



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-04-83-Misc.1
Date: 1 November 2006
Original: English

IN THE APPEALS CHAMBER

Before: Judge Liu Daqun, Presiding
Judge Mehmet Güney
Judge Andréia Vaz
Judge Theodor Meron
Judge Wolfgang Schomburg

Registrar: Mr. Hans Holthuis

Decision: 1 November 2006

PROSECUTOR

v.

Rasim DELIĆ

DECISION ON PROSECUTION'S APPEAL

The Office of the Prosecutor:

Mr. Daryl A. Mundis

Counsel for the Accused:

Mrs. Vasvija Vidović
Ms. Quincy Whitaker

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”),

BEING SEIZED of the “Prosecution’s Notice of Appeal” and the “Prosecution’s Appellant’s Brief” (“Appellant’s Brief”) filed by the Prosecution on 20 September 2006, pursuant to Article 25 of the Statute of the International Tribunal and Rule 108 of the Rules of Procedure and Evidence (“Statute” and “Rules” respectively), against the “Decision on the Prosecution’s submission of Proposed Amended Indictment and Defence Motion Alleging Defects in Amended Indictment” rendered by the Trial Chamber on 30 June 2006 (“Impugned Decision”);

NOTING that in the Appellant’s Brief, the Prosecution claims that the Impugned Decision became a Judgement when the Trial Chamber denied its request for certification pursuant to Rule 73 of the Rules and rejected its request to reconsider the Impugned Decision on 23 August 2006, thereby exhausting all its remedies before the Trial Chamber;¹

NOTING that the Prosecution further submits that since Rule 73*bis* provides for an appeal as of right, there is an oversight in the Rules because no appeal as of right exists when a Trial Chamber rejects an application to amend an indictment pursuant to Rule 50;²

BEING SEIZED of the “Defence Motion to Strike Prosecution Appellant’s Brief as an Abuse of Process”, filed by Counsel for Rasim Delić (“Defence”) on 28 September 2006;

NOTING the “Appellant’s Response to Respondent’s Motion to Strike Appellant’s Brief”, filed by the Prosecution on 5 October 2006;

BEING SEIZED of the “Defence Request for Leave to Reply and Reply to Prosecution Response to Defence Motion to Strike Prosecution Appellant’s Brief as an Abuse of Process”, filed on 11 October 2006 by the Defence;

CONSIDERING that a decision of a Trial Chamber denying the Prosecution’s application to amend the indictment is not a final judgement that confers a right to appeal pursuant to Article 25 of the Statute and Rule 108 of the Rules;

¹ Appellant’s Brief, para.1.1

² *Ibid.*, para. 2.13.

CONSIDERING that the Decision of the Trial Chamber is of an interlocutory nature;

CONSIDERING further that Rule 73bis(E), which confers authority on a Trial Chamber to direct the Prosecution to narrow the scope of its indictments and provides for a right of appeal against such a decision, does not create a general right of appeal where the Prosecution seeks to amend an indictment under Rule 50;³

CONSIDERING that the analogy drawn by the Prosecution is misguided;

FINDING there is no lacuna in the Rules, which justifies the Appeals Chamber considering this appeal *proprio motu*;⁴

CONSIDERING that the Appeals Chamber has no inherent authority to intervene in an interlocutory decision of a Trial Chamber, not subject to a right of appeal and to which certification has been denied pursuant to Rule 73(B) of the Rules, on the basis of an allegation by the Prosecution that the Trial Chamber has abused its discretion by not allowing the Prosecution amendments;⁵

CONSIDERING that there is a misinterpretation of the Rules on the part of the Prosecution and that there is no abuse of process in this case;

FOR THE FOREGOING REASONS,

- 1) **GRANTS** the Motion of the Defence to Strike the Appellant's Brief, in part, and **DECLARES** the Appellant's Brief **NULL AND VOID**;
- 2) **DENIES** the request for granting leave to the Defence to file a Reply to the Prosecution's Response to the Defence Motion to Strike the Appellant's Brief, since it is **MOOT**;⁶
- 3) **DENIES** the request for ordering the Prosecution to pay any and all costs associated with this appeal.

³ *Ibid.*, para. 1.4

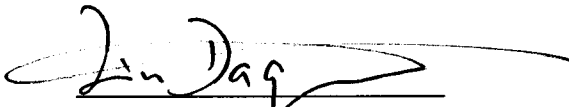
⁴ *Ibid.*, para. 1.4.

⁵ *Ibid.*, para.1.5.

⁶ The Appeals Chamber notes, however, that pursuant to the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the International Tribunal (IT/155/Rev. 3), paras II.3 and IV.11, an appellant may file a reply within four days of the filing of a response to an interlocutory appeal, and thus it is not necessary to request leave to file a reply.

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

Done this 1st day of November 2006,
At The Hague
The Netherlands



Judge Liu Daqun
Presiding

[Seal of the International Tribunal]