006” filed on 1 June 2006 (“Prosecution Request”) by the Office of the Prosecutor (“Prosecution”) in which the Prosecution requests the Chamber to reconsider its decision of 25 May 2006 or to authorise it to file an interlocutory appeal against the said decision;

**NOTING** the confidential “Decision on Lead Counsel’s Assignment of Mr Orsat Miljenić as *Pro Bono* Co-counsel for the Accused Petković” rendered on 25 May 2006 (“Decision”) in which the Chamber held that there is no conflict of interests which might hinder the assignment of Mr Miljenić as Co-counsel to the Accused;

**CONSIDERING** that the Chamber notes that the Defence has not responded to the Prosecution Request within fourteen days as required by Rule 126 *bis* of the Rules of Procedure and Evidence (“Rules”);

**CONSIDERING** that the Prosecution claims that the assignment of Mr Miljenić to the defence of Milivoj Petković (“Accused”) may create a conflict of interests with the Accused and, furthermore, would be contrary and prejudicial to the interests of justice since Mr Miljenić allegedly assisted the Prosecution for a number of years, *inter alia* in preparing the case against the Accused;

**CONSIDERING** that the Prosecution submits that Mr Miljenić engaged in a campaign of obstruction to and interference with the work of the Tribunal, including the concealment of evidence, witnesses and suspects, the making of false statements and espionage operations inside the Tribunal;

**CONSIDERING** that the Prosecution submits that the primary responsibility for matters related to the appointment and participation of counsel rests with the Registry and that “[u]nless there is very strong evidence or reason to believe that the Registry

has abused its discretion, the Trial Chamber should affirm the Registry in exercising its discretion”;

**CONSIDERING** that the Prosecution notes that the Registrar, the President of the Tribunal and the Prosecution objected to Mr Miljenić representing the Accused and that they indicated and/or affirmed the existence of a conflict of interests;

**CONSIDERING** that the Prosecution argues that in these and similar issues to be resolved by the Chamber, the standard of proof required is not one of proof beyond reasonable doubt but whether a sufficiently serious question has been raised that "indicates a significant ethical or propriety cloud or question concerning these proceedings”;

**CONSIDERING** that the Prosecution submits that the prejudice caused by an erroneous assignment of defence counsel may be too great to redress after the fact;

**CONSIDERING** that the Prosecution argues that the Decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings and that its immediate resolution by the Appeals Chamber would advance the proceedings;

**CONSIDERING** that in its Decision the Chamber held that the Prosecution failed to show how the assignment of Mr Miljenić could actually prejudice the Accused or give the Defence an unfair advantage over the Prosecution;

**CONSIDERING** further that the Chamber found that the Prosecution has failed to prove Mr Miljenić’s involvement in any potential obstruction of justice;

**CONSIDERING** that in its Request the Prosecution has failed to submit new evidence and that, therefore, there is no reason for the Chamber to reconsider its Decision;

**CONSIDERING** that Rule 73(B) of the Rules states that a Trial Chamber can only certify an interlocutory appeal after having ascertained that two conditions are met, namely that the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings and that an immediate resolution by the Appeals Chamber may materially advance the proceedings;

**CONSIDERING** that the Chamber is of the view that whether or not there is a conflict of interests in the assignment of counsel is an issue that affects the fair and expeditious conduct of proceedings;

**CONSIDERING** that the Prosecution has shown that the issue raised is of crucial importance and that it could affect the outcome of the trial if, in reviewing the judgement on the merits, the Appeals Chamber were to reverse the Trial Chamber's decision;

**CONSIDERING** that, consequently, the Chamber finds that an immediate resolution of this issue by the Appeals Chamber could materially advance the proceedings;

**CONSIDERING** that the Chamber finds that the two conditions set out in Rule 73(B) of the Rules are met;

**FOR THE FOREGOING REASONS,**

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

The Trial Chamber unanimously:

**1. DISMISSES** the request for review.

The Trial Chamber by a majority:

**2. CERTIFIES** the appeal from the Decision.

**Judge Antonetti's dissenting opinion to this decision is attached hereto.**

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

*/signed/*

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Judge Jean-Claude Antonetti  
Presiding Judge

Done this twenty-third day of June 2006  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**