



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: 6 December 2007
Original: ENGLISH
French

IN TRIAL CHAMBER III

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

Registrar: Mr Hans Holthuis

Decision of: 6 December 2007

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON THE APPLICATION BY THE PETKOVIĆ DEFENCE FOR
CERTIFICATION TO APPEAL THE DECISION DENYING ADDITIONAL
TIME FOR CROSS-EXAMINATION**

The Office of the Prosecutor:

Mr Kenneth Scott
Mr Douglas Stringer

Counsel for the Accused:

Mr Michael Karnavas and Ms Suzana Tomanović for Jadranko Prlić
Ms Senka Nožica and Mr Karim A.A. Khan 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 Application by Milivoj Petković for Certification Under Rule 73 (B) for Appeal Against the Trial Chamber’s 5 November 2007 Decision Refusing his Request for Adequate Time for Cross-Examination of Prosecution Expert Witness Andre Pringle, filed by Counsel for the Accused Petković (“Petković Defence”) on 5 November 2007 (“Application”), in which the Defence requests certification to appeal the oral decision of 5 November 2007 (“Decision of 5 November 2007”),¹

NOTING that the Decision of 5 November 2007 in which the Chamber denied the Petković Defence’s request to be granted five hours to cross-examine Witness Andrew Pringle and granted it one hour,

NOTING the new oral request on 6 November 2007 in which the Petković Defence again requested to be granted additional time to cross-examine Witness Andrew Pringle and asked the Chamber to change its Decision of 5 November 2007,²

NOTING the oral decision of 7 November 2007 in which the Chamber upheld its Decision of 5 November 2007 to grant the Petković Defence one hour to cross-examine Witness Andrew Pringle,³

CONSIDERING that in its Application, the Petković Defence submits that by being granted only one hour to cross-examine Witness Andrew Pringle, the Chamber did not show flexibility by adjusting the division of time for the cross-examination as a function of the particularities of each Accused,⁴

CONSIDERING that in its Application, the Petković Defence also holds that the Chamber did not bear in mind the importance of the Expert Witness’s statement and of the number of documents presented by the Office of the Prosecutor when setting

¹ Court transcript in French (“CT(F)”), p. 23975.

² CT(F), p. 24186.

³ CT(F), pp. 24189-24190.

⁴ Application, para. 2.

the time for the cross-examination and that finally the right to cross-examination as provided by Article 21 (4)(e) of the Tribunal's Statute has not been respected,⁵

CONSIDERING that pursuant to Rule 73 (B) of the Rules of Procedure and Evidence ("Rules"), "[d]ecisions on all motions are without interlocutory appeal save with certification by the Trial Chamber, which may grant such certification if 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 consequently that the certification to appeal is a matter of the discretionary power of the Chamber that must, in any case, verify in advance that the two cumulative conditions set out in Rule 73 (B) of the Rules are met in this case,⁶

CONSIDERING furthermore that the object of a request for certification is not to show that an impugned decision was not correctly grounded but to show that the conditions set out in Rule 73 (B) of the Rules have been met,⁷

CONSIDERING that the Chamber recalls that its Decision of 5 November 2007 was rendered after examining the Expert Witness's report, which is primarily factual and contains 25 pages, and that the Chamber consequently estimated that one hour for the cross-examination was sufficient,

CONSIDERING that the Chamber also recalls that the same time of one hour for the cross-examination was also given to the Defence for the Accused Praljak, and that the other Defence were given less time,

CONSIDERING that the Chamber finds, contrary to what the Petković Defence maintains, that in determining the time for the cross-examination, the Chamber bore in mind the particularities of each Accused,

⁵ Application, paras. 2 and 4.

⁶ *The Prosecutor v. Pavle Strugar*, Case No IT-01-42-T, Decision on Defence Motion for Certification, 17 June 2004, para. 2.

⁷ *The Prosecutor v. Sefer 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; *The Prosecutor v. Rasim Delić*, Case No. IT-04-83-PT, Decision on Prosecution Request for Certification to Appeal Trial Chamber Decision Denying Prosecution Application for Leave to Amend, 14 July 2006, p. 1.

CONSIDERING furthermore that the Chamber recalls that it is always possible for one or several Accused to give their time to another Accused for the cross-examination,

CONSIDERING finally that the Petković Defence would be able to challenge the contents of the Expert Witness's report during the presentation of his case by appealing to his own witnesses,

CONSIDERING consequently that the Chamber does not see the circumstances in its Decision of 5 November 2007 that would involve 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,

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 73 (B) of the Rules,

DENIES the Application.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this sixth day of December 2007
At The Hague
The Netherlands

[Seal of the Tribunal]