



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-02-65-PT  
Date: 6 July 2004  
Original: ENGLISH

**IN THE TRIAL CHAMBER**

**Before:** Judge Patrick Robinson, Presiding  
Judge O-Gon Kwon  
Judge Bert Swart

**Registrar:** Mr. Hans Holthuis

**Order of:** 6 July 2004

**PROSECUTOR**

v.

**ŽELJKO MEJAKIĆ  
MOMČILO GRUBAN  
DUŠAN FUŠTAR  
DUŠKO KNEŽEVIĆ**

**DECISION ON PROSECUTION'S REQUEST FOR CERTIFICATION OF  
THE TRIAL CHAMBER'S DECISION ON  
SECOND MOTION TO RESOLVE CONFLICT OF INTEREST  
REGARDING ATTORNEY JOVAN SIMIĆ**

**The Office of the Prosecutor:**

Ms. Ann Sutherland

**Counsel for the Accused:**

Mr. Jovan Simić, for Željko Mejačić  
Ms. Sanja Turlakov, for Momčilo Gruban  
Mr. Theodore Scudder and Mr. Dragan Ivetić, for Dušan Fuštar  
Ms. Slobodanka Nedić, for Duško Knežević

**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 (“the International Tribunal”),

**BEING SEISED** of a “Prosecution’s Request for Certification”, filed by the Prosecution on 24 June 2004 (“Request”), requesting the Trial Chamber to certify, pursuant to Rule 73(B) of the Rules of Procedure and Evidence (“Rules”), an interlocutory appeal of the Trial Chamber’s “Decision on Prosecution’s Second Motion to Resolve Conflict of Interest Regarding Attorney Jovan Simić”, issued on 17 June 2004,

**NOTING** that the Prosecution sets forth several arguments in support of the Request, including that:

- (a) the Trial Chamber erred in concluding that no conflict existed because the Prosecution has no right to interview Mr. Prcać as a witness;<sup>1</sup>
- (b) the Prosecution request to interview Mr. Prcać causes the conflict of interest to be actual, as Defence Counsel is put in a position whereby he has two conflicting interests;<sup>2</sup>
- (c) the Prosecution fully intends to secure Mr. Prcać’s evidence;<sup>3</sup>
- (d) it is in the interests of justice to have this matter resolved now, as opposed to when steps are taken to interview Mr. Prcać, or when the Prosecution seeks to call the witness;<sup>4</sup> and
- (e) the issue of assignment of one counsel to two accused (who are alleged to have been in a superior-subordinate relationship) should be resolved before the trial in the current case commences,

**NOTING** that Counsel Jovan Simić has not responded to the Motion,

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<sup>1</sup> Request, para. 7.

<sup>2</sup> *Ibid.*, para. 9.

<sup>3</sup> *Ibid.*, para. 14.

<sup>4</sup> *Ibid.*, para. 11.


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

**CONSIDERING** that, in this matter, the Trial Chamber is satisfied that the cumulative requirements under Rule 73 (B) of the Rules have been met,

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

**HEREBY GRANTS THE REQUEST FOR CERTIFICATION ON APPEAL**

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

  
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Patrick Robinson  
Presiding

Dated this sixth day of July 2004  
At The Hague  
The Netherlands

[Seal of the Tribunal]