



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-AR72.2
Date: 4 June 2007
Original: English

BEFORE THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Andréia Vaz
Judge Wolfgang Schomburg

Registrar: Mr. Hans Holthuis

Decision of: 4 June 2007

THE PROSECUTOR

v.

**JADRANKO PRLIĆ
BRUNO STOJIĆ
SLOBODAN PRALJAK
MILIVOJ PETKOVIĆ
VALENTIN ĆORIĆ
& BERISLAV PUŠIĆ**

**DECISION ON PETKOVIĆ APPEAL AGAINST DECISION ON
DEFENCE MOTION TO STRIKE THE AMENDED 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 Tomašević-Tomić and Mr. Dražen Plavec for Valentin Ćorić
Mr. Fahrudin Ibrišimović and Mr. Roger Sahota for Berislav Pušić**

1. The Appeals Chamber of the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (“Appeals Chamber” and “International Tribunal”, respectively), is seized of an appeal filed by the accused Milivoj Petković (“Appeal”) on 10 May 2007,¹ against a decision of the Trial Chamber dated 25 April 2007 (“Impugned Decision”) dismissing his challenge to the International Tribunal’s jurisdiction over him with respect to certain paragraphs of the Amended Indictment, which plead forms of individual criminal liability he alleges are not recognised by the International Tribunal as falling within its jurisdiction pursuant to Article 7(1) of the Statute.² On 21 May 2007, the Prosecution filed its Response to the Appeal in the form of a motion requesting the Appeals Chamber to strike the Appeal on procedural grounds.³ Should the Appeals Chamber refuse this relief, the Prosecution requests that it be granted 24 hours to file its response to the merits of the Appeal.⁴ Petković replied on 25 May 2007 and filed a corrigendum thereto on 29 May 2007.⁵

2. In his Appeal, Petković advises the Appeals Chamber that while he considers that he has a right to file his Appeal as a preliminary challenge to the jurisdiction of the Tribunal pursuant to Rule 72(B)(i) and (C) of the Rules of Procedure and Evidence of the International Tribunal (“Rules”), as a precautionary measure, he also sought certification from the Trial Chamber to appeal the Impugned Decision pursuant to Rule 73 (B) and (C) of the Rules. At the time of the filing of the Appeal as of right, that request was still pending before the Trial Chamber. However, Petković submits that should it be granted, he will submit a certified appeal pursuant to Rule 73 of

¹ Petković Defence Appeal Concerning the Trial Chamber’s Decision on the Defence Motion to Strike From the Amended Indictment Certain Parts Alleging Co-Perpetration, Indirect Co-Perpetration, Indirect Perpetration and Aiding and Abetting of JCE, 10 May 2007 (“Appeal”).

² *Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, Decision on Defence Motion to Strike from the Amended Indictment Certain Parts Alleging Co-Perpetration, Indirect Perpetration and Aiding and Abetting of Joint Criminal Enterprise, 25 April 2007.

³ *Prosecutor v. Prlić et al.*, Case No. IT-04-74-AR72.2, Prosecution’s Motion to Strike Petković’s Appeal Concerning the Trial Chamber’s Decision on Defence Motion to Strike from the Amended Indictment Certain Parts Alleging Co-Perpetration, Indirect Co-Perpetration, Indirect Perpetration and Aiding and Abetting JCE, 21 May 2007 (“Response”), paras. 2-9.

⁴ Response, para. 10.

⁵ Petković Defence Reply to Prosecution’s Motion to Strike Petković’s Appeal of 10 May 2007 Concerning the Trial Chamber’s Decision to Strike From the Amended Indictment Certain Parts Alleging Co-Perpetration, Indirect Co-Perpetration, Indirect Perpetration and Aiding and Abetting JCE, 25 May 2007; Petković Defence Corrigendum to its Reply to Prosecution Motion to Strike Petković’s Appeal of 10 May 2007. The Appeals Chamber notes that Petković attempted to circumvent the Practice Direction on the Length of Briefs and Motions (IT/184 Rev.2) by attaching to his reply an Annex entitled “Book of References to Relevant Paragraphs of Various Pre-Trial Submissions of Petković Defence Concerning Indirect Perpetration”, made up of arguments against holdings of the Trial Chamber. As Annexes are not to be used for further arguments the Annex has been disregarded in full.

