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28 November 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 Former Yugoslavia since 1991

Case No. IT-95-11-T
Date: 28 November 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: 28 November 2006

PROSECUTOR

v.

MILAN MARTIĆ

**DECISION ON DEFENCE'S MOTION FOR ACCESS TO
FULL STATEMENTS OBTAINED IN THE INQUIRY ON
THE DEATH OF MILAN BABIĆ**

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’s Motion for Access to Full Statements Obtained in the Inquiry on the Death of Milan Babić”, filed on 13 November 2006 (“Motion”), in which the Defence requests the Trial Chamber to order Judge Kevin Parker, who conducted an inquiry into the circumstances surrounding the death of Milan Babić, to disclose to the Defence five statements obtained during the inquiry into Milan Babić’s death, in their entirety;

NOTING the Defence submission that it “intends to use information presumably contained in the statements, which concern circumstances of Mr. Babić’s cooperation with the Prosecution in this and other trials and of his testimony in the instant trial, when making arguments on the weight that is to be attached to his evidence at the end of the trial”;¹

NOTING the “Prosecution’s Response to the Defence’s Motion for Access to Full Statements Obtained in the Inquiry on the Death of Milan Babić”, filed on 15 November 2006, in which the Prosecution opposes the Defence Motion on the ground that the Defence has failed to demonstrate a legitimate forensic purpose for obtaining the five statements in their entirety;

NOTING the “Request of the Defence of Milan Martić for Disclosure of Certain Materials Produced During the Inquiry on the Death of Milan Babić”, filed before Judge Parker on 14 June 2006 (“Request”), in which the Defence requested that it be provided with the five statements, *inter alia*, as they “are likely to assist the Defence in making arguments on reliability and credibility of Mr. Babić as a witness at the end of the trial”;²

NOTING the memorandum by Judge Parker dated 27 June 2006, in which he, having reviewed them, provided to the Defence only what he considered to be potentially relevant portions of the requested statements;³ and **NOTING** the memorandum by Judge Parker dated 3 July 2006, whereby he explained that he had done so “acting administratively” and with regard to the confidential nature of much of the information in the requested statements;⁴

¹ Motion, para. 11.

² Request, para.13.

³ Judge Parker also provided these portions of the statements to the Prosecution and this Trial Chamber, as well as the Appeals Chamber where the Defence’s interlocutory appeal against the Trial Chamber’s decision not to exclude the evidence of Milan Babić was pending. In the Request, the Defence also sought the statements to find support for its interlocutory appeal.

⁴ See also Letter by Pascale Chifflet (on behalf of Judge Parker) to the Defence, 21 Sep 2006, wherein it is stated that Judge Parker disclosed only extracts of the requested statements because much of the information in them concerns personal details about the immediate family of Milan Babić who are living under the Tribunal’s witness protection program. This letter is attached to the Motion.

NOTING that Judge Parker was assigned by the President of the Tribunal to “conduct an inquiry into the circumstances surrounding the death of Milan Babić [...] and to report the findings of that inquiry to [the President] directly” pursuant to Rules 19(A) and 33(A) of the Rules of Procedure and Evidence, which place the administration and servicing of the Tribunal under the authority and supervision of the President, as well as pursuant to Rule 33 of the “Rules Governing the Detention of Persons Awaiting Trial or Appeals Before the Tribunal or Otherwise Detained on the Authority of the Tribunal”, which provides that in the event of a death of a detainee in the United Nations Detention Unit, “[t]he President may order an inquiry into the circumstances surrounding the death [...] of any detainee”;⁵

CONSIDERING that Judge Parker, when providing what he considered to be potentially relevant portions of the requested statements, was acting under the authority of the President and as such made an administrative decision which was connected with his task to inquire into the circumstances surrounding the death of Milan Babić;

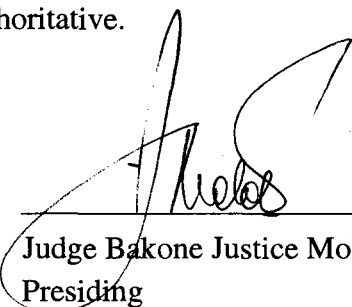
CONSIDERING therefore that this Trial Chamber is not the proper forum before which a request for review of the decision taken by Judge Parker can be brought and that the proper forum in this situation would be the President;

FINDING that this Motion was not properly filed before the Trial Chamber;

FOR THE FOREGOING REASONS,

DISMISSES the Motion.

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



Judge Bakone Justice Moloto
Presiding

Dated this twenty eighth day of November 2006

At The Hague

The Netherlands

[Seal of the Tribunal]

⁵*Prosecutor v. Milan Babić*, Case No. IT-03-72, Order Assigning a Judge to Conduct an Inquiry, 6 March 2006.