



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: 22 March 2007
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: 22 March 2007

THE PROSECUTOR

v.

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

**DECISION ON THE REQUEST FOR CERTIFICATION OF APPEAL CONCERNING
THE TRIAL CHAMBER'S DECISION OF 1 MARCH 2007**

The Office of the Prosecutor:

Mr Kenneth Scott
Mr Daryl Mundis

Counsel for the Accused:

Mr Michael Karnavas and Ms Suzana Tomanović for Jadranko Prlić
Ms Senka Nožica and Mr Peter Murphy 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 “Prosecution Request for Certification of Appeal concerning the Trial Chamber’s Decision on Remand Dated 1 March 2007” (“Request”), filed on 7 March 2007 by the Office of the Prosecutor (“Prosecution”), whereby the Prosecution requests the leave of the Trial Chamber to appeal its Decision of 1 March 2007 pursuant to Rule 73(B) of the Rules of Procedure and Evidence (“Rules”),

NOTING the “Decision on Adoption of New Measures to Bring the Trial to an End within a Reasonable Time” of 13 November 2006 (“Decision of 13 November 2006”), whereby the Chamber reduced by 107 hours the time allocated to the Prosecution to present its evidence and set the duration for that presentation at 190 hours as of 13 November 2006,

NOTING the “Decision on Prosecution Appeal concerning the Trial Chamber’s Ruling Reducing Time for the Prosecution Case” rendered on 6 February 2007 by the Appeals Chamber (“Appeals Chamber Decision”), whereby the Appeals Chamber requested the Trial Chamber to determine whether the reduction of time would allow the Prosecution a fair opportunity to present its case in light of the complexity and number of issues that remain,

NOTING the “Decision Following the Appeals Chamber Decision of 6 February 2007 concerning Appeal Against Reducing Time for the Prosecution Case” rendered by the Chamber on 1 March 2007 (“Decision of 1 March 2007”), in which the Trial Chamber reassessed the Decision of 13 November 2006 in accordance with the Appeals Chamber Decision and maintained its Decision of 13 November 2006,

NOTING the “Response of Bruno Stojić to Prosecution Request for Certification of Appeal concerning the Trial Chamber’s Decision on Remand Dated 1 March 2007” filed by Counsel for the Accused Bruno Stojić (“Stojić Defence”) on 12 March 2007 (“Stojić Response”), in which the Stojić Defence makes no objection to the Request,

NOTING the “Joint Defence Response of Jadranko Prlić, Slobodan Praljak and Berislav Pušić to Prosecution Request for Certification of Appeal concerning the Trial Chamber’s Decision on Remand dated 1 March 2007” (“Joint Response”), filed jointly by Counsel for the Accused Jadranko Prlić (“Prlić Defence”), Slobodan Praljak (“Praljak Defence”) and Berislav Pušić (“Pušić Defence”) on 12 March 2007, in which they make no objection to the Request,

NOTING the “Joinder of the Accused Valentin Ćorić in the Response of Bruno Stojić to Prosecution Request for Certification of Appeal concerning the Trial Chamber’s Decision on Remand dated 1 March 2007” (“Ćorić Response”) filed by Counsel for the Accused Ćorić (“Ćorić Defence”) on 14 March 2007, in which the Ćorić Defence joins the Stojić Response,

NOTING the “Petković Defence Response to Prosecution Request for Certification to Appeal against the Trial Chamber Decision on Remand Dated 1 March 2007” (“Petković Response”) filed by Counsel for the Accused Petković (“Petković Defence”) on 19 March 2007, in which the Petković Defence requests the Trial Chamber to reconsider its Decision of 1 March 2007 or, in the alternative, grant the Request,

CONSIDERING that the Prosecution argues that the Appeals Chamber remains seized of the appeal against the Decision of 13 November 2006 and that it requests the Trial Chamber

therefore to certify the appeal of the Decision of 1 March 2007 “to the extent that [it] may be required”,¹

CONSIDERING that the Prosecution further argues that the Decision of 1 March 2007 contains no information as to how the time allocated for the presentation of its case is objectively adequate to permit it to set forth its case without suffering prejudice,²

CONSIDERING that the Prosecution argues that it will not be in a position to present its case within the time allocated by the Chamber in its Decisions of 13 November 2006 and 1 March 2007,³

CONSIDERING that the Prosecution also argues that the Chamber, by stating that it allows for the possibility of modifying the measures taken in the Decision of 13 November 2006, should new elements arise, provides the victims and the international community no assurance of a fair trial,⁴

CONSIDERING that according to the Prosecution, the result of all of these circumstances is that the Decision of 1 March 2007 is of a nature that would significantly compromise the fair and expeditious conduct of the proceedings and an immediate resolution by the Appeals Chamber may materially advance the proceedings,⁵

