



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: 1 June 2007

Original: English

**IN TRIAL CHAMBER II**

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

**Registrar:** Mr. Hans Holthuis

**Decision of:** 1 June 2007

**PROSECUTOR**

v.

**MILORAD TRBIĆ**

**PUBLIC**

**DECISION ON TRIAL CHAMBER'S COMPETENCE TO ENTERTAIN MOTION  
FILED AFTER ENTRY INTO FORCE OF DECISION UNDER RULE 11 *BIS***

**Office of the Prosecutor**

Mr. Peter McCloskey  
Mr. Kweku Vanderpuye

**Counsel for the Accused**

Mr. Stéphane Piletta-Zanin

**THIS 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”);

**NOTING** the “Motion to Suspend Following Registry Decision of 7 May 2007”, filed confidentially in the original French on 17 May 2007;<sup>1</sup>

**NOTING** the “Decision on Referral of Case Under Rule 11 *bis*” of 27 April 2007 (“Referral Decision”), in which the Referral Bench decided to refer the Accused’s case to the authorities of Bosnia and Herzegovina;<sup>2</sup>

**NOTING** that Rule 11 *bis*(I) of the Rules of Procedure and Evidence of the Tribunal provides, in pertinent part, that “[a]n appeal by the accused or the Prosecutor shall lie as of right from a decision of the Referral Bench whether or not to refer a case”, and that “[n]otice of appeal shall be filed within fifteen days of the decision”;<sup>3</sup>

**CONSIDERING** that neither the Accused nor the Prosecution filed notice of appeal against the Referral Decision within the 15-day limit prescribed by Rule 11 *bis*(I),<sup>4</sup> and that the Referral Decision therefore became final on 14 May 2007;<sup>5</sup>

**CONSIDERING** that, while the Referral Bench retains the power to issue certain orders in a referred case after its decision on referral has become final,<sup>6</sup> the Trial Chamber seized of pre-trial

<sup>1</sup> This motion was signed on 16 May 2007 and the English translation was filed on 29 May 2007.

<sup>2</sup> Referral Decision, para. 49(a).

<sup>3</sup> Rule 11 *bis*(I).

<sup>4</sup> In a letter dated 2 May 2007 and filed publicly on 3 May 2007, the Accused informed the Registrar that he did not intend to file an appeal against the Referral Decision. See Letter from Milorad Trbić to Hans Holthuis, 3 May 2007, p. 1. Since this filing was not made by Counsel for the Accused, it cannot be regarded as a formal waiver of the right of appeal having the effect of making the Referral Decision final. See Registry Submission Pursuant to Rule 33(B) of the Rules of Procedure and Evidence Regarding the Status of Defence Counsel, 4 May 2007, p. 2 (stating that, as of 4 May 2007, Counsel for the Accused “is still officially assigned to the Accused”).

<sup>5</sup> Counting from the day after the day on which the Referral Decision was issued, the deadline to file notice of appeal would have fallen on 12 May 2007. Cf. *Prosecutor v. Popović, Beara, Nikolić, Borovčanin, Miletić, Gvero, and Pandurević*, Case No. IT-05-88-T, Decision Regarding Evidence of General Rupert Smith and the Calculation of Time Limits Under Rule 126 *bis*, 30 March 2007, p. 2 (interpreting the language “within fourteen days” in Rule 126 *bis* as “excluding the day the original motion is filed”). As 12 May 2007 was a Saturday, and thus “a day when the Registry of the Tribunal does not accept documents for filing”, such notice would have been considered timely had it been filed “on the first day thereafter when the Registry does accept documents for filing”—that is, Monday, 14 May 2007. See Rule 126(B).

<sup>6</sup> See Rules 11 *bis*(D)–(F). See also, e.g., *Prosecutor v. Mejakić, Gruban, Fuštar, and Knežević*, Case No. IT-02-65-PT, Order on Prosecution Request for an Extension of Time to File Progress Report, 25 September 2006 (issued five months after Appeals Chamber decision upholding referral); *Prosecutor v. Ljubičić*, Case No. IT-00-41-PT, Decision on Defence Request for Handover of Confidential Material, confidential, 22 September 2006 (issued two months after Appeals Chamber decision upholding referral); *Prosecutor v. Janković*, Case No. IT-96-23/2-PT, Decision on Former Counsel’s Motion for Leave to Hand Over Confidential Documents to New Counsel, partly confidential, 23 June 2006 (issued seven months after Appeals Chamber decision upholding referral); *Prosecutor v. Trbić*, Case No. IT-05-88/1-PT, Decision on Referral of Case Under Rule 11 *bis*, 27 April 2007, para. 41 (Referral

proceedings in a referred case lacks competence to consider any motions filed subsequent to the date on which the Bench's decision becomes final, including through the issuance of a decision by the Appeals Chamber upholding the Bench's decision,<sup>7</sup> and where neither party has filed notice of appeal against the decision within the 15-day time limit in Rule 11 *bis*(I);

**CONCLUDES** that the Trial Chamber is not competent to deal with the Motion.

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




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Carmel Agius  
Presiding

Dated this first day of June 2007  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**

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Bench "recall[ing] its power under Rules 11 *bis*(F) and (G) to revoke the referral of this case and compel the Accused's return to the seat of the Tribunal if [...] it will not be possible for him to receive a fair trial").

<sup>7</sup> See *Prosecutor v. Janković*, Case No. IT-96-23/2-PT, Decision on Prosecution's Motion for Reconsideration, confidential, 6 October 2005, p. 3 (considering that "the Prosecutor prejudges [...] the Appeals Chamber's decision on the [Referral Bench's decision to refer the case] when assuming that the pre-trial status of the case ceases with the [Bench's decision]", and that "the pre-trial status of the case will effectively cease when and if the Appeals Chamber renders a decision that confirms the Decision on Referral"). Several decisions have been taken by Trial Chambers after an order by the Referral Bench for referral under Rule 11 *bis*, but before the issuance of a decision by the Appeals Chamber upholding such referral. See, e.g., *ibid.*; *Prosecutor v. Janković*, Case No. IT-96-23/2-PT, Decision on Prosecution's Motion for Reconsideration, confidential, 6 October 2005; *Prosecutor v. Janković*, Case No. IT-96-23/2-PT, Decision on Janković's Motion for Provisional Release, 21 September 2005; *Prosecutor v. Rašević and Todović*, Case No. IT-97-25/1-PT, Decision on Savo Todović's Application for Provisional Release, 22 July 2005. Moreover, one Trial Chamber has held status conferences during this period. See *Prosecutor v. Rašević and Todović*, Case No. IT-97-25/1-PT, T. 175–187 (20 October 2005); *Prosecutor v. Rašević and Todović*, Case No. IT-97-25/1-PT, T. 188–195 (21 February 2006).