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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 No. IT-03-67-PT

Date: 21 June 2006

Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Patrick Robinson
Judge Bakone Justice Moloto

Registrar: Mr Hans Holthuis

Decision of: 21 June 2006

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

**DECISION ON PROSECUTION'S REQUEST FOR
CERTIFICATION TO APPEAL**

Office of the Prosecutor

Ms Hildegard Uertz-Retzlaff
Mr Dan Saxon
Mr Ulrich Mussemeyer

The Accused

Mr Vojislav Šešelj

Standby Counsel

Mr Tjarda Eduard van der Spoel

TRIAL CHAMBER I 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;

BEING SEIZED OF the Confidential “Prosecution’s Request for Certification to Appeal Under Rule 73 (B)” filed on 29 December 2005 (“Motion”);

NOTING the “Decision on Prosecution’s Sixth Motion for Protective Measures for Witnesses” filed on 18 December 2005 (“Impugned Decision”);

NOTING “Submission No. 121”, filed on 11 January 2006, whereby the Accused objects to the Prosecution’s request for certification to appeal;

NOTING that in the Motion the Prosecution submits that (i) Trial Chamber II, in denying the delayed disclosure, did “not adequately take into account the Accused’s proven intention to intimidate or even worse, ‘disable’ potential witnesses and interfere with the judicial process”; “did not take into account that the Accused through his behaviour, jeopardized the security of the witnesses”; and “did not take into account that no trial date is scheduled yet” (“first set of arguments”); and that (ii) “effective protection of its witnesses is a vital prerequisite for the Prosecution to lead evidence and to prove its case”; “Denying adequate protection for its witnesses significantly affects the Prosecution’s ability to present its case and thus its right to a fair trial”; and the Impugned Decision “jeopardizes the expeditiousness of the proceedings as it may make it necessary to replace witnesses who due to their unsolved security concerns will [not] or cannot appear before the Court”;

NOTING that Rule 73 (B) of the 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 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 that the witnesses concerned have been granted protective measures which protect their identities from being disclosed to the public;

CONSIDERING that the Prosecution’s first set of arguments are an attempt to reargue matters previously raised and already considered by Trial Chamber II in the Impugned Decision and that they do not address the criteria set out in Rule 73 (B) of the Rules;

CONSIDERING that the Prosecution's claim that the Impugned Decision "may make it necessary to replace witnesses who due to their unsolved security concerns will or cannot appear before the Court" does not explain how disclosure at this stage rather than 30 days before the witness testifies will impact on the fair and expeditious conduct of the proceedings or the outcome of the trial;

CONSIDERING that the Prosecution's claim that the "issue of protective measures has an important impact on the trial and thus has to be decided before the start of the trial" because "at the Appeals stage witnesses will have already testified without protective measures or... may have refused to testify" also does not explain how disclosure at this stage rather than 30 days before the witness testifies will impact on the fair and expeditious conduct of the proceedings or the outcome of the trial;

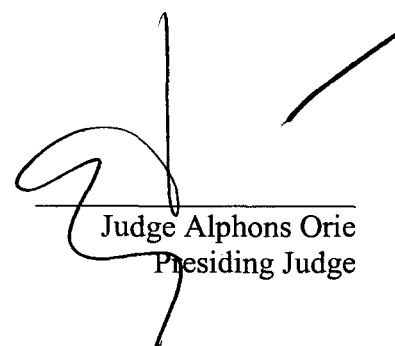
CONSIDERING that none of the arguments raised by the Prosecution involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial;

CONSIDERING that an immediate resolution by the Appeals Chamber of the issue is not likely to materially advance the proceedings;

FOR THE FOREGOING REASONS

DENIES the Motion.

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



Judge Alphons Orié
Presiding Judge

Dated this 21st day of June 2006
The Hague
The Netherlands

[Seal of the Tribunal]