

IT-00-39-A
A83 - A81
20 DECEMBER 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-00-39-A
Date: 20 December 2006
Original: English

IN THE APPEALS CHAMBER

Before: Judge Wolfgang Schomburg, Pre-Appeal Judge
Registrar: Mr. Hans Holthuis
Order of: 20 December 2006

PROSECUTOR

v.

MOMČILO KRAJIŠNIK

**ORDER ON REFERRAL OF REQUEST PURSUANT TO
RULES 65 *ter*(J) AND 107**

The Office of the Prosecutor:

Mr. Peter Kremer
Ms. Christine Dahl

Counsel for the Applicant:

Mr. Colin Nicholls

I, WOLFGANG SCHOMBURG, a Judge of the Appeals 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 ("International Tribunal");

NOTING the "Order Assigning Judges to a Case Before the Appeals Chamber and Appointing a Pre-Appeal Judge", filed on 26 October 2006;

NOTING the "Order Reassigning a Pre-Appeal Judge in a Case Before the Appeals Chamber", filed on 2 November 2006, which assigned me as Pre-Appeal Judge in this case;

BEING SEIZED of Momčilo Krajišnik's ("Applicant") "Request for Certification to Appeal Against the Oral Decision of Pre-Appeal Judge Schomburg Affirming the Registrar's Decision to Assign Counsel to Mr. Krajišnik" ("Request"), filed on 18 December 2006;

NOTING that the Applicant in his Request argues that at the status conference on 11 December 2006 the Pre-Appeal Judge "issued an oral decision confirming the reasonableness of the Registrar's decision to assign counsel"¹ to the Applicant;

NOTING that the Applicant requests the Pre-Appeal Judge to "grant a certificate pursuant to Rules 107 and 73(B) to enable the filing of an interlocutory appeal in relation to his oral decision of 11 December 2006";²

NOTING that the Prosecution has indicated today by e-mail to the Senior Legal Officer of the Appeals Chamber that it will not file a response;

NOTING that the Trial Judgement in this case was delivered on 27 September 2006;

NOTING that in his Decision on Request for Extension of Time to File Notice of Appeal, filed on 26 October 2006, the then Pre-Appeal Judge ordered the Applicant to "file his notice of appeal no later than 30 days after the assignment of counsel to him";³

NOTING that in his Decision, filed on 8 December 2006, the Registrar assigned Mr. Colin Nicholls as permanent counsel to the Applicant;⁴

NOTING that in the status conference of 11 December 2006, the Pre-Appeal Judge, in the interests of justice, extended, pursuant to prior jurisprudence,⁵ the Applicant's filing deadlines to 5 February 2007 for the Notice of Appeal and the response to the Prosecution Appeal Brief,⁶ and to 15 February 2007 for

¹ Request, para. 3.

² Request, para. 11.

³ *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Decision on Request for Extension of Time to File Notice of Appeal, 26 October 2006, p. 2.

⁴ *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Decision, 8 December 2006, p. 2.

⁵ See *Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-A, Decision on Vidoje Blagojević's Expedited Motion for Extension of Time in Which to File His Notice of Appeal, 16 February 2005.

⁶ Status Conference, 11 December 2006, Transcript, p. 18.

the response to the "Motion by Mićo Stanišić for Access to All Confidential Materials in the Krajišnik Case";⁷

NOTING that should no Notice of Appeal be filed by the Applicant through assigned counsel or, if need may be, by the Applicant himself before 5 February 2007, the Appeals Chamber will be seized in this case only of the Prosecution's Appeal;

CONSIDERING Rule 65ter(J) of the Rules which stipulates that "[t]he pre-trial Judge shall keep the Trial Chamber regularly informed, particularly where issues are in dispute and may refer such disputes to the Trial Chamber";

CONSIDERING that Rule 107 of the Rules provides that "[t]he rules of procedure and evidence that govern proceedings in the Trial Chambers shall apply *mutatis mutandis* to proceedings in the Appeals Chamber;

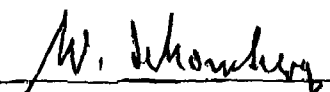
FINDING that there is a dispute as stipulated by Rule 65ter(J);

HEREBY ORDER as follows:

1. The Request is referred to the entire bench (a) by transmitting all the underlying documents to the President, at the same time Presiding Judge in this case,⁸ to take the necessary steps; and (b) by transmitting all the underlying documents to the other members of the bench.
2. The Applicant, i.e. Mr. Momčilo Krajišnik and his assigned counsel,⁹ is reminded that this order leaves undisturbed the timeframes set by the Pre-Appeal Judge in the status conference of 11 December 2006 according to which the Applicant/assigned counsel has to file, if he so wants, a Notice of Appeal and a response to the Prosecution Appeal Brief no later than 5 February 2007, as well as a response to the "Motion by Mićo Stanišić for Access to All Confidential Materials in the Krajišnik Case" no later than 15 February 2007.

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

Dated this twentieth day of December 2006,
At The Hague, The Netherlands.


Judge Wolfgang Schomburg
Pre-Appeal Judge

[Seal of the International Tribunal]

⁷ *Ibid.*, p. 20.

⁸ See *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Order Reassigning A Pre-Appeal Judge in a Case Before the Appeals Chamber, 2 November 2006.

⁹ See, *mutatis mutandis*, Rule 2(A) of the Rules.