

IT-06-90-T
D 21536 - D 21534
19 March 2009

21536

HB.



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-06-90-T
Date: 19 March 2009
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Uldis Ķinis
Judge Elizabeth Gwaunza

Acting Registrar: Mr John Hocking

Decision of: 19 March 2009

PROSECUTOR

v.

ANTE GOTOVINA
IVAN ČERMAK
MLADEN MARKAČ

PUBLIC

**DECISION ON JOINT DEFENCE REQUEST FOR CERTIFICATE TO APPEAL
THE SECOND DECISION ON JOINT DEFENCE MOTION TO STRIKE THE
PROSECUTION'S FURTHER CLARIFICATION OF IDENTITY OF VICTIMS**

Office of the Prosecutor

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Mr Goran Mikuličić
Mr Tomislav Kuzmanović

1. On 17 July 2008, the Prosecution filed a Further Clarification concerning the identity of alleged killing victims by submitting an Amended Schedule 2 to the Indictment in the present case.¹ On 24 July 2008, the three Defence teams (“Defence”) filed a motion to strike the Prosecution’s Further Clarification.² On 9 October 2008, the Chamber issued its Decision on Joint Defence Motion to Strike the Prosecution’s Further Clarification of Identity of Victims (“First Decision”) in which it denied the Motion. On 12 November 2008, the Chamber granted a joint Defence request for certification to appeal the First Decision.³ On 26 January 2009, the Appeals Chamber issued its decision and remanded the matter to the Chamber for reconsideration in light of two errors it had identified in the First Decision.⁴ On 2 March 2009, the Chamber issued its Second Decision on Joint Defence Motion to Strike the Prosecution’s Further Clarification of Identity of Victims (“Second Decision”). On 5 March 2009, the Defence filed a request for certification to appeal the Second Decision (“Request”).⁵ On 17 March 2009, the Prosecution filed its response to the Request.⁶

2. Rule 73 (B) of the Tribunal’s Rules of Procedure and Evidence (“Rules”) requires two cumulative criteria to be satisfied to allow a Trial Chamber to grant a request for certification to appeal: 1) that the decision involved an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and 2) that, in the opinion of a Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

3. The Chamber has already found that the subject matter of the First Decision, namely the question of possible prejudice to the Defence which may have resulted from the Further Clarification, involved an issue which satisfied both requirements of Rule 73 (B) of the Rules.⁷ The Second Decision is a reconsideration of a part of the First Decision, within the scope determined by the Appeals Chamber,⁸ but it still concerns the same subject matter. The

¹ Prosecution’s Further Clarification of Identity of Victims, 17 July 2008 (“Further Clarification”), para. 1.

² Joint Defence Motion to Strike the Prosecution’s Further Clarification of Identity of Victims, 24 July 2008 (“Motion”).

³ Decision on Joint Defence Request for Certification to Appeal the Trial Chamber’s Decision of 9 October 2008, 12 November 2008 (“Certification Decision”).

⁴ Decision on Joint Defence Interlocutory Appeal Against Trial Chamber’s Decision on Joint Defence Motion to Strike the Prosecution’s Further Clarification of Identity of Victims, 26 January 2009.

⁵ Joint Defence Request for Certificate to Appeal the Trial Chamber’s Second Decision of 2 March 2009, 5 March 2009.

⁶ Prosecution’s Response to Joint Defence Request for Certificate to Appeal the Trial Chamber’s Second Decision of 2 March 2009, 17 March 2009.

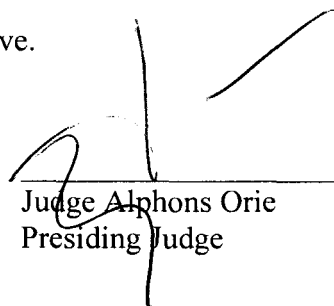
⁷ Certification Decision, paras 6-7.

⁸ Second Decision, para. 2; Decision on Joint Defence Interlocutory Appeal Against Trial Chamber’s Decision on Joint Defence Motion to Strike the Prosecution’s Further Clarification of Identity of Victims, 26 January 2009, paras 18-23.

Chamber therefore maintains its finding that the issue involved could significantly affect the fair and expeditious conduct of the proceedings and that the immediate resolution by the Appeals Chamber will materially advance the proceedings.

4. The Chamber therefore, pursuant to Rule 73 (B) of the Rules, **GRANTS** the Request.

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



Judge Alphons Orie
Presiding Judge

Dated this 19th day of March 2009
At The Hague
The Netherlands

[Seal of the Tribunal]