

IT-00-39-T
D14277-D14275
28 AUGUST 2006

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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: IT-00-39-T

Date: 28 August 2006

Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Joaquín Martín Canivell
Judge Claude Hanoteau

Registrar: Mr Hans Holthuis

Decision of: 28 August 2006

PROSECUTOR

v.

MOMČILO KRAJIŠNIK

REASONS FOR DENYING DEFENCE APPLICATION FOR
CERTIFICATION TO APPEAL

Office of the Prosecutor:

Mr Mark Harmon
Mr Alan Tieger

Counsel for the Defence:

Mr Nicholas Stewart, QC
Mr David Josse

1. The Chamber was seised of a Defence application dated 23 August 2006 for certification to appeal the Chamber's reasons of 16 August 2006 for denying a Defence motion for to call additional Defence witnesses. The Chamber's legal officer informed the parties by email on 25 August 2006 that the application was being denied. The reasons for the denial are set out below.

2. In its decision on the Defence motion the Chamber found that: (i) the Chamber showed great flexibility on time issues, and had already accommodated several Defence requests for extensions of time; (ii) the Chamber was lenient in enforcing Rule 65 of the Rules of Procedure and Evidence; (iii) the overall time allocated to the Defence was adequate even considering that the Accused's testimony consumed a considerable proportion of court time during the Defence phase of the case; and (iv) the Chamber had heard or received a sufficient amount of evidence to decide the case fairly. The Chamber also considered the relevance of the proposed additional evidence, as well as the Accused's non-payment of his assessed contribution to his Defence team.

3. The Defence submits that the issue of whether further evidence may be called on behalf of the Accused is an issue which "significantly affects the fair and expeditious conduct of the proceedings or the outcome of the trial", unless the Chamber can conscientiously decide that the appeal has no reasonable prospect of success. Denial of certification would entail, in case of conviction, the impossibility to "turn the clock back" and allow the Defence to adduce additional evidence.¹ An immediate resolution by the Appeals Chamber would, in the Defence's view, materially advance the proceedings.² Moreover, the Defence purports to identify several mistakes and inconsistencies in the Chamber's reasoning that call for review by the Appeals Chamber.³

4. The question for the Chamber is whether its 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."⁴

5. The Chamber finds that the Defence has not identified, in general, a relevant factual or legal issue, nor has it identified, in particular, any error in the exercise of the Chamber's

¹ Application, para. 5

² Application, para. 5(a).

³ Application, para. 5(b).


⁴ Rule 73 (B) of the Rules.

discretion as to the time allocated to the Defence case. In other words, the Chamber's decisions as to the amount of time allocated to the Defence have not been shown by the Defence to be suffering from such a flaw in factual or legal reasoning that "the fair and expeditious conduct of the proceedings or the outcome of the trial" have been placed in question and immediate involvement of the Appeals Chamber has become necessary.

6. Beyond the Defence submissions, the Chamber has not itself been able to identify any issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial.

7. For the above reasons, the Chamber **DENIED** the application.

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



Judge Alphons Orie
Presiding Judge

Dated this 28th day of August 2006,
At The Hague,
The Netherlands

[Seal of the Tribunal]