

16 OCTOBER 1996
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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-96-21-AR72.3

Date: 15 October 1996

Original: English and French

BEFORE A BENCH OF THE APPEALS CHAMBER

Before: Judge Antonio Cassese, Presiding
Judge Haopei Li
Judge Jules Deschênes

Registrar: Mrs. Dorothee de Sampayo Garrido-Nijgh

Decision of: 15 October 1996

PROSECUTOR

v.

**ZEJNIL DELALIĆ
ZDRAVKO MUCIĆ also known as "PAVO"
HAZIM DELIĆ
ESAD LANDŽO**

**DECISION ON APPLICATION FOR LEAVE
TO APPEAL (FORM OF THE INDICTMENT)**

The Office of the Prosecutor

**Mr. Eric Ostberg
Ms. Teresa McHenry**

Counsel for the Accused

Ms. Edina Rešidović for Zejnil Delalić

I

APPLICATION FOR LEAVE TO APPEAL

1. In an application dated 10 October 1996, the accused Zejnil Delalić seeks leave to appeal against the Decision on the Motion by the Accused Zejnil Delalić based on defects in the form of the indictment issued by Trial Chamber II on 2 October 1996, and filed on 4 October 1996. The application satisfies the seven day time period provided for under Rule 72(B)(ii) of the Rules of Procedure and Evidence since the Bench considers that period must run from the date the decision was filed and notified to the accused rather than the date on which it was rendered.

2. The grounds for seeking leave to appeal, as set down in that application, are as follows:

- (i) that the indictment does not provide details of the facts which, if established, would give rise to the accused's liability for the acts of his subordinates, but merely recites the relevant part of Article 7(3) of the Tribunal's Statute which relates to that form of criminal liability;
- (ii) that the indictment is "unclear and contradictory" in a number of respects;
- (iii) that the Decision of the Trial Chamber is "based, in one part, on evidence, which cannot be used in the proceedings"; and
- (iv) that the Decision of the Trial Chamber is erroneously based on previous decisions of the Tribunal.

3. The applicant concludes that for the reasons set forth in his application, "in addition to the reasons presented in the course of the proceedings so far", there are "serious reasons which justify the right of the accused to appeal".

II

PROSECUTOR'S SUBMISSIONS

4. The Prosecutor filed her Response to the application for leave to appeal on 14 October 1996. The Prosecutor submits that the Accused has not shown "serious cause", since he has failed to demonstrate that either the form of the indictment or an erroneous ruling of the Trial Chamber have prejudiced his rights or placed him in a position of being unable to adequately prepare his defence. Accordingly the Prosecutor avers that leave to appeal should not be granted.

III

SCOPE OF RULE 72(B)(ii)

5. This Rule has now been applied in the present case in the Decision of this Bench (14 October 1996) refusing to grant leave to appeal from the Decision of the Trial Chamber denying the Accused's motion for a separate trial. As this Bench noted, a three-fold test of cumulative conditions is to be applied whenever an application for leave to appeal under Rule 72(B)(ii) is concerned:

- (1) Does the application relate to one of the issues covered by Rule 73 (A) (ii), (iii), (iv), (v).?

(2) Is the application frivolous, vexatious, manifestly ill-founded, an abuse of the process of court or so vague and imprecise as to be unsusceptible of any serious consideration?

(3) Does the application show a "serious cause", namely does it either show a grave error which would cause substantial prejudice to the accused or is detrimental to the interests of justice, or raise issues which are not only of general importance but are also directly relevant to the future development of trial proceedings, in that the decision by the Appeals Chamber would seriously impact upon further proceedings before the Trial Chamber?

IV

DISCUSSION

6. Applying the first of these tests, the application of Delalic does indeed relate to one of the issues covered by Rule 73 (A) (ii), (iii), (iv), (v), namely Rule 73(A)(ii) concerning objections based on defects in the form of the indictment.

7. Passing to the other two tests, however, the Bench does not consider that "serious cause" has been shown. The application addresses itself exclusively to factual and legal issues which arise solely in respect of this accused and this indictment, the proper consideration of which falls to the Trial Chamber. Some further comments are necessary in this regard. The indictment is the factual document on which the trial of an accused or many accused is based. Whether the indictment is in proper form for the conduct of a fair and expeditious trial is preeminently a question for the Trial Chamber to decide, provided the indictment meets the criteria set out in Rule 47(B) of the Rules of Procedure and Evidence. Only if the Decision by the Trial Chamber appears to be vitiated by a grave error which would cause substantial prejudice to the accused or be detrimental to the interests of justice, or if it raises material issues of general importance, will the Bench grant leave to appeal. Such is not the case here.

DISPOSITION

The Bench of the Appeals Chamber,

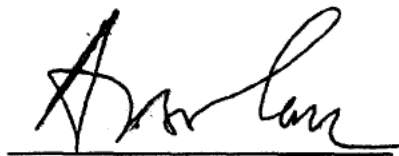
Ruling unanimously,

For the above reasons,

Pursuant to Rule 72(B)(ii) of the Rules of Procedure and Evidence,

REJECTS the application of Delalic for leave to appeal the Decision of Trial Chamber II of 2 October 1996 denying his motion on defects in the form of the indictment.

DONE in English and French, both versions being authoritative



Antonio Cassese

President

Dated this 15th day of October 1996

At The Hague

The Netherlands