

IT-00-39-T
D13503-D13501
23 JUNE 2006

13503

27

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: 23 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: 23 June 2006

PROSECUTOR

v.

MOMČILO KRAJIŠNIK

DECISION ON DEFENCE APPLICATION FOR CERTIFICATION TO APPEAL
AGAINST TRIAL CHAMBER'S DECISION OF 16 JUNE 2006

Office of the Prosecutor

Mr Mark Harmon
Mr Alan Tieger

Counsel for the Defence

Mr Nicholas Stewart, QC
Mr David Josse

1. The Chamber is seized of an application by the Defence dated 22 June 2006 (“Application”) for certification to appeal the Chamber’s decision of 16 June 2006 (“Decision”) on the “Defence Motion for a Ruling that His Honour Judge Canivell is Unable to Continue Sitting in This Case”.
2. In its Decision the Chamber ruled that: (i) the rights of the Accused were not infringed by the decision of the UN Security Council; (ii) Security Council Resolution 1668/2006 is a mere administrative act, allowing the Chamber to complete the case in its present composition without undue delay; (iii) the Security Council and the General Assembly did not improperly usurp the Tribunal’s functions in this case; and (iv) Security Council resolutions should be implemented by the Tribunal if they do not interfere with the Tribunal’s judicial function, and in the present case they do not.
3. In its Application, the Defence submits that the Trial Chamber may not be legally constituted, thus compromising the integrity of the proceedings and therefore bearing on the final outcome of the trial.¹ Further, it argues that important questions such as the implementation of Security Council and General Assembly resolutions “in direct contravention of the Statute” and issues that go to the independence and impartiality of a judicial bench should be considered “at the highest level of the ICTY”.² Finally, the Defence submits that if Judge Canivell is found not to be entitled to sit on this case, continuing the proceedings would constitute a waste of resources and an unnecessary delay in the final determination of the Accused’s case.³
4. While the Defence has not identified any purported error in the Decision, it argues that the matter is so unprecedented and uniquely important that an opinion by an appellate bench of the Tribunal is in order.
5. The question for the Chamber is whether the decision in question “involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the

¹ Application, para. 5

² Application, para. 6.

³ Application, para. 7.

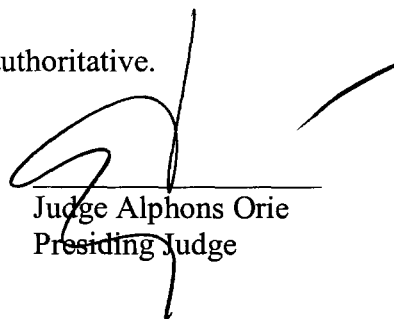
outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.”⁴

6. On the first question, the issue raised by the Defence is whether the Accused is being tried by a validly constituted and independent bench. Should the Appeals Chamber find that the Chamber erred on the law and that, for example, the Defence’s challenge to Security Council Resolution 1668/2006 supports a conclusion different from that reached by the Chamber, this would have a significant impact on the fair and expeditious conduct of the proceedings. Therefore, the first question is answered in the affirmative.

7. On the second question, and considering the advanced stage of the case, the Chamber is of the view that an immediate resolution of the issue by the Appeals Chamber would materially advance the proceedings. Furthermore, an immediate resolution by the Appeals Chamber would dispense with the possibility that an irregularly constituted Chamber pronounces its judgement.

8. The Chamber therefore **GRANTS** the application.

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



Judge Alphons Orié
Presiding Judge

Dated this 23rd day of June 2006
At The Hague,
The Netherlands

[Seal of the Tribunal]

⁴ Rule 73 (B) of the Tribunal’s Rules of Procedure and Evidence.