



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-06-90-PT

Date: 13 March 2007

Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Christine Van den Wyngaert
Judge Bakone Justice Moloto

Registrar: Mr. Hans Holthuis

Decision of: 13 March 2007

PROSECUTOR

v.

**ANTE GOTOVINA
IVAN ČERMAK
MLADEN MARKAČ**

**DECISION ON REQUEST FOR CERTIFICATION TO FILE
INTERLOCUTORY APPEAL AGAINST TRIAL CHAMBER'S
DECISION ON CONFLICT OF INTEREST OF ATTORNEY
MIROSLAV ŠEPAROVIĆ AND ON REQUEST FOR
CERTIFICATION TO FILE INTERLOCUTORY APPEAL
AGAINST TRIAL CHAMBER'S DECISION ON FINDING OF
MISCONDUCT OF ATTORNEY MIROSLAV ŠEPAROVIĆ**

The Office of the Prosecutor:

Mr. Alan Tieger
Ms. Laurie Sartorio

Counsel for the Accused:

Mr. Luka S. Mišetić, Mr. Gregory Kehoe and Mr. Payam Akhavan for Ante Gotovina
Mr. Čedo Prodanović and Ms. Jadranka Sloković for Ivan Čermak
Mr. Miroslav Šeparović and Mr. Goran Mikuličić for Mladen Markač

TRIAL CHAMBER I (“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 SEIZED of the “Request for Certification to File Interlocutory Appeal against Trial Chamber’s Decision on Conflict of Interest of Attorney Miroslav Šeparović” filed on 5 March 2007 (“Request for Certification of 5 March”) and of the “Request for Certification to File Interlocutory Appeal against Trial Chamber’s Decision on Finding of Misconduct of Attorney Miroslav Šeparović” filed on 12 March 2007 (“Request for Certification of 12 March”) (collectively, “Requests for Certification”), in which Defence for the Accused Mladen Markač requests the Trial Chamber, pursuant to Rule 73 (B) of the Rules of Procedure and Evidence of the Tribunal (“Rules”), to grant certification to appeal the Decision on Conflict of Interest of Attorney Miroslav Šeparović (“Decision on Conflict of Interest”) and the Decision on Finding of Misconduct of Attorney Miroslav Šeparović (“Decision on Finding of Misconduct”), rendered by the Trial Chamber on 27 February 2007 and 6 March 2007 respectively (collectively, “Impugned Decisions”);

NOTING that in an email to the Trial Chamber of 13 March 2007, the Prosecution has indicated that it will not file a response to the Requests for Certification;

RECALLING the Trial Chamber’s Scheduling Order, filed on 17 January 2007, whereby the Trial Chamber scheduled, *inter alia*, the opening statement of the Prosecution to take place on 7 May 2007;

NOTING the urgent character of the Requests for Certification;

CONSIDERING that Rule 73 (B) of the Rules provides that

Decisions 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 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 Requests for Certification were filed in accordance with Rule 73 (C) of the Rules;

CONSIDERING that several of the submissions made in the Request for Certification of 5 March were incorporated in the subsequent Request for Certification of 12 March, but that Defence

Counsel for Mladen Markač erroneously referred to the Decision on Finding of Misconduct as the “Impugned Decision” in the Request for Certification of 12 March, when it should have referred to the Decision on Conflict of Interest¹;

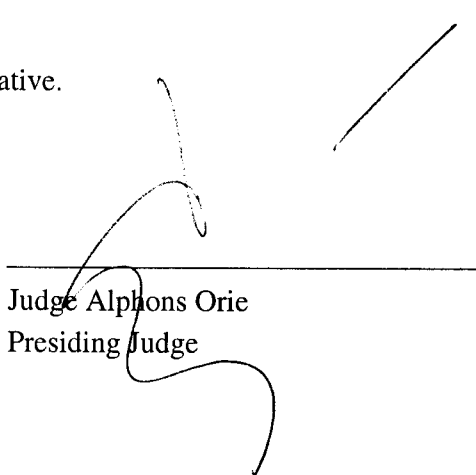
FINDING that the Decision on Conflict of Interest is intrinsically linked with the Decision on Finding of Misconduct under Rule 46 of the Rules;

CONSIDERING that the Impugned Decisions involve the issue of the assistance of counsel of choice which would significantly affect the fair and expeditious conduct of the proceedings in this case, and for which the Chamber finds that an immediate resolution by the Appeals Chamber may materially advance the proceedings;

PURSUANT to Rule 73 (B) of the Rules,

HEREBY GRANTS both Requests for Certification.

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



Judge Alphons Orié
Presiding Judge

Dated this thirteenth day of March 2007

At The Hague

The Netherlands

[Seal of the Tribunal]

¹ Request for Certification of 12 March, para. 7.