



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-04-82-PT
Date: 14 June 2006
Original: English

IN TRIAL CHAMBER II

Before: Judge Carmel Agius, Presiding
Judge Hans Henrik Brydensholt
Judge Albin Eser, Pre-Trial Judge

Registrar: Mr. Hans Holthuis

Decision of: 14 June 2006

PROSECUTOR

v.

**Ljube BOŠKOSKI
Johan TARČULOVSKI**

**DECISION ON ASSIGNED *PRO BONO* COUNSEL'S NOTICE
TO TRIAL CHAMBER**

Counsel for the Prosecutor:

Mr. Dan Saxon
Mr. Anees Ahmed
Mr. William Smith

Counsel for the Accused:

Ms. Edina Rešidović for Ljube Boškosi
Mr. Antonio Apostolski for Johan Tarčulovski

TRIAL CHAMBER II (“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 the confidential “Assigned *Pro Bono* Counsel Notice to the Trial Chamber Further to its ‘Decision on Motions on Fair Trial and Extension of Time’ and Response to the Registry’s ‘Submission Pursuant to Rule 33(B) of the Rules of Procedure and Evidence Concerning Ljube Boškoski’s ‘Confidential Motion to Ensure a Fair Trial’” (“Notice”), filed on 25 May 2006 by Counsel for Boškoski (“Counsel”);

NOTING that, on 19 May 2006, after the filing of the Trial Chamber’s “Decision on the Motions of Fair Trial and Extensions of Time” (“Trial Chamber’s Decision”), the Registry filed the “Registry Submission Pursuant to Rule 33(B) of the Rules of Procedure and Evidence Concerning Ljube Boškoski’s ‘Confidential Motion to Ensure a Fair Trial’” (“Submission”);

NOTING that, in the Notice, Counsel requests the Trial Chamber to: (i) take notice that Counsel reserves the right to request certification to appeal “the Decision”, if necessary, at a later stage but that a request for certification is not made in the Notice; and, (ii) take into consideration the arguments set out in the Notice, which are made in response to the Submission;

NOTING that, in support of the requests made in the Notice, Counsel submits that: (i) “the Decision failed to address the true issue raised in the *Motion to Ensure a Fair Trial*” and, therefore, “Counsel considers it necessary [...] to request certification of the Decision”; (ii) a request for certification to appeal is not made in the Notice because the Government of Macedonia may, subject to “future arrangements to be concluded” between Boškoski and the Macedonian Government, pay the costs of Boškoski’s defence and that if this occurs there would no longer be a need to appeal;¹ and, (iii) the Submission “is wrong in fact and law and for this reason it is necessary to respond to the arguments therein”;²

NOTING that it is not altogether clear from the Notice which decision Counsel is referring to when discussing certification to appeal but that it is presumed that Counsel is referring to the Trial Chamber’s Decision;

NOTING that the Counsel does not request either certification to appeal the Trial Chamber’s Decision at this time or an extension of time to file a request for certification to appeal, but rather asserts a right to make a request for certification to appeal at any, unspecified time in the future;

¹ Notice, paras. 5 – 9.

² Notice, para. 10. See paras. 11 – 27 for further arguments pertaining to the Submission.

NOTING that Rule 73(B) of the Tribunal's Rules of Procedure and Evidence ("Rules") provides that decisions on motions are without interlocutory appeal, except when the Trial Chamber grants certification to appeal, that Rule 73(C) of the Rules clearly states that requests for certification shall be filed within seven days of the filing of the impugned decision, and that, pursuant to Rule 127 of the Rules, the Trial Chamber may enlarge any time prescribed under the Rules if "good cause" is shown;

CONSIDERING that it was not necessary for Counsel to file the Notice confidentially and emphasises that in accordance with Article 21(2) of the Statute, which provides for an accused's right to a public hearing, and the need to ensure the transparency of all proceedings before the Tribunal, motions should only be filed confidentially in exceptional circumstances;

CONSIDERING that neither the Rules nor the Tribunal's Statute provide for the reservation of the right to request certification to appeal and that a request for certification to appeal or a request for an extension of time to make a request for certification to appeal must be made within the time-limits, which are clearly established by the Rules;

CONSIDERING that permitting a reservation of the right to request certification to appeal could run counter to the purpose of Rule 73(B) of the Rules to secure an expeditious trial;

CONSIDERING further that in the absence of case law supporting the existence of a right to reserve the right to request certification to appeal, the Trial Chamber sees no reason to "take notice" of such a right in this case;

CONSIDERING that the context in which the Trial Chamber would examine the arguments that Counsel raises in response to the Submission and the reasons for doing so are not clear from the Notice and, that, consequently, the Trial Chamber will not take those arguments into consideration;

PURSUANT to Rules 65*ter*, 73, 126*bis*, 127(A)(i) of the Rules;

HEREBY DENIES the requests made in the Notice.

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

Dated this fourteenth day of June 2006,

At The Hague

The Netherlands



Judge Carmel Agius

Presiding Judge

[Seal of the Tribunal]