UNITED NATIONS

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: 29 May 2008

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: **29 May 2008**

THE PROSECUTOR

v.

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

PUBLIC

DECISION ON PETKOVIĆ DEFENCE MOTION FOR CERTIFICATION TO APPEAL THE DECISION OF 24 APRIL 2008

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 of Petković Defence for Certification Under Rule 73(B) for Appeal Against Points in the Trial Chamber's 24 April 2008 *Decision Adopting Guidelines For The Presentation Of Defence Evidence"* filed by Counsel for the Accused Petković ("Petković Defence") on 1 May 2008 ("Application"), in which the Petković Defence requests the leave of the Chamber to appeal certain points raised in the "Decision Adopting Guidelines for the Presentation of Defence Evidence", rendered by the Trial Chamber on 24 April 2008 ("Decision of 24 April 2008"),

NOTING the "Motion for Extention of Time to File Opposition to Petković Application for Certification Under Rule 73(B) for Appeal Against Points in the Trial Chamber's 24 April 2008 Decision Adopting Guidelines for the Presentation of Defence Evidence", filed by the Office of the Prosecutor ("Prosecution") on 15 May 2008 ("Motion for Extension of Time"), in which it requests the Trial Chamber to grant an extension of time until 20 May 2008 to file a response to the Application,

NOTING the internal memorandum filed by the Conference and Language Services Section ("CLSS") on 15 May 2008 ("Memorandum of 15 May 2008"), in which CLSS corrected the English translation of the Decision of 24 April 2008,

NOTING the "Petkovic Defence Notice to the Trial Chamber in Connection with its Application for Certification under Rule 73(B) for Appeal Against Points in the Trial Chamber's 24 April 2008 Decision Adopting Guidelines for the Presentation of Defence Evidence", filed by the Petković Defence on 16 May 2008 ("Notice"), in which it informs the Chamber that further to the Memorandum of 15 May 2008 it withdraws in part its request for certification to appeal,

NOTING the "Prosecution Motion Concerning Use of Leading Questions, the Attribution of Time to the Defence Cases, the Time Allowed for Cross-Examination By the Prosecution, and Associated Notice Requirements", filed by the Prosecution on 20 May 2008, in which it requests the Chamber to amend some of the guidelines adopted in the Decision of 24 April 2008 ("Motion to Amend"),

CONSIDERING that in the Application, the Petković Defence requests certification to appeal the Decision of 24 April 2008 in order to appeal two specific points, namely (1) the fact that the Chamber, in paragraph 14 of the Decision of 24 April 2008, establishes the rule according to which the Prosecution shall have, for the cross-examination of Defence witnesses, 100 % of the time allocated for the direct examination and (2) the use of the word "essential" in the English translation of paragraph 35 of the Decision of 24 April 2008,

CONSIDERING that in the Memorandum of 15 May 2008, CLSS corrected the error in the English translation of the Decision of 24 April 2008 and that it replaced the English word "essential" with the English word "important" in paragraph 35 of that Decision,

CONSIDERING that in the Notice, the Petković Defence thus withdrew its request for certification to appeal in respect of the use of the term "essential" in the English translation of paragraph 35 of the Decision of 24 April 2008,

CONSIDERING that in support of the Application, the Petković Defence submits that the time allocated to the Prosecution for cross-examination is: (1) greatly disproportionate to the time allocated to each of the Defence teams to cross-examine witnesses during the Prosecution case; (2) much more than is required by the Prosecution to allow it to deal with the issues it must cover and (3) excessive, especially when taking into account the time restrictions imposed by the Chamber for the overall presentation of defence cases in its Decision Allocating Time to the Defence to Present Its Case, rendered on 25 April 2008,

CONSIDERING that the Defence argues that the points raised in the present Application clearly involve issues that may significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and that they are of such a nature as to require an immediate resolution, which may materially advance the proceedings,

CONSIDERING that in the Motion to Amend, the Prosecution fails to respond to the Application, since it makes submissions on the merits only and not on the request for certification to appeal,

CONSIDERING that in this decision, the Chamber will rule only on the Application and not on the Motion to Amend,

CONSIDERING that the Chamber takes note of the fact that the Defence requests certification to appeal only the fact that the Chamber, in paragraph 14 of the Decision of 24 April 2008, established the rule according to which the Prosecution shall have, for the cross-examination of Defence witnesses, 100 % of the time allocated for the direct examination,

CONSIDERING that in the "Decision on Defence Request Filed Jointly By the Six Accused for Certification of Interlocutory Appeal Against the Oral Decision of 8 May on Time Allocated for Cross-Examination By Defence" of 29 May 2006, the Chamber certified the appeal against a decision whose purpose was also the allocation of time for cross-examination,

CONSIDERING that in that decision, the Chamber already found that the question of time allocated for the cross-examination of witnesses is an issue of principle that may affect the fair and expeditious conduct of the trial, and that its immediate resolution by the Appeals Chamber may materially advance the proceedings,

CONSIDERING that the Chamber finds therefore that it is appropriate to certify the appeal of the Decision of 24 April 2008 in respect of paragraph 14 thereof,

CONSIDERING that the Chamber holds therefore that the criteria set out in Rule 73 (B) of the Rules of Procedure and Evidence ("Rules") have been met,

FOR THESE REASONS,

IN ACCORDANCE with Rule 73 (B) of the Rules,

GRANTS the Application as amended by the Notice.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-ninth day of May 2008
At The Hague
The Netherlands

[Seal of the Tribunal]