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: 23 July 2008

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: **23 July 2008**

THE PROSECUTOR

v.

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

PUBLIC

DECISION ON PRALJAK DEFENCE REQUEST FOR CERTIFICATION TO APPEAL

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 "Slobodan Praljak's Request for Certification to Appeal the Trial Chamber's 26 June 2008 Decision Further Restricting Witness Examination By the Accused", filed by Counsel for the Accused Praljak ("Praljak Defence") on 2 July 2008 ("Request"), in which they request the Chamber to certify the appeal against the Decision on Motion for Reconsideration Presented by the Praljak Defence, rendered by the Chamber on 26 June 2008 ("Impugned Decision"),

NOTING the "Prosecution Opposition to Slobodan Praljak's Request for Certification to Appeal the Trial Chamber's 26 June 2006 [*sic*] Decision Further Restricting Witness Examination by the Accused", filed by the Office of the Prosecutor ("Prosecution") on 15 July 2008 ("Response") in which the Prosecution objects to the Request,

NOTING "Slobodan Praljak's Request for Leave to Reply to the Prosecution's Response to Praljak's Request for Certification to Appeal the Trial Chamber's 26 June 2008 Decision & Praljak's Reply to the Prosecution's Response to Praljak's Request for Certification", filed by the Praljak Defence on 17 July 2008 ("Reply"), in which the Praljak Defence requests the leave of the Chamber to file a reply to the Response and attaches a reply to the arguments put forth in the Response,

CONSIDERING that the Praljak Defence recalls that the Chamber has established that an Accused may put questions directly to a witness only with the leave of the Chamber and in exceptional circumstances; that these exceptional circumstances are linked to the subjects for which the Accused possesses specific expertise; that the Impugned Decision defines this specific expertise as "expertise held by an Accused at the time of the alleged facts and owing to which he was charged in the Amended Indictment of 11 June 2008" ("Indictment"),[1]

[1] Request, para. 2.

CONSIDERING that in support of the Request, the Praljak Defence submits in particular that the Accused Praljak possessed expertise as an electrical engineer, theatrical, film and television producer and professor of philosophy and sociology at the time of the facts alleged in the Indictment,[2]

CONSIDERING that, as argued by the Praljak Defence, the Impugned Decision violates the basic right of the Accused to participate personally in the trial since the Accused should not be forced to show how he employed his expertise in relation to the facts in the Indictment in order to participate in the trial,[3]

CONSIDERING that the Praljak Defence also submits that the fact that the Accused possesses expertise in non-military areas was recognized by the Prosecution, the Presiding Judge and by the Chamber itself,[4]

CONSIDERING that the Praljak Defence further argues that the Request is consistent with Rule 73 of the Rules of Procedure and Evidence ("Rules") since the limitation of the Accused's right to examine witnesses is an issue that would significantly affect the fair conduct of the trial and its immediate resolution may materially advance the proceedings,[5]

CONSIDERING that in support of the Response, the Prosecution argues in particular that in the Impugned Decision, the Chamber merely recalls that the right of the Accused Praljak to cross-examine witnesses is limited, which was confirmed by the Appeals Chamber on 24 August 2007 in the Decision on Praljak's Appeal of the Trial Chamber's 10 May 2007 Decision on the Mode of Interrogating Witnesses ("Decision of 10 May 2007"),[6]

CONSIDERING that according to the Prosecution, the Request raises no new issue which would justify seizing the Appeals Chamber anew,[7]

CONSIDERING that in support of the Reply, the Praljak Defence argues that the Chamber should grant it leave to file a reply allowing it to clarify the new issues

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[2] Request, para. 13.
[3] Request, para. 14.
[4] Request, para. 19.
[5] Request, paras. 25 to 27.
[6] Response, paras. 11 to 15.
[7] Response, para. 17.

raised by the Prosecution in the Response; that in particular it should have leave to reply to the legal and factual arguments raised by the Prosecution which it considers incorrect,[8]

CONSIDERING that as a preliminary matter, the Chamber considers that the arguments raised in the Response do not touch upon fundamentally new issues in relation to what was set out in the Request and that, as a result, they do not warrant the filing of a reply,

CONSIDERING that the Chamber consequently dismisses the Reply,

CONSIDERING that the Chamber next notes that while it did not entirely modify the Decision Adopting Guidelines for the Presentation of Defence Evidence, rendered by the Chamber on 24 April 2008, and the Decision of 10 May 2007, the Impugned Decision made an important clarification with regard to the limitations placed on an Accused to personally examine a witness,

CONSIDERING that in accordance with Rule 73 (B) of the Rules, the Chamber will certify the appeal of the Impugned Decision if it involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial and for which and immediate resolution by the Appeals Chamber may materially advance the proceedings,

CONSIDERING that Article 21 (4) (d) of the Statute of the Tribunal ("Statute") guarantees the right of an Accused to defend himself in person or through legal assistance of his own choosing and that Article 21 (4) (e) of the Statute guarantees him the right to examine or have examined the witnesses against him,

CONSIDERING that, as it explained in the Decision on Certification to Appeal the Decision on the Mode of Interrogating Witnesses, rendered on 28 June 2007 ("Decision of 28 June 2007"), the Chamber holds that limiting the right of Accused persons assisted by Counsel to participate directly in the examination of witnesses by

[8] Reply, paras. 1 and 2.

construing the rights as enshrined in Article 21 (4) (d) and (e) of the Statute is an issue that would significantly affect the fairness of the trial,[9]

CONSIDERING that the Chamber also holds that since it will continue to hear defence witnesses and the Accused Praljak will wish to participate in the cross-examination of those witnesses, a decision by the Appeals Chamber may materially advance the proceedings by making a final determination on this matter at issue,

FOR THESE REASONS,

IN ACCORDANCE with Article 21 (4) (d) and (e) of the Statute and Rule 73 (B) of the Rules,

DISMISSES the Reply,

GRANTS the Request, **AND**

CERTIFIES the appeal of the Impugned Decision.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-third day of July 2008
At The Hague
The Netherlands

[Seal of the Tribunal]

[9] Decision of 28 June 2007, p. 3.