



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-98-29/1-T

Date: 3 May 2007

Original: English

**IN TRIAL CHAMBER III**

**Before:** Judge Patrick Robinson, Presiding  
Judge Antoine Kesia-Mbe Mindua  
Judge Frederik Harhoff

**Registrar:** Mr. Hans Holthuis

**Decision of:** 3 May 2007

**PROSECUTOR**

v.

**DRAGOMIR MILOŠEVIĆ**

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**DECISION ON DEFENCE AND PROSECUTION  
MOTIONS FOR CERTIFICATION TO APPEAL  
DECISION ON PROSECUTION'S MOTION FOR  
JUDICIAL NOTICE OF ADJUDICATED FACTS**

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**The Office of the Prosecutor:**

Mr. Alex Whiting  
Mr. Stefan Waespi  
Ms. Carolyn Edgerton  
Mr. John Docherty

**Counsel for the Accused:**

Mr. Branislav Tapušković  
Ms. Branislava Isailović

**TRIAL CHAMBER III** (“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 two motions, the first being the “Demande de Certification d’Appel Contre la Décision Prise par la Chambre de Première Instance le 10 Avril 2007 sur la Demande du Procureur aux Fins de Dresser le Constat Judiciaire des Faits” (“Defence Motion”), filed on 16 April 2007 and the second being the “Prosecution’s Rule 73(B) Request for Interlocutory Appeal Certification of Trial Chamber’s 10 April 2007 Decision on Adjudicated Facts” (“Prosecution Motion), filed on 17 April 2007;

**NOTING** the arguments of the parties as set forth in the Defence and the Prosecution Motion;

**NOTING** that Rule 73 (B) requires the satisfaction of two cumulative criteria in order for the Trial Chamber to exercise its discretion to certify a decision for interlocutory appeal:<sup>1</sup>

- the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial;
- an immediate resolution of the issue may, in the opinion of the Trial Chamber, materially advance the proceedings;

**CONSIDERING** that the very objective of judicially noticing adjudicated facts, involving as it does, the concepts of judicial economy and expeditiousness, is relevant to the fair and expeditious conduct of the proceedings;<sup>2</sup>

**CONSIDERING** that an immediate determination by the Appeals Chamber on the Trial Chamber’s Decision and the exercise of its discretion to judicially notice adjudicated facts from the *Galić* judgements, could, in relation to facts that may go to the notice of the Accused, materially advance the proceedings in this case by establishing the scope of the evidence which the Defence may challenge;

<sup>1</sup> See *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Decision on the Prosecution’s Requests for Certification of Appeal Against Decisions of the Trial Chamber, 6 May 2003, p. 2, n. 1 citing *Prosecutor v. Brđanin and Talić*, Decision on Radislav Brđanin’s Motion for the issuance of Rule 73 (B) Certification Regarding the Chamber’s Rule 70 Confidential Decision, 24 May 2002 (“*Brđanin* Certification Decision”), para. 3, both stating that the two criteria are cumulative and constitute an exception to the principle that decisions on all motions are without interlocutory appeal.

<sup>2</sup> See *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-T, Decision on Prosecution’s Motion for Judicial Notice of Adjudicated Facts and Prosecution’s Catalogue of Agreed Facts, 10 April 2007, p.12; See also *Prosecutor v. Karemera, Ngirumpatse, Nzirorera*, Case No. ICTR-98-44-T, Decision on defence Motion for Certification to Appeal Decision on Appeals Chamber Remand of Judicial Notice, 22 March 2007 (“*Karemera* Decision on Certification to Appeal Remand”) para. 9.

**CONSIDERING** that the two requirements of Rule 73 (B) are satisfied;

**PURSUANT TO** Rule 73 (B),

**HEREBY GRANTS BOTH REQUESTS FOR CERTIFICATION ON APPEAL.**

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



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Judge Patrick Robinson  
Presiding

Dated this third day of May 2007

At The Hague

The Netherlands

**[Seal of the Tribunal]**