



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-98-30/1-T

Date 11 January 2001

Original: ENGLISH  
FRENCH

**IN THE TRIAL CHAMBER**

**Before:** Judge Almiro Rodrigues, Presiding  
Judge Fouad Riad  
Judge Patricia Wald

**Registrar:** Mr. Hans Holthuis

**Decision of:** 11 January 2001

**THE PROSECUTOR**

v.

**MIROSLAV KVOČKA  
MILOJICA KOS  
MLAĐO RADIĆ  
ZORAN ŽIGIĆ  
DRAGOLJUB PRCAĆ**

**DECISION ON THE "REQUEST TO THE TRIAL CHAMBER TO ISSUE A DECISION  
ON USE OF RULE 90H"**

**The Office of the Prosecutor:**

Ms. Brenda Hollis

Ms. Susan Somers

Mr. Kapila Waidyaratne

**Defence Counsel:**

Mr. Krstan Simić for Miroslav Kvočka

Mr. Zarko Nikolić for Milojica Kos

Mr. Toma Fila for Mlado Radić

Mr. Slobodan Stojanović for Zoran Žigić

Mr. Jovan Simić for Dragoljub Prcać

**TRIAL CHAMBER I** (“the 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 (“the Tribunal”);

**BEING SEISED** of the “Request to the Trial Chamber to issue a decision on use of Rule 90H” filed by the Defence of Miroslav Kvočka on 1 December 2000 (“the Motion”), asking the Trial Chamber to limit Prosecution cross-examination of defence witnesses to questions relating to the accused who has called the witness, