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D15894-D15895
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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 No. IT-03-67-T

Date: 30 November 2006

Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Frank Höpfel
Judge Ole Bjørn Støle

Registrar: Mr Hans Holthuis

Decision of: 30 November 2006

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

**DECISION ON APPLICATION FOR CERTIFICATION TO APPEAL ORDER OF
25 OCTOBER 2006**

Office of the Prosecutor

Ms Hildegard Uertz-Retzlaff
Mr Dan Saxon
Mr Ulrich Müssemer
Ms Melissa Pack
Ms Joanne Motoike

Counsel for the Accused:

Mr David Hooper
Mr Andreas O'Shea

1. On 25 October 2006 the Chamber issued an Order Concerning Appointment of Standby Counsel and Delayed Commencement of Trial. This Order was translated and served upon the Accused on 27 October 2006.
2. On 7 November 2006 the Accused applied for certification to appeal the Chamber's Order of 25 October 2006. The Accused stated that the issue involved has a significant impact on the fair and expeditious conduct of "the proceedings, trial and the outcome of the proceedings", and that a decision by the Appeals Chamber would materially advance the proceedings and "render them relatively lawful".¹
3. The Prosecution responded on 16 November 2006. It argued that the Accused had filed the Request after the seven day time-limit, without an application showing good cause for an extension, and that the Request should, therefore, be dismissed. As for the substance of the Request, the Prosecution argued that the Accused had failed to satisfy the requirements of Rule 73 (B) of the Rules of Procedure and Evidence.²
4. Rule 73 (C) of the Rules provides that requests for certification "shall be filed within seven days of the filing of the impugned decision". In this case the Accused failed to apply for certification within the prescribed time limit and did not show good cause for an extension. Regardless of this the Chamber decides to deal with the merits of the application.
5. Rule 73 (B) of the Rules provides that a Trial Chamber may grant certification to appeal a decision "if the 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".
6. The Order Concerning Appointment of Standby Counsel and Delayed Commencement of Trial of 25 October 2006 reinstated the situation to how it was prior to the Chamber's Decision on Assignment of Counsel of 21 August 2006, and it did not affect the Accused's self-represented status and freedom to represent himself. The exact role of standby counsel would, to a large extent, be for the Accused to determine. For example, any assistance by standby counsel, in the preparation and presentation of the case, would be solely at the request

¹ Motion for Certification to File an Interlocutory Appeal Against the Order of Trial Chamber I issued on 25 October 2006, 7 November 2006.

² Prosecution's Response to the Accused's Motion for Certification dated 7 November 2006, 16 November 2006.

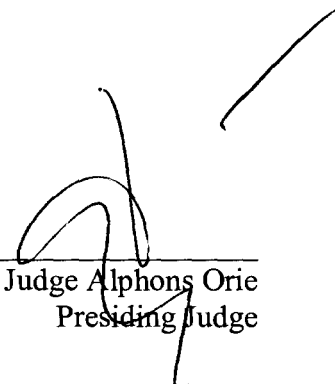
of the Accused.³ Also, the temporary or permanent take over of the conduct of the defence by standby counsel would be as a result of the conduct of the Accused. The Chamber could only order standby counsel to put questions to witnesses “in the event of abusive conduct by the Accused”.⁴ Additionally, the Chamber could only order standby counsel to temporarily take over the conduct of the defence if the Accused “is engaging in disruptive conduct or conduct requiring his removal from the courtroom under Rule 80 (B) [of the Rules]” and to permanently take over if the Accused’s conduct “is substantially obstructing the proper and expeditious proceedings”⁵. The only exception to the rule that the role of standby counsel is determined by the Accused is that standby counsel would be allowed to address the court, either upon the request of the Accused, or the Chamber.⁶ This exception is, however, of very limited practical significance. The existence of a standby counsel, with a role as defined in the Order of 25 October 2006, would not, in itself, affect the conduct of the proceedings. The Chamber therefore considers that the order does not involve an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial.

7. Since the first part of the test in Rule 73 (B) has not been met the Chamber will not deal with the second part, namely whether “an immediate resolution by the Appeals Chamber may materially advance the proceedings”.

8. Therefore, the Chamber, pursuant to Rule 73(B) of the Rules, **DENIES** the Accused’s request.

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

Dated this 30th day of November 2006
The Hague
The Netherlands



Judge Alphons Orie
Presiding Judge

[Seal of the Tribunal]

³ Order concerning Appointment of Standby Counsel and Delayed Commencement of Trial, 25 October 2006, para. 5 (a)

⁴ Ibid. para. 5 (g).

⁵ Ibid. para. 5 (h) and (i).

⁶ Ibid. para. 5 (c).