



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: 6 December 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:** 6 December 2007

**THE PROSECUTOR**

v.

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

***PUBLIC***

**DECISION ON THE APPLICATION BY THE PETKOVIĆ DEFENCE FOR  
CERTIFICATION TO APPEAL THE DECISION DENYING ADDITIONAL  
TIME FOR CROSS-EXAMINATION**

**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 Karim A.A. Khan 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 Application by Milivoj Petković for Certification Under Rule 73 (B) for Appeal Against the Trial Chamber’s 5 November 2007 Decision Refusing his Request for Adequate Time for Cross-Examination of Prosecution Expert Witness Andre Pringle, filed by Counsel for the Accused Petković (“Petković Defence”) on 5 November 2007 (“Application”), in which the Defence requests certification to appeal the oral decision of 5 November 2007 (“Decision of 5 November 2007”),<sup>1</sup>

**NOTING** that the Decision of 5 November 2007 in which the Chamber denied the Petković Defence’s request to be granted five hours to cross-examine Witness Andrew Pringle and granted it one hour,

**NOTING** the new oral request on 6 November 2007 in which the Petković Defence again requested to be granted additional time to cross-examine Witness Andrew Pringle and asked the Chamber to change its Decision of 5 November 2007,<sup>2</sup>

**NOTING** the oral decision of 7 November 2007 in which the Chamber upheld its Decision of 5 November 2007 to grant the Petković Defence one hour to cross-examine Witness Andrew Pringle,<sup>3</sup>

**CONSIDERING** that in its Application, the Petković Defence submits that by being granted only one hour to cross-examine Witness Andrew Pringle, the Chamber did not show flexibility by adjusting the division of time for the cross-examination as a function of the particularities of each Accused,<sup>4</sup>

**CONSIDERING** that in its Application, the Petković Defence also holds that the Chamber did not bear in mind the importance of the Expert Witness’s statement and of the number of documents presented by the Office of the Prosecutor when setting

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<sup>1</sup> Court transcript in French (“CT(F)”), p. 23975.

<sup>2</sup> CT(F), p. 24186.

<sup>3</sup> CT(F), pp. 24189-24190.

<sup>4</sup> Application, para. 2.

the time for the cross-examination and that finally the right to cross-examination as provided by Article 21 (4)(e) of the Tribunal's Statute has not been respected,<sup>5</sup>

**CONSIDERING** that pursuant to Rule 73 (B) of the Rules of Procedure and Evidence ("Rules"), "[d]ecisions 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** consequently that the certification to appeal is a matter of the discretionary power of the Chamber that must, in any case, verify in advance that the two cumulative conditions set out in Rule 73 (B) of the Rules are met in this case,<sup>6</sup>

**CONSIDERING** furthermore that the object of a request for certification is not to show that an impugned decision was not correctly grounded but to show that the conditions set out in Rule 73 (B) of the Rules have been met,<sup>7</sup>

**CONSIDERING** that the Chamber recalls that its Decision of 5 November 2007 was rendered after examining the Expert Witness's report, which is primarily factual and contains 25 pages, and that the Chamber consequently estimated that one hour for the cross-examination was sufficient,

**CONSIDERING** that the Chamber also recalls that the same time of one hour for the cross-examination was also given to the Defence for the Accused Praljak, and that the other Defence were given less time,

**CONSIDERING** that the Chamber finds, contrary to what the Petković Defence maintains, that in determining the time for the cross-examination, the Chamber bore in mind the particularities of each Accused,

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<sup>5</sup> Application, paras. 2 and 4.

<sup>6</sup> *The Prosecutor v. Pavle Strugar*, Case No IT-01-42-T, Decision on Defence Motion for Certification, 17 June 2004, para. 2.

<sup>7</sup> *The Prosecutor v. Sefer Halilović*, Case No. IT-01-48-PT, Decision on Prosecution Request for Certification for Interlocutory Appeal of "Decision on Prosecutor's Motion Seeking Leave to Amend the Indictment", 12 January 2005, p. 1; *The Prosecutor v. Rasim Delić*, Case No. IT-04-83-PT, Decision on Prosecution Request for Certification to Appeal Trial Chamber Decision Denying Prosecution Application for Leave to Amend, 14 July 2006, p. 1.

**CONSIDERING** furthermore that the Chamber recalls that it is always possible for one or several Accused to give their time to another Accused for the cross-examination,

**CONSIDERING** finally that the Petković Defence would be able to challenge the contents of the Expert Witness's report during the presentation of his case by appealing to his own witnesses,

**CONSIDERING** consequently that the Chamber does not see the circumstances in its Decision of 5 November 2007 that would involve 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,

**FOR THE FOREGOING REASONS,**

**PURSUANT TO** Rule 73 (B) of the Rules,

**DENIES** the Application.

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

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Jean-Claude Antonetti  
Presiding Judge

Done this sixth day of December 2007  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**