



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-01-42/2-I
Date: 27 September 2006
Original: English

Before: Judge Alphonsus Orie, Presiding
Judge Bakone Justice Moloto
Judge Joaquín Martín Canivell

Registrar: Mr. Hans Holthuis

Order of: 27 September 2006

PROSECUTOR

v.

VLADIMIR KOVAČEVIĆ

**DECISION ON DEFENCE
"REQUEST FOR CERTIFICATION FOR INTERLOCUTORY
APPEAL OF 'DECISION ON DEFENCE MOTION TO DISMISS
THE INDICTMENT' FROM 1st SEPTEMBER 2006"**

The Office of the Prosecutor:

Ms. Susan Somers
Mr. Philip Weiner

Counsel for the Accused:

Ms. Tanja Radosavljević

TRIAL CHAMBER I (“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”);

BEING SEISED of the “Request for Certification for Interlocutory Appeal of ‘Decision on Defence Motion to Dismiss the Indictment’ from 1st September 2006” (“Request for Certification”), filed by counsel for Vladimir Kovačević (“Defence” and “Accused”, respectively) on 8 September 2006;

NOTING the Trial Chamber’s “Decision on Defence Motion to Dismiss the Indictment” of 1 September 2006 (“Decision of 1 September 2006”), in which the Trial Chamber denied the request to dismiss the indictment against the Accused who was previously found unfit to enter a plea and to stand trial;¹

NOTING the Defence’s arguments that the Trial Chamber “erred in defining” whether its refusal to dismiss the indictment was based on a determination of the facts of this case or a lack of legal basis to make such a dismissal and that the Trial Chamber furthermore “erred in assessing” the seriousness of the mental condition of the Accused;

NOTING the Defence’s submission that the refusal of the Trial Chamber to dismiss the indictment *proprio motu* at this procedural junction “is a significant legal matter” which “affect[s] the fair and expeditious conduct of the proceedings” in that, given “the possibilities for the further development of the Accused’s mental condition” it has the effect of prolonging the period in which the Accused would be subjected to “examinations connected to a criminal procedure”;

NOTING the Defence’s further submission that an immediate resolution by the Appeals Chamber of this issue would, if the appeal is upheld, materially advance the proceedings, as the proceedings would then be terminated;

NOTING the “Prosecution’s Response to Defence Request for Certification for Interlocutory Appeal of the ‘Decision on Defence Motion to Dismiss the Indictment’ of 8 September 2006” (“Response”), filed by the Office of the Prosecutor (“Prosecution”) on 22 September 2006, in which it argues that the Trial Chamber has established mechanisms for monitoring the mental health of the Accused, thus safeguarding the fairness of the proceedings, and noting that in its Decision of 1 September 2006, the Trial Chamber “viewed as speculative the possible future effects of

¹ Decision on Accused’s Fitness to Enter a Plea and Stand Trial (Public Version), 12 April 2006 (“Fitness Decision”), p. 12.

continuation of the proceedings, including additional investigations”;

NOTING the Prosecution’s further submission that only in a “simplistic, strict sense” would a dismissal of the indictment materially advance the proceedings, as they would cease to exist, and furthermore that the refusal of the Trial Chamber to dismiss the indictment was based on a determination of the facts of this case rather than a pronouncement of a lack of legal basis for doing so, thus the Defence “seeks certification as a means of factual review by the Appeals Chamber”, which in the view of the Prosecution is unwarranted;

NOTING that Rule 73(B) of the Tribunal’s Rules of Procedure and Evidence (“Rules”) provides: “Decisions on all motions are without interlocutory appeal save with certification by the Trial Chamber, which may grant such certification 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”;

CONSIDERING that a proper request for certification rests only on the above-mentioned criteria and not upon “whether a decision was correctly reasoned or not” as “that is a matter for appeal”;²

CONSIDERING therefore that the argument of the Defence as to the Trial Chamber’s alleged error in reasoning in defining whether its refusal to dismiss the indictment was based on a determination of the facts of this case or a lack of legal basis to make such a dismissal falls outside the relevant criteria of Rule 73(B) and, furthermore, that the legal question raised by this argument is nonetheless immaterial, as noted by the Trial Chamber in its Decision of 1 September 2006 where it stated that even if it “chose to avail itself of the general provision of Rule 54, a reason to terminate the proceedings, like in the case of a deceased accused, could hardly be conceived”;

CONSIDERING that any additional future “examinations connected to a criminal procedure” and their possible effect on the fairness or expediency of the proceedings or the outcome of the case call for speculation;

CONSIDERING therefore, that the Defence has failed to demonstrate that there exists an issue which would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial;

² *Prosecutor v. Milosević*, 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.

CONSIDERING that as the Defence has failed to demonstrate that the first criterion for certification has been established, therefore the Trial Chamber does not see the need to consider whether the second criterion has been met;

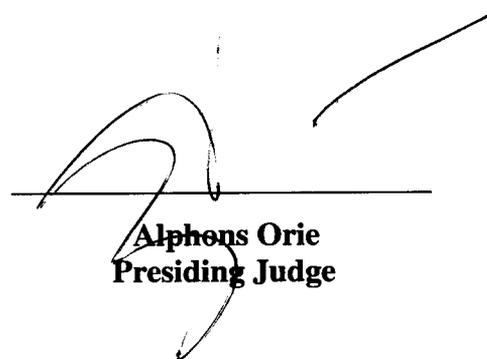
FOR THE FOREGOING REASONS

Hereby **DENIES** the Request for Certification.

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

Dated this twenty-seventh day of September 2006

At The Hague,
The Netherlands.



A handwritten signature in black ink, consisting of a large, stylized 'A' followed by 'Orie', is written over a horizontal line. The signature is positioned to the right of the center of the page.

**Alphons Orie
Presiding Judge**

[Seal of the Tribunal]