



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: 30 May 2007  
Original: ENGLISH  
French

**IN TRIAL CHAMBER III**

**Before:** Judge Jean-Claude Antonetti, presiding  
Judge Árpád Prandler  
Judge Stefan Trechsel  
Reserve Judge Antoine Kesia-Mbe Mindua

**Registrar:** Mr Hans Holthuis

**Decision of:** 30 May 2007

**THE PROSECUTOR**

v.

Jadranko PRLIĆ  
Bruno STOJIĆ  
Slobodan PRALJAK  
Milivoj PETKOVIĆ  
Valentin ĆORIĆ  
Berislav PUŠIĆ

***PUBLIC***

**DECISION ON REQUEST FOR CERTIFICATION TO APPEAL THE DECISION OF  
25 APRIL 2007 ON DEFENCE MOTION TO STRIKE CERTAIN PARTS FROM THE  
INDICTMENT**

**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 Murphy for Bruno Stojić  
Mr Božidar Kovačić and Ms Nika Pinter for Slobodan Praljak  
Ms Vesna Alaburić and Mr Nicholas Stewart for Milivoj Petković  
Ms Dijana Tomašegović-Tomić and Mr Dražen Plavec 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”);

**SEIZED OF** the “Request of the Petković Defence for Certification to Appeal the Trial Chamber’s Decision on its Submission to the Trial Chamber to Order the Prosecution to Strike from the Amended Indictment Certain Parts Alleging Co-perpetration, Indirect Co-perpetration, Indirect Perpetration and Aiding and Abetting of JCE”, filed by Counsel for the Accused Petković (“Petković Defence”) on 1 May 2007 (“Request for Certification to Appeal”), whereby the Petković Defence requests certification from the Chamber to appeal the “Decision on Defence Motion to Strike From the Amended Indictment Certain Parts Alleging Co-Perpetration, Indirect Co-Perpetration, Indirect Perpetration and Aiding and Abetting of Joint Criminal Enterprise”, rendered by the Chamber on 25 April 2007 (“Decision of 25 April 2007”),

**NOTING** the Decision of 25 April 2007 whereby the Chamber denied the motion of the Petković Defence to strike certain parts from the Amended Indictment (“Indictment”) alleging co-perpetration, indirect co-perpetration, indirect perpetration and aiding and abetting of joint criminal enterprise,

**NOTING** that the Office of the Prosecutor (“Prosecution”) filed no response to the Request for Certification to Appeal,

**CONSIDERING** that in support of the Request for Certification to Appeal, the Petković Defence submits that the issues raised in this case would significantly affect the fairness and expeditiousness of the trial in that they affect in particular the right of the Accused to be informed promptly and in detail of the nature and cause of the charges against him, as set out in Article 21(4)(a) of the Statute of the Tribunal (“Statute”),

**CONSIDERING** that the Petković Defence argues that the right in question pertains not only to the crimes the Accused is charged with, but also to the forms of responsibility alleged in the Indictment,

**CONSIDERING** that the Petković Defence also argues that the Decision of 25 April 2007 affects the rights of the Accused as set out in Article 21(4)(b), (c) and (e) of the Statute, since it forces the Defence to spend considerable energy, resources and time to respond to invalid forms of responsibility,

**CONSIDERING** that the Petković Defence argues that an immediate resolution from the Appeals Chamber would materially advance the proceedings in that it would eliminate or significantly reduce the uncertainties in the Indictment before the presentation of the Defence case begins,

**CONSIDERING** that pursuant to Rule 73(B) of the Rules of Procedure and Evidence (“Rules”), the Chamber may grant certification to appeal if the impugned decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which an immediate resolution by the Appeals Chamber may materially advance the proceedings,

**CONSIDERING** that Article 21(4)(a) of the Statute guarantees the right of the Accused to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him,

**CONSIDERING** that, contrary to the argument put forth by the Petković Defence, the issue in this case is not whether the Accused are informed of the charges against them, since paragraphs 218, 224, 225 and 226 of the Indictment clearly particularize the forms of alleged responsibility,

**CONSIDERING** that the Petković Defence instead requests the Chamber to make a premature interpretation of the applicable law in the case and to make its legal findings in this regard, even before any decision pursuant to Rule 98 *bis* of the Rules is rendered,

**CONSIDERING** that the applicable law is interpreted at the appropriate time provided for in the Statute and the Rules, namely in Article 23 of the Statute and Rules 72(A), 87, 98 *bis* and 98 *ter* of the Rules, no later than the time the judgement is pronounced,

**CONSIDERING** that, in the Decision of 25 April 2007, the Chamber consequently decided to rule on the issue raised in this case at the time provided for in the Rules and in the Statute, namely when it renders a decision pursuant to Rule 98 *bis* of the Rules,

**CONSIDERING** that there is no rule of law requiring the Chamber to assess the validity of the allegations against the Accused each time the Appeals Chamber makes a ruling or decision on the applicable law in this case,

**CONSIDERING**, finally, that the Chamber believes that the rights of the Accused, as set out in Article 21(4)(b), (c) and (e) of the Statute, are not affected by the Decision of 25 April 2007

since, first, the Chamber takes into account the scope of the Indictment and all forms of responsibility alleged therein when ruling on the time and facilities necessary to prepare cross-examination, in particular when it decides how much time to allocate to the Defence for its cross-examination of Prosecution witnesses and since, second, the Chamber has not yet determined at this stage of the proceedings how much time the Defence will have for the presentation of its case,

**CONSIDERING**, consequently, that the Chamber does not agree that the Decision of 25 April 2007 involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial,

**FOR THE FOREGOING REASONS,**

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

**DENIES** the Request for Certification.

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

*/signed/*

---

Judge Jean-Claude Antonetti  
Presiding Judge

Done this thirtieth day of May 2007

At The Hague

The Netherlands

**[Seal of the Tribunal]**