



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-05-88/1-PT

Date: 14 July 2006

Original: English

**IN TRIAL CHAMBER II**

**Before:** Judge Carmel Agius, Presiding  
Judge O-Gon Kwon  
Judge Kimberly Prost

**Registrar:** Mr. Hans Holthuis

**Decision of:** 14 July 2006

**PROSECUTOR**

v.

**MILORAD TRBIĆ**

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**DECISION ON “REQUETE DE LA DEFENSE EN CERTIFICATION  
D’APPEL (art. 72(B)(ii) SUITE A LA DECISION DE LA CHAMBRE  
DATEE DU 26 JUIN 2006”**

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**Office of the Prosecutor**

Ms. Carla Del Ponte

Mr. Peter McCloskey

**Counsel for Milorad Trbić**

Mr. Stéphane Piletta-Zanin

**TRIAL CHAMBER II** 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 “Requête de la Défense en Certification d’Appel (art. 72(B)(ii)) Suite à la Décision de la Chambre Datée du 26 Juin 2006” filed by Counsel for Milorad Trbić (respectively “Defence” and “Accused Trbić”) on 3 July 2006 (“Certification Request”), in which the Defence, pursuant to Rule 72(B)(ii) of the Rules of Procedure and Evidence of the Tribunal (“Rules”), requests certification to appeal the “Decision on Severance of Case Against Milorad Trbić” issued by the Trial Chamber on 26 June 2006 (“Impugned Decision”);

**NOTING** the “Decision on Motion for Joinder”, issued on 21 September 2005, in which the indictment against the Accused Trbić and Vinko Pandurević was joined, pursuant to Rule 48 of the Rules, with that of the other Accused in the case No. IT-05-88-PT (“co-Accused”);<sup>1</sup>

**NOTING** that the “Motion by the Prosecutor under Rule 11 *bis* for Referral of the Indictment” and the partly confidential “Request by the Prosecutor under Rule 11 *bis* for Referral of the Indictment to Another Court”, both filed on 4 May 2006 (“Referral Request”), in which the Office of the Prosecutor (“Prosecution”) requests the Referral Bench of the Tribunal to refer the case against the Accused Trbić to the authorities of Bosnia and Herzegovina, is still pending;<sup>2</sup>

**NOTING** the “Motion for Severance of the Case Against Milorad Trbić” filed confidentially and *ex parte* by the Prosecution on 16 June 2006 (“Severance Motion”), wherein the Prosecution sought the severance of the case against the Accused Trbić from that of the co-Accused pursuant to Rule 82(B) of the Rules;

**NOTING** the “Notification of Filing of *Ex-Parte* and Confidential Motion for Severance of the Case Against Milorad Trbić”, filed publicly by the Prosecution on 21 June 2006, in which the Prosecution explains that it filed the Severance Motion “to preclude any delay of the trial against the other co-Accused which could arise due to the outstanding [Referral Request] pending before

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<sup>1</sup> *Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Zdravko Tolimir, Radivoje Miletić, Milan Gvero, Vinko Pandurević and Milorad Trbić (“Popović et al.”)*, Case No. IT-05-88-PT, Decision on Motion for Joinder, 21 September 2005, para. 36.

<sup>2</sup> See *Popović et al.*, Order Appointing a Referral Bench for the Purpose of Determining whether the Indictment Should Be Referred to Another Court under Rule 11 *bis*, 10 May 2006, p. 2.

the Referral Bench”,<sup>3</sup> and that the Severance Motion was filed confidentially and *ex parte* “due to information of a sensitive and confidential nature” contained therein;<sup>4</sup>

**NOTING** that the Accused Trbić did not file a response to the Severance Motion within the time limit prescribed in the “Scheduling Order” issued confidentially and *ex parte* on 20 June 2006;<sup>5</sup>

**NOTING** further the “Scheduling Order for a Status Conference and for Start of Trial” issued on 6 June 2006 and in which the Pre-Trial Judge set 14 July 2006 as the date for the official start of trial in the Case No. IT-05-88;<sup>6</sup>

**NOTING** in addition that several confidential submissions relating to the health of the Accused were also pending at the time the Impugned Decision was issued and that they have still not been resolved;<sup>7</sup>

**NOTING** that the Impugned Decision granted the Severance Motion with immediate effect, directed the Registry to assign a new case number to any further submissions or proceedings involving Milorad Trbić,<sup>8</sup> and instructed the Prosecution to file two new versions of the Second Consolidated Amended Indictment reflecting these changes;

**NOTING** that Rules 72(B)(ii) and 73(B) of the Rules respectively cover certification for appeal of preliminary motions and other motions and that the Trial Chamber held, in the Impugned Decision, that “considering that, notwithstanding the language of Rule 72 of the Rules, a motion requesting relief under Rule 82(B) may be brought at any stage of the proceedings”<sup>9</sup>;

**NOTING** therefore Rule 73(B) of the Rules which sets out two cumulative criteria to be satisfied before the Trial Chamber can exercise its discretion to certify a decision on a motion for interlocutory appeal:

- i) the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial; and
- ii) for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings;

<sup>3</sup> *Popović et al.*, Notification of Filing of *Ex-Parte* and Confidential Motion for Severance of the Case against Milorad Trbić, 21 June 2006, para. 2.

<sup>4</sup> *Ibid.*

<sup>5</sup> Confidential and *Ex Parte* Scheduling Order, 20 June 2006, p. 2, ordering the Accused Trbić to file his response to the Severance Motion no later than 23 June 2006.

<sup>6</sup> *Popović et al.*, Scheduling Order for a Status Conference and for Start of Trial, 6 June 2006, p. 2.

<sup>7</sup> Impugned Decision, *Confidential* and *ex parte* Annex.

**CONSIDERING** that the Impugned Decision involves an issue which would significantly affect the fair and expeditious conduct of the proceedings against the Accused and the co-Accused;

**CONSIDERING** further that the Trial Chamber does not doubt that an immediate resolution of the issue involved in the Impugned Decision by the Appeals Chamber, namely the severance of the proceedings against the Accused Trbić, may materially advance the proceedings;

**FINDING** that granting certification to the Defence to appeal the Impugned Decision is therefore appropriate;

**FOR THE FOREGOING REASONS**

**PURSUANT TO** Articles 20 and 21(2) of the Statute of the Tribunal and to Rule 73(B) of the Rules;

**HEREBY GRANTS** the Certification Request.

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

Dated this fourteenth day of July 2006,

At The Hague,

The Netherlands.



Carmel Agius  
Presiding

**[Seal of the Tribunal]**

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<sup>8</sup> All submissions and proceedings concerning Milorad Trbić were thus assigned the Case No. IT-05-88/1-PT.

<sup>9</sup> Impugned Decision, p. 2.