



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-98-29/1-T

Date: 21 August 2007

Original: English

IN TRIAL CHAMBER III

Before: Judge Patrick Robinson, Presiding
Judge Antoine Kesia-Mbe Mindua
Judge Frederik Harhoff

Registrar: Mr. Hans Holthuis

Date: 21 August 2007

PROSECUTOR

v.

DRAGOMIR MILOŠEVIĆ

**DECISION ON DEFENCE REQUEST FOR
CERTIFICATION ORAL DECISION OF 23 JULY 2007**

The Office of the Prosecutor:

Mr. Stefan Waespi
Ms. Carolyn Edgerton
Mr. John Docherty

Counsel for the Accused:

Mr. Branislav Tapušković
Ms. Branislava Isailović

TRIAL CHAMBER III (“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 Defence “Request for Certification to Appeal the Trial Chamber’s Oral Decision of 23 July 2007 on the Defence Application to Admit into the Record the 65^{ter} Video (377D) and its Subtitle (DD00-4360)”, filed 26 July 2007 (“Request”), in which the Defence requests the Trial Chamber to grant certification to appeal the Trial Chamber’s decision of 23 July 2007 in which the Trial Chamber rescinded its original decision on the admission of the aforementioned material, and decided not to admit into evidence the said material;

NOTING the “Prosecution’s Response to the Request for Certification to Appeal the Trial Chamber’s Oral Decision of 23 July 2007 on the Defence Application to Admit into the Record the 65^{ter} Video (377D) and its Subtitle (DD00--4360)”, filed 31 July 2007 (“Prosecution Response”), in which the Prosecution objects to the request;

NOTING the Oral Decision of the Trial Chamber on 23 July 2007, in which the Trial Chamber held “[y]ou did not object to proposed facts 1 to 53, which includes fact 29 which says that a major JNA attack occurred on the 2nd of May 1992 on the centre of Sarajevo. [...] [Y]ou’re not entitled now to bring evidence to dispute that. [...] In the light of this, all the evidence that has been led in relation to this matter will be disregarded by the Trial Chamber, and [...] we rescind the decision to admit the video.”

NOTING that the Defence submits that the Trial Chamber erred in its decision and that the Trial Chamber confused the concept of adjudicated facts with the concept of agreed facts;

NOTING that the Defence submits that it intends to continue to challenge all of the facts of which judicial notice has been taken in the current proceedings;

NOTING that the Defence submits that the decision concerns an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial “namely whether the Defence can challenge adjudicated facts in a previous case, of which judicial notice has been taken in this case, in a case where the Defence left the matter to the decision of the Trial Chamber in respect of their judicial notice” and that the immediate resolution of the issue may materially advance the proceedings;

NOTING that the Prosecution, in its Response, submits that the video has no relevance to the current proceedings and that therefore “Rule 73(B) is not engaged by the Trial Chamber’s decision to rescind its original decision on the clip’s admission”;

CONSIDERING that pursuant to Rule 73 of the Rules of Procedure and Evidence (“Rules”), a party requesting certification must show that the 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, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings;

CONSIDERING that the Defence has led evidence through several witnesses pertaining to the general context of the conflict and events set out in the Indictment, including events taking place in 1992 and the withdrawal of the JNA from Sarajevo;

CONSIDERING that the Defence fails to show how the decision on the admission into evidence of a video containing images of events predating the Indictment period by more than two years, whether tendered to challenge a judicially noticed fact or not, involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial;

CONSIDERING that only one week of witness testimony is scheduled before the close of the Defence case on 24 August 2007;

CONSIDERING that the Defence fails to show how, at this stage of the proceedings, an immediate resolution of the issue would materially advance the proceedings;

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 73 of the Rules,

HEREBY DENIES the Defence Request.

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



Judge Patrick Robinson
Presiding

Dated this twenty-first day of August 2007

At The Hague

The Netherlands

[Seal of the Tribunal]

et al., Case No IT-05-88-T, Decision on Defence Motion Requesting Reconsideration or Certification of Decision Admitting Exhibits with Testimony of Witness 168, 20 July 2007.