



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-04-83-PT

Date: 14 July 2006

Original: ENGLISH

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**IN THE TRIAL CHAMBER**

**Before:** Judge Patrick Robinson, Presiding  
Judge Krister Thelin  
Judge Frank Höpfel

**Registrar:** Mr. Hans Holthuis

**Order of:** 14 July 2006

**PROSECUTOR**

**v.**

**RASIM DELIĆ**

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**DECISION ON PROSECUTION REQUEST FOR CERTIFICATION TO APPEAL  
TRIAL CHAMBER DECISION DENYING PROSECUTION APPLICATION FOR  
LEAVE TO AMEND**

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**Office of the Prosecutor**  
Mr. Daryl Mundis  
Ms. Tecla Henry-Benjamin

**Counsel for the Accused**  
Mrs. Vasvija Vidović  
Ms. Quincy Whitaker

**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 (“Tribunal”);

**BEING SEISED** of the “Prosecution Request for Certification to Appeal Trial Chamber Decision Denying Prosecution Application for Leave to Amend”, filed by the Prosecution on 7 July 2006 (“Request”) pursuant to Rule 73(B) of the Rules of Evidence and Procedure of the Tribunal (“Rules”), seeking certification from the Trial Chamber for interlocutory appeal of its decision denying leave to amend the indictment (“Amendment Decision”);<sup>1</sup>

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

**CONSIDERING** that even when an important point of law is raised, such as in this case, the effect of Rule 73(B) is to preclude certification unless the party seeking certification establishes that both conditions are satisfied;<sup>2</sup>

**CONSIDERING** that “[t]he effect of Rule 73(B) is to preclude certification unless its conditions are satisfied, but, in a case where they are satisfied, certification remains in the discretion of the Trial Chamber”;<sup>3</sup>

**NOTING** that the Prosecution’s arguments in favour of certification are the following: (1) “[t]he denial of the Prosecution motion goes to the scope of the Indictment, and therefore significantly affects the outcome of the trial”; (2) “given the Tribunal’s completion strategy, the Prosecution cannot, for practical reasons, appeal the Amendment Decision after the

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<sup>1</sup> *Prosecutor v. Delić*, Case No. IT-04-83-PT, Decision on Prosecutor’s Submission of Proposed Amended Indictment and Defence Motion Alleging Defects in Amended Indictment, 30 June 2006; Corrigendum to Decision on Prosecutor’s Submission of Proposed Amended Indictment and Defence Motion Alleging Defects in Amended Indictment, 12 July 2006.

<sup>2</sup> *Prosecutor v. Halilović*, Case No. IT-01-48-PT, Decision on Prosecution Request for Certification for Interlocutory Appeal of ‘Decision on Prosecutor’s Motion Seeking Leave to Amend the Indictment’, 12 January 2005, p. 1.

<sup>3</sup> *Prosecutor v. Strugar*, Case No. IT-01-42-T, Decision on Defence Motion for Certification, 17 June 2004, para. 2.

conclusion of the trial” and for that reason “permitting interlocutory appeal now would materially advance these proceedings”;<sup>4</sup>

**NOTING** the Prosecution further submission that the Trial Chamber abused its discretion in denying the Prosecution’s Motion to Amend the Indictment and erred in three ways: (1) in classifying the mode of liability as a new charge; (2) exercising its discretion without regard to any real factual findings and without regard to its own duty and ability to control its own courtroom; and (3) by failing to consider the interests of the Prosecution and the overall interest of justice;<sup>5</sup>

**NOTING** the “Defence Response to Prosecution’s Request for Certification to Appeal Trial Chamber Decision Denying Prosecution Application for Leave to Amend,” filed by the Defence on 1 July 2006 (“Response”), in which it argues that the Prosecution has failed to establish that the requirements of Rule 73(B) has been met, and urges the Trial Chamber to deny the Request;<sup>6</sup>

**CONSIDERING** that the Request does not adequately explain how the criteria of Rule 73(B) have been satisfied in this case; in particular, the Prosecution has not adequately demonstrated that the second prong under Rule 73(B) has been met;

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

**HEREBY DENIES THE REQUEST.**


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<sup>4</sup> Request, para. 3.

<sup>5</sup> Request, paras. 4, 16.

<sup>6</sup> Response, paras. 11–12, 18.

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



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**Judge Patrick Robinson**  
**Presiding**

Dated this fourteenth day of July 2006  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**