



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-02-54-R77.5

Date: 13 May 2009

Original: English

IN A SPECIALLY APPOINTED CHAMBER

Before: Judge Bakone Justice Moloto, Presiding
Judge Mehmet Güney
Judge Liu Daqun

Acting Registrar: Mr. John Hocking

Decision of: 13 May 2009

IN THE CASE

AGAINST

FLORENCE HARTMANN

PUBLIC

**DECISION ON MOTION FOR CERTIFICATION TO
APPEAL TRIAL CHAMBER'S DECISION RE STAY OF
PROCEEDINGS FOR ABUSE OF PROCESS**

Amicus Curiae Prosecutor

Mr. Bruce MacFarlane, QC

Counsel for the Accused

Mr Karim A. A. Khan, Counsel
Mr Guénaél Mettraux, Co-Counsel

THE SPECIALLY APPOINTED CHAMBER (“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 is seized of the “Defence Motion for Leave to Appeal Trial Chamber’s Decision Re Stay of Proceedings for Abuse of Process” of 9 February 2009 (“Request for Leave to Appeal”) and hereby renders its Decision.

I. PROCEDURAL HISTORY

1. On 23 January 2009, the Defence filed a motion for stay of proceedings for abuse of process.¹ The *Amicus Curiae* Prosecutor filed his response to the Motion on 29 January 2009.² The Chamber orally denied the Motion on 30 January 2009, with reasons to follow.³ On 3 February 2009, the Chamber issued its reasons for this decision.⁴ On 9 February 2009, the Defence filed a motion for leave to appeal the Decision.⁵ The *Amicus Curiae* Prosecutor responded to the Defence’s Request for Leave to Appeal on 17 February 2009.⁶

II. APPLICABLE LAW

2. Rule 73 (B) of the Rules of Procedure and Evidence (“Rules”) requires two cumulative criteria to be satisfied to allow a Trial Chamber to grant a request for certification to appeal: 1) that the decision involved an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and 2) that, in the opinion of a Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings. Even in cases where both criteria are met, certification remains in the discretion of the Trial Chamber.⁷

¹ Motion for Stay of Proceedings for Abuse of Process with Confidential Annexes, 23 January 2009 (“Motion”).

² Prosecution Response to Defence Motion for Stay of Proceedings, 29 January 2009.

³ T. 45-46.

⁴ Reasons for Decision on the Defence Motion for Stay of Proceedings for Abuse of Process, 3 February 2009. The Chamber’s decision of 30 January 2009 and its reasons for this decision of 3 February 2009 will henceforth be referred to as the “Decision”.

⁵ Defence Motion for Leave to Appeal Trial Chamber’s Decision *Re* Stay of Proceedings for Abuse of Process, 9 February 2009.

⁶ Prosecution Response to Defence Motion for Leave to Appeal Decision *Re* Stay of Proceedings for Abuse of Process, 17 February 2009.

⁷ See, for example, *Prosecutor v. Karadžić*, Case No. IT-95-5/18-PT, Decision on Accused’s Application for Certification to Appeals, 19 January 2009, para. 11.

3. The Chamber emphasizes that a request for certification “is not a further opportunity [for the requesting party] to inform the Trial Chamber that it disagrees with a decision it has made”.⁸ Neither is certification concerned with whether the impugned decision was correctly reasoned or not, as this is a matter for appeal, be it an interlocutory appeal or one after the final judgement has been rendered.⁹

III. SUBMISSIONS AND DISCUSSION

4. In its Request for Leave to Appeal, the Defence lists 19 alleged errors in the Decision. When describing these alleged errors,¹⁰ the Defence repeatedly submits that the Chamber erred in law and/or fact and abused its discretion, but the Defence does not explain how the alleged errors are relevant to the criteria set out in Rule 73 (B). The Defence further argues that the Chamber, by committing the 19 alleged errors and “generally refusing to address and review the manner in which this investigation has been conducted” has effectively violated the right of the Accused to a fair trial, her right to adequate time and facilities to prepare and her right to effective confrontation.¹¹ The Defence is thereby addressing what it claims to be the effect of the Chamber’s decision. Again the Defence does not explain how this relates to the criteria set out in Rule 73 (B). In fact, the Defence does not set out anywhere in the Request for Leave to Appeal whether it considers that the Decision involves an issue that would affect “the fair and expeditious conduct of the proceedings” or “the outcome of the trial”. Neither does the Defence bring forth any arguments about the Decision “significantly” affecting any of those two elements. The Chamber considers that the Defence’s arguments merely amount to an expression of disagreement with the Decision. Lacking specific arguments with regard to the criteria in Rule 73 (B), the Chamber will not speculate as to the exact meaning of the Defence’s submissions, in particular considering that the Rule clearly sets out what a requesting party needs to address.

5. As the prongs of Rule 73 (B) are cumulative and the Defence has not met the first prong, the Chamber will not deal with the second prong.

⁸ *Prosecutor v. Milošević*, Case No. IT-02-54-T, Decision on Prosecution Motion for Certification Regarding Evidence of Defence Witness Barry Lituchy, 18 May 2005, p. 5.

⁹ *Prosecutor v. Milošević*, Case No. IT-02-54-T, Decision on Prosecution Motion for Certification of Trial Chamber Decision on Prosecution Motion for Voir-Dire Proceeding, 20 June 2005, para 4.

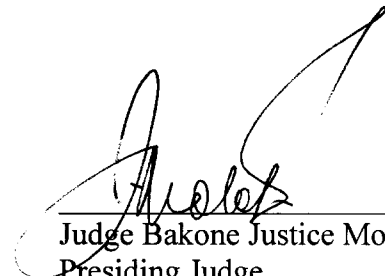
¹⁰ Request for Leave to Appeal, para. 8.

¹¹ *Ibid.*, para. 9.

IV. DISPOSITION

6. For the foregoing reasons, the Chamber **DENIES** the Request for Leave to Appeal.

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



Judge Bakone Justice Moloto
Presiding Judge

Dated this 13th of May 2009
At The Hague
The Netherlands

[Seal of the Tribunal]