

UNITED
NATIONS

IT-02-60-T
D 23418-D 23415
24 AUGUST 2004

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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-02-60-T
Date: 24 August 2004
Original: English

IN TRIAL CHAMBER I, SECTION A

Before: Judge Liu Daqun, Presiding
Judge Volodymyr Vasylenko
Judge Carmen Maria Argibay

Registrar: Mr. Hans Holthuis

Order of: 24 August 2004

PROSECUTOR

v.

**VIDOJE BLAGOJEVIĆ
DRAGAN JOKIĆ**

**ORDER FOR ADDITIONAL SUBMISSIONS FROM PARTIES
IN RELATION TO REQUEST FOR CERTIFICATION**

The Office of the Prosecutor:

Mr. Peter McCloskey

Counsel for the Accused:

Mr. Michael Karnavas and Ms. Suzana Tomanović for Vidoje Blagojević
Mr. Miodrag Stojanović and Mr. Branko Lukić for Dragan Jokić

TRIAL CHAMBER I, SECTION A, ("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 SEISED OF the "Request for Certification to Appeal the Trial Chamber's Decision on Vidoje Blagojević's Oral Request & Request for the Appointment of an Independent Counsel for this Interlocutory Appeal Should Certification be Granted," dated 8 August 2004 and filed on 9 August 2004 ("Request"),

NOTING the "Decision on Vidoje Blagojević's Oral Request," issued by the Trial Chamber on 30 July 2004 and translated into B/C/S on 6 August 2004 ("Decision"), in which the Trial Chamber found that by his refusal to follow the procedure established in the Rules of Procedure and Evidence ("Rules") for the presentation of evidence, Vidoje Blagojević ("Accused") had effectively waived his right to appear as a witness and his case, and that "unless there is a change of circumstances," the options available to the Accused are either to make a sworn or unsworn statement under the Trial Chamber pursuant to Rule 84 *bis* of the Rules or to remain silent,

NOTING the "Prosecution's Response to Vidoje Blagojević's Request for Certification to Appeal the Trial Chamber's Decision on Vidoje Blagojević's Oral Request & Request for the Appointment of an Independent Counsel for this Interlocutory Appeal Should Certification be Granted," filed by the Office of the Prosecutor ("Prosecution") on 19 August 2004 ("Response"),

NOTING Rule 73 (B) of the Rules, which provides:

(B) 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 the 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, should the Trial Chamber determine that the decision in question involves an issue that would either significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, the Trial Chamber retains the discretion ("may grant certification" and "in the opinion of the Trial Chamber") to determine the second condition for certification: whether an immediate resolution by the Appeals Chamber may materially advance the proceedings,

CONSIDERING THEREFORE that, under the Rules, decisions on motions, other than preliminary motions, are without interlocutory appeal unless the criteria set-out in Rule 73(B) have both been satisfied,¹

NOTING that in the Request, the Blagojević Defence submits that the Decision involves an issue that would affect the outcome of the trial in that: (a) the point would ultimately need to be raised before the Appeals Chamber in the event of a conviction; and (b) if the issue is resolved in favour of the Accused "on the basis that this Trial Chamber's practice implies that he did not receive a fair trial, it is likely to be of such importance that the conviction may be quashed and a re-trial ordered,"²

NOTING that in the Response, the Prosecution agrees with the Blagojević Defence that the Accused's "ability to testify and the form of any such testimony" satisfies the criteria set-out in Rule 73(B), but fails to provide any reasons for this determination,

CONSIDERING that neither the Request nor the Response identifies a specific issue in the Decision that would significantly affect the fair and expeditious conduct of the proceedings or specifies *how* the fairness or expeditiousness of the trial would be affected by the Decision,

CONSIDERING that neither the Request nor the Response identifies a specific issue in the Decision that would affect the outcome of the trial or specifies *how* the outcome of the trial would be affected by the Decision,

CONSIDERING FURTHER that neither the Request nor the Response identifies any error of law or fact in the Decision,

CONSIDERING that the Trial Chamber can only grant certification if the criteria set-out in Rule 73 (B) are satisfied, and that, based on the Request and the Response, those criteria are not satisfied,

CONSIDERING that additional submissions by the Parties *may* assist the Trial Chamber in determining that the criteria set-out in Rule 73 of the Rule are indeed satisfied in this case,

PURSUANT TO Rule 73 of the Rules,

¹ See, *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-T, Decision on Defence Motion for Certification, 17 June 2004, para. 2.

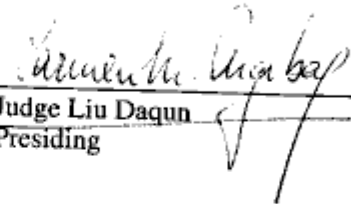
The Trial Chamber recalls the amendment history of Rules 72 and 73 in relation to the appeal process for motions.

² Request, para. 2.

HEREBY ORDERS that:

1. The Blagojević Defence and Prosecution shall file additional submissions on the question of whether the Trial Chamber should certify the Decision for interlocutory appeal, taking into account the criteria set-out in Rule 73 (B), by **Friday, 27 August 2004**; and
2. The Decision be stayed until a decision is issued on the Request.

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


for Judge Liu Daqun
Presiding

Dated this twenty-fourth day of August 2004,
At The Hague
The Netherlands

[Seal of the Tribunal]