



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: 28 June 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: 28 June 2007

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON CERTIFICATION TO APPEAL THE DECISION ON THE
MODE OF INTERROGATING WITNESSES**

The Office of the Prosecutor:

Mr Kenneth Scott
Mr Douglas Stringer

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 “Slobodan Praljak’s Request for Certification to Appeal the Trial Chamber’s 10 May 2007 Decision on the Modalities of Examination of Witnesses” filed by Counsel for the Accused Praljak (“Praljak Defence”) on 17 May 2007 (“Request”) in which the Praljak Defence seeks leave of the Chamber to certify the appeal of the Decision on the Mode of Interrogating Witnesses, rendered on 10 May 2007 (“Impugned Decision”) pursuant to Rule 73 (B) of the Rules of Procedure and Evidence (“Rules”);

NOTING that no response to the Request was filed;

NOTING the Impugned Decision in which the Chamber took up various procedural matters;

CONSIDERING that the Praljak Defence submits in its Request that the Impugned Decision violates the right to a fair trial insofar as the Chamber restricts the right of the Accused to participate in the proceedings and directly examine witnesses;

CONSIDERING that in the Impugned Decision the Chamber recalls in particular guideline C of the “Decision Adopting Guidelines on Conduct of Trial Proceedings”, in its revised version of 28 April 2006 (“Guideline C”);

CONSIDERING that Guideline C provides the following:

“Article 21 (e) of the Statute reiterates the right of the accused to examine, or have examined, the witnesses against him. In the present case, the Accused are represented by counsel. Witnesses shall primarily be questioned by counsel for

the Accused. In exceptional circumstances and after authorisation of the Chamber, an Accused may directly address a witness and put questions to him or her”;

CONSIDERING that in the Impugned Decision the Chamber furthermore explains that the exceptional circumstances mentioned in Guideline C are “exceptional circumstances linked either to the examination of events in which an Accused took part or to the examination of issues about which he is specifically competent.” and that the Chamber furthermore decided that “an Accused who wishes to take the floor will previously explain to the Chamber the reasons why exceptional circumstances are involved”¹;

CONSIDERING that pursuant to Rule 73 (B) of the Rules, the Chamber shall certify the appeal of an Impugned Decision if it involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial and for which an immediate resolution by the Appeals Chamber may materially advance the proceedings;

CONSIDERING that Article 21 4 (d) of the Tribunal Statute (“Statute”) guarantees the right of an accused to defend himself in person or through legal assistance of his own choosing, and Article 21 4 (e) of the Statute guarantees him the right to examine or have examined witnesses against him;

CONSIDERING that the Impugned Decision restricts the ability to participate directly in the interrogation of witnesses by interpreting the rights that are guaranteed by Article 21 4 (d) and (e) of the Statute, which is an issue that may considerably compromise the fairness of the trial;

¹ Impugned Decision, para. 12.

CONSIDERING that the Chamber will continue to hear witnesses for the Prosecution, that the Accused will want to take part in cross-examining these witnesses and, consequently, a decision by the Appeals Chamber may materially advance the proceedings;

FOR THE FOREGOING REASONS,

PURSUANT TO Articles 21 4 (d) and (e) of the Statute and Rule 73 (B) of the Rules

GRANTS the Request and

CERTIFIES the appeal of the Impugned Decision.

Judge Antonetti joins a separate opinion to this Decision.

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

/signed/

Jean-Claude Antonetti

Presiding Judge

Done this twenty-eighth day of June 2007

At The Hague, The Netherlands

[Seal of the Tribunal]