

IT-00-39-T
D13410 - D13407
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UNITED
NATIONS



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: IT-00-39-T

Date: 2 June 2006

Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Joaquín Martín Canivell
Judge Claude Hanoteau

Registrar: Mr Hans Holthuis

Date of Decision: 2 June 2006

PROSECUTOR

v.

MOMČILO KRAJIŠNIK

DECISION ON DEFENCE APPLICATION FOR CERTIFICATION TO APPEAL
AGAINST TRIAL CHAMBER'S DECISION OF 23 MAY 2006

Office of the Prosecutor

Mr Mark Harmon
Mr Alan Tieger

Counsel for the Defence

Mr Nicholas Stewart, QC
Mr David Josse

THE TRIAL CHAMBER

BEING SEIZED of the “Defence application for certification pursuant to Rule 73 (B) of the Rules of Procedure and Evidence to appeal against Trial Chamber’s Decision of 23 May 2006”, filed on 24 May 2006;

NOTING that: on 27 February 2006 the Chamber allotted to the Defence a total of 20 days for the examination-in-chief of Mr Krajišnik;¹ that on 19 May 2006 the Prosecution orally applied for a recess of three days in order to prepare the cross-examination of Mr Krajišnik;² that on the same day, the Chamber granted one additional day for the examination-in-chief;³ that the Defence filed an application on 22 May 2006 regarding the timetable and requested three additional days for examination-in-chief;⁴ that on 23 May 2006 the Chamber granted the Defence another additional day for examination-in-chief; and declared that there will be one non-sitting day between the close of the examination-in-chief and the start of cross-examination;⁵

NOTING that Rule 73 (B) of the Rules of Procedure and Evidence stipulates that certification may be granted “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”;

¹ Decision on Defence’s rule 74 bis motion; amended trial schedule, 27 February 2006.

² T. 24423.

³ E-mail to the Parties, 19 May 2006, quoted in full in Defence application for orders dealing fairly with the timetable, preparation and presentation of Mr Krajišnik’s evidence and allowing the opportunity of submission by the parties before the Trial Chamber makes judicial decisions, 22 May 2006.

⁴ Defence application, 22 May 2006, para. 10.

⁵ Decision on the applications by the Defence and by the Prosecution regarding the timetable of Mr Krajišnik’s evidence, 23 May 2006.

NOTING that the arguments of the Defence in favour of a certification to appeal are that: the schedule for the testimony of Mr Krajišnik was understood to be open to reasonable adjustment, particularly in view of the time spent on questions put by the judges; that the Defence attempted to tailor the examination-in-chief to the scheduled 20 days, as could be seen from the Rule 65 ter filing of Mr Krajišnik's testimony; that the Defence application for additional days was not filed at a late stage; and that the non-sitting day on Friday 26 May 2006 was effectively taken away from the Defence as a "punitive" sanction;

CONSIDERING that these arguments go to the substance of the Chamber's Decision of 23 May rather than to the criteria provided for in Rule 73 (B);

NOTING that the trial is at a late stage of its proceedings; that the Chamber's Decision of 23 May is mainly focusing on the testimony of Mr Krajišnik and not on the scheduling of the whole Defence case; that major parts of the issues concerning scheduling have already been decided upon by the Appeals Chamber;⁶ that the issue of allocation of time, after being again raised by the Defence, was again decided upon in the Chamber's Decision of 18 November 2005;⁷ and that this Decision became final due to the failure of the Defence to address the criteria of Rule 73 (B) and the fact that the Chamber did not find these criteria to be satisfied;⁸

CONSIDERING that the Defence has not argued, and the Chamber does not find, that its Decision of 23 May involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial;

CONSIDERING in this respect that the Defence was effectively granted a total of 22 days, was ultimately denied only two days of the additional days it requested for examination-in-

⁶ *Krajišnik*, Appeals Chamber Decision on interlocutory appeal of Decision on second Defence motion for adjournment, 25 April 2005.

⁷ T. 18799-805.

⁸ Decision on Defence application for certification to appeal the Decision on scheduling of 18 November 2005.

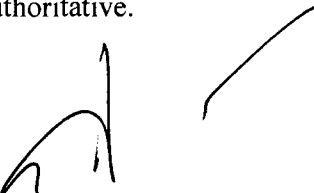
chief, and has been given ample time to prepare for Mr Krajišnik's examination-in-chief, scheduled for 20 days;

CONSIDERING that, since the first criterion of Rule 73 (B) has not been satisfied, there is no reason to make an assessment on the basis of the second criterion;

FOR THE FOREGOING REASONS,

DENIES the application.

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



Judge Alphons Orie
Presiding Judge

Dated this 2nd day of June 2006
At The Hague,
The Netherlands

[Seal of the Tribunal]