

**UNITED
NATIONS**



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-95-11-T

Date: 20 June 2006

Original: English

IT-95-11-T
10059-10056
20 June 2006

10059
H.C.

IN TRIAL CHAMBER I

Before: Judge Bakone Justice Moloto, Presiding
Judge Janet Nosworthy
Judge Frank Höpfel

Registrar: Mr. Hans Holthuis

Decision of: 20 June 2006

PROSECUTOR

v.

MILAN MARTIĆ

**DECISION ON DEFENCE APPLICATION FOR
CERTIFICATION OF APPEAL PURSUANT TO RULE
73 (B)**

The Office of the Prosecutor:

Mr. Alex Whiting
Ms. Anna Richterova
Mr. Colin Black
Ms. Nisha Valabhji

Counsel for the Accused:

Mr. Predrag Milovančević
Mr. Nikola Perović

TRIAL CHAMBER I (“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 “Defence Application for Certification of Appeal pursuant to Rule 73(B)”, filed on 16 June 2006 (“Defence Request”), which seeks certification from the Trial Chamber for interlocutory appeal of the Trial Chamber’s “Decision on Defence Motion to Exclude the Testimony of Witness Milan Babić, together with Associated Exhibits, from Evidence”, which was issued on 9 June 2006 (“Decision”);

NOTING that on 19 June 2006, the Prosecution filed its “Prosecution Response to Defence Application for Certification of Appeal pursuant to Rule 73(B)” (“Prosecution Response”) in which it submits that the Defence Request should be denied;

NOTING that the Defence requests that the Trial Chamber grants certification for appeal of its Decision, because the Decision “deals with the issue of the right of the Accused to cross-examine witnesses against him”¹ and because “the question whether interruption of cross-examination warrants the exclusion of evidence is, given the importance of the evidence in question, capable of *significantly* affecting the fairness of the trial”;²

NOTING the Defence submission that the evidence of Milan Babić “is the most important piece of evidence against the Accused” and that this is “demonstrated by the statement of the Prosecution counsel in court that they would not be able to rest their case without a decision on its fate”;³

NOTING the Defence arguments that an immediate resolution of the issue will materially advance the proceedings, because a possible exclusion during appellate proceedings after the rendering of a Judgement could result in the Prosecution seeking to re-open its case; and that in case the evidence of Milan Babić is excluded by way of a final decision of the Appeals Chamber “much of the evidence that the Defence would lead during its case might prove to be led unnecessarily, wasting significant time and resources”;⁴

NOTING that Prosecution submission that the admission or exclusion from evidence of Milan Babić’s evidence cannot reasonably be seen as significantly affecting the fair and expeditious conduct of the proceedings or the outcome of the trial⁵ because the evidence of Milan Babić is not a

¹ Defence Request, para. 7.

² Defence Request, para. 9.

³ Defence Request, para. 9.

⁴ Defence Request, para. 12.

⁵ Prosecution Response, paras 5-6.

conditio sine qua non of the Accused's guilt or innocence, as his evidence is corroborated by other evidence;⁶ because the Decision states that where Milan Babić's evidence was not cross-examined and goes to the acts and conduct of the Accused, or is pivotal to the Prosecution case, it will be used to determine guilt only when corroborated;⁷ and because "it is impossible to know what, if any, importance the Trial Chamber will place on Milan Babić's evidence in making its final assessment of the Accused criminal responsibility";⁸

NOTING the Prosecution submission that certification would not materially advance the proceedings because, contrary to the Defence's argument, the Prosecution has no means of re-opening the case once a final judgement has been rendered and because there is no reason why the Defence during its case should respond solely or to a large extent to the evidence of Milan Babić, seeing that this evidence has been corroborated;⁹

NOTING the Prosecution submission that the "mere possibility of a favourable decision on appeal from a final judgement cannot itself satisfy Rule 73 (B)'s requirement that immediate resolution would 'materially advance' the proceedings";¹⁰

NOTING that Rule 73 (B) of the Rules of Procedure and Evidence ("Rules") provides that:

Decisions 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 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 that the issue decided upon by the Trial Chamber in its Decision, namely whether the testimony of a witness should be excluded from the trial record for reasons of incomplete cross-examination specifically involves the statutory right of the Accused to examine the witness against him, as guaranteed in Article 21 (4)(e) of the Tribunal's Statute; and, therefore, that the requirement that the "decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings" is met;

NOTING that the Defence case is scheduled to begin on 11 July 2006, in accordance with the revised scheduling order issued by the Trial Chamber on 19 June 2006;

CONSIDERING that, in the opinion of the Trial Chamber, an immediate resolution of the issue by the Appeals Chamber would materially advance the proceedings;

⁶ Prosecution Response, para. 4.

⁷ Prosecution Response, para. 5.

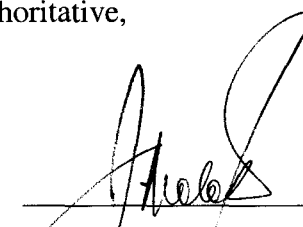
⁸ Prosecution Response, para. 6.

FOR THE FOREGOING REASONS

PURSUANT TO Rule 73 (B) of the Rules,

HEREBY GRANTS the Defence Request.

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



Judge Bakone Justice Moloto
Presiding

Dated this twentieth day of June 2006

At The Hague

The Netherlands

[Seal of the Tribunal]

⁹ Prosecution Response, paras 12-13.

¹⁰ Prosecution Response, para. 14.