



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: 23 June 2006

Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr. Hans Holthuis

Decision of: 23 June 2006

PROSECUTOR

v.

MILAN MARTIĆ

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

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)” (“Application”) and urgent “Defence Motion for Stay of Proceedings” (“Motion”), both filed on 22 June 2006;

NOTING that the Defence requests certification for appeal of the Trial Chamber’s oral Scheduling Order delivered on 19 June 2006 (“Scheduling Order”) on the grounds that:

- 1) “by providing a tight schedule that disallows the adequate preparation of the Accused’s defence”, the Scheduling Order infringes upon minimum rights of the Accused, such as “to have adequate time and facilities for the preparation of his defence and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him”;¹
- 2) “an immediate resolution of the issue of scheduling by the Appeals Chamber will definitely materially advance the proceedings in this case” by addressing the “concerns of the Defence that insufficient time was given for preparation thus rendering the trial unfair for the Accused”;²

NOTING that in the Motion the Defence requests stay of the proceedings on the grounds that:

- 1) it would be unfair for the Defence to have to start its case before the Appeals Chamber has decided on the issue of “whether the testimony of Milan Babić, together with associated exhibits, will remain in evidence”; that “should the Defence case start before that, and Mr. Babić’s evidence is later excluded, much of the evidence that the Defence would lead during its case might prove to be led unnecessarily, wasting significant time and resources”;³
- 2) in case the Trial Chamber certifies the appeal against the Scheduling Order, the Appeal Chamber “would address the concerns of the defence that insufficient time was given for the preparation thus rendering the trial unfair for the Accused”;⁴

¹ Application, paras 4-6. The Defence cites the Trial Chamber in *Prosecutor v. Krajišnik*, IT-00-39-T, “Decision on Defence Application for Certification on Interlocutory Appeal”, 15 March 2005 (“*Krajišnik* Decision”) to reinforce its argument that in the Tribunal’s jurisprudence time for preparation of a defence has been held as capable of affecting both the fairness and the outcome of the proceedings and may materially advance the proceedings, thus justifying an interlocutory appeal.

² Application, para. 5.

³ Motion, para. 7.

⁴ Motion, paras 6, 8.

NOTING the “Prosecution Response to Defence Motion for Stay of Proceedings and to Defence Application for Certification of Appeal pursuant to Rule 73(B)”, filed on 22 June 2006 (“Prosecution Response”), in which the Prosecution submits that both the Application and the Motion should be denied;⁵

NOTING Rule 73 (B) of the Rules of Procedure and Evidence (“Rules”), which 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 Defence’s argument that insufficient time has been given by the Trial Chamber for the preparation of the Defence case is unconvincing in light of the fact that the Trial Chamber revised its original scheduling order for the sole purpose of accommodating the parties and providing, in particular, the Defence with further time to prepare its case;⁶

CONSIDERING that the issue raised by the Defence does not *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 this issue will not materially advance the proceedings;

CONSIDERING that a stay of proceedings is ordered at the Trial Chamber’s discretion to avoid prejudice to a party, and in the case of an accused, to prevent infringement of a statutory right, such as his right to a fair trial;

CONSIDERING that the Defence’s allusion to practical inconveniences arising out of the pending appeal and that these alleged inconveniences affect its preparations, such as that “much of the evidence that the Defence would lead during its case might prove to be led unnecessarily, wasting time and resources” should the Defence’s appeal be *granted*, fails to demonstrate how continuing the proceedings will result in prejudice to the Defence or the Accused in light of the fact that many areas of the case were not touched upon in the evidence of Milan Babić and which areas, therefore, the Defence should be able to address pending the resolution of the appeal;

CONSIDERING THEREFORE that the inconveniences alluded to may be tempered by the Defence itself, as pursuant to the Scheduling Order the first Defence evidence is only heard for four

⁵ Prosecution Response, paras 1-2.

⁶ Hearing 19 Jun 06, T. 5759, 5797-5798.

days prior to a four week recess; and that it follows that the Defence is in a position to call witnesses prior to the recess which are unrelated to the Milan Babić's testimony;

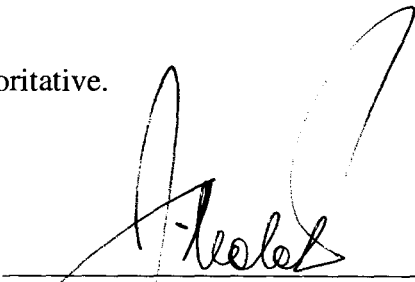
FINDING that a stay of the proceedings will result in considerable delay and waste of Tribunal resources;

PURSUANT to Rule 73 (B) of the Rules;

DENIES the Application, and

DENIES the Motion.

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



Judge Bakone Justice Moloto
Presiding

Dated this twenty-third day of June 2006

At The Hague

The Netherlands

[Seal of the Tribunal]