CONSIDERING that the Stojić Defence and the Prlić, Praljak and Pušić Defences are of the view, as is the Prosecution, that the Appeal of the Decision of 13 November 2006 is still pending before the Appeals Chamber and that, as a result, there is no need for certification to appeal the Decision of 1 March 2007,⁶

CONSIDERING that the Accused Stojić argues, in the alternative, that the Prosecution should be able to appeal the Decision of 1 March 2007 insofar as that decision has a significant impact on the conduct of the trial,⁷

CONSIDERING that in support of its Response, the Stojić Defence further argues that the time constraints imposed on the Prosecution prompt the Prosecution to introduce large numbers of exhibits, often critical to the case, by way of Rule 92 *bis* of the Rules, thereby preventing the Defence from confronting such evidence in cross-examination,⁸

CONSIDERING that the Stojić Defence is of the view that the application of the Decision of 13 November 2006 also reduces the time allocated for cross-examination,⁹

CONSIDERING that the Stojić Defence finally argues the Chamber did not provide sufficient reasons for its Decision of 1 March 2007 and that it rendered the said decision without hearing the Parties on this issue, in spite of an express request from the Parties to be heard,¹⁰

¹ Request, paras. 1 and 23.

² *Ibidem.*, paras. 10, 14 and 15.

³ *Ibid.*, para. 13.

⁴ *Ibid.*, para. 19.

⁵ *Ibid.*, paras. 21, 22 and 23.

⁶ Stojić Response, para. 2 and Joint Response, para. 2.

⁷ Stojić Response, para. 2 and Petković Response, para. 4.

⁸ Stojić Response, para. 5 and Petković Response, para. 5.

⁹ *Ibid.*, para. 6.

¹⁰ *Ibid.*, para. 7.

CONSIDERING that the Petković Defence is of the view that, for reasons similar to those raised by the Stojić Defence related principally to respecting the rights of the Accused to a fair trial, the Chamber must certify the Request or reconsider its own Decision of 1 March 2007,¹¹

CONSIDERING that the Chamber must first respond to the question of whether or not it has jurisdiction to rule on the present Request,

CONSIDERING that the Appeals Chamber Decision was limited to remanding to the Trial Chamber the Decision of 13 November 2006 for its renewed assessment and consideration of whether the reduction of time allocated for the presentation of the Prosecution case guarantees a fair trial for the Prosecution,¹²

CONSIDERING that in accordance with the Appeals Chamber's requirements, the Trial Chamber, in its Decision of 1 March 2007, maintained the Decision of 13 November 2006, explaining the basis for its belief that the time limits imposed on the Prosecution enable it to conclude the presentation of its evidence in full accordance with the rules of procedural fairness,

CONSIDERING that according to the terms and meaning of the Appeals Chamber Decision, the Appeals Chamber did not intend to rule on the merits of the Prosecution appeal against the Decision of 13 November 2006 before giving the Trial Chamber the opportunity to reassess the said decision, which the Trial Chamber has done,

CONSIDERING that the result is that at this stage of the proceedings, the Prosecution appeal against the Decision of 13 November 2006 is still pending before the Appeals Chamber,

CONSIDERING that, consequently, the Trial Chamber does not consider itself to have jurisdiction to deal with the present Request and denies it as inadmissible,

CONSIDERING, however, that should the Appeals Chamber not consider itself seized of the Prosecution appeal against the Decision of 13 November 2006, and in the interests of judicial economy, the Trial Chamber considers itself competent to rule on the merits of the Request,

CONSIDERING that, in this case, the Trial Chamber is of the opinion, as indicated previously in its Oral Decision of 23 November 2006 certifying the appeal of the Decision of 13 November 2006,¹³ that the issue of the reasonable length of the trial raises a question of principle of a nature that would significantly affect the fair and expeditious conduct of the trial, and its immediate resolution by the Appeals Chamber may materially advance the proceedings,

CONSIDERING that in all other respects, in particular the issues raised in the Stojić and Petković Responses, the Chamber refers to its reasons set out in its Decision of 13 November 2006 and its oral decision rendered on 23 November 2006,¹⁴

CONSIDERING that consequently, assuming the Appeals Chamber considers itself not seized of the matter in dispute, the Trial Chamber considers it appropriate to certify the appeal of the Decision of 1 March 2007,

¹¹ Petković Response, para. 17.

¹² Appeals Chamber Decision, para. 24.

¹³ Court transcript in French, pp. 10677-10679.

¹⁴ *Ibid.*

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 73 (B) of the Rules,

Principally:

FINDS by majority that the Request is inadmissible,

In the alternative:

FINDS by majority that the Request is admissible and well-founded,

AND CERTIFIES the appeal of the Decision of 1 March 2007.

Decision made by a majority, Judge Jean Claude Antonetti appending a dissenting opinion,

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

/signed/

Judge Jean-Claude Antonetti
Presiding Judge

Done this twenty-second day of March 2007
At The Hague
The Netherlands

[Seal of the Tribunal]