the Rules as well.⁶ The Appeals Chamber notes that the request to the Trial Chamber for certification to appeal the Impugned Decision was rejected by the Trial Chamber on 30 May 2007.⁷

3. In his Appeal, Petković argues that his right to bring this appeal as a challenge to the jurisdiction of the Tribunal is supported by the fact that the Impugned Decision is explicitly based on Rule 72(a)(i) of the Rules. The Impugned Decision found that his challenge to the Prosecution's pleading of the modes of liability of indirect perpetration, indirect co-perpetration and aiding and abetting a joint criminal enterprise was in substance a challenge to the jurisdiction of the International Tribunal with respect to those modes of liability.⁸ However, the Trial Chamber did not consider that it would expedite the proceedings of the trial to consider the challenge on its merits, noting that the motion should have been filed during the pre-trial phase and within the time limits prescribed by the Rules.⁹ Petković argues that this holding violates his rights as guaranteed under Article 21 of the International Tribunal's Statute and renders his trial unfair.¹⁰

4. The Appeals Chamber finds that Petković's challenge is properly characterised as a jurisdictional challenge under Rule 72 (D)(iv);¹¹ however, it also finds that Petković's claim that he has a right to file this Appeal pursuant to Rule 72(B)(i) and (C) is misguided. Rule 72(A)(i) of the Rules clearly states that challenges to jurisdiction must be "brought not less than 30 days after disclosure by the Prosecutor to the defence of all material and statements referred to in Rule 66(A)(i)". Additionally, when an Indictment is amended to include additional charges, Rule 50(C) accords a further period of thirty days in which to file preliminary motions pursuant to Rule 72 with respect to the new charges. Neither of these situations is applicable to the present case. The motion which led to the Impugned Decision of the Trial Chamber was filed nine months into the trial of Petković and therefore, his Appeal is inadmissible before the Appeals Chamber.¹²

5. The Appeals Chamber is also not satisfied that a failure to resolve this issue at this stage in the trial proceedings would cause Petković prejudice. The Trial Chamber made clear in the Impugned Decision that it will consider his challenges to the impugned parts of the Amended Indictment in a decision issued pursuant to Rule 98bis, prior to the presentation of the Defence

⁶ Appeal, paras. 11-12.

⁷ Décision relative à la demande de certification d'appel de la Décision portant sur la demande de la Défense de supprimer certains passages de l'Acte d'accusation du 25 avril 2007.

⁸ Impugned Decision, pp. 2-3; *see also* Appeal, paras. 11-12.

⁹ Impugned Decision, pp. 3-4.

¹⁰ Appeal, para. 22.

¹¹ *See Prosecutor v. Milan Milutinović et al.*, Case No. IT-99-37-AR-72, Decision on Dragoljub Odjanić's Motion Challenging Jurisdiction *Joint Criminal Enterprise*, 21 May 2003.


¹² *See Prosecutor v. Ljube Bošković and Johan Tarčulovski*, Case No. IT-04-82-AR72.2, Decision on Ljube Bošković's Appeal on Jurisdiction, 9 January 2007 ("*Bošković Appeal on Jurisdiction*"), para. 3.

case.¹³ As such, Petković’s rights under Article 21 of the Statute are not, as he alleges, violated by the Impugned Decision.¹⁴

6. On the basis of the foregoing, the Appeals Chamber considers that it would be acting *ultra vires* if it were to address the Appeal on the merits. Accordingly, the Appeal is hereby **DISMISSED**.

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

Dated this 4th day of June 2007,
At The Hague,
The Netherlands.



Judge Fausto Pocar
Presiding Judge

[Seal of the International Tribunal]

¹³ Impugned Decision, p. 4.

¹⁴ See Appeal, paras. 20-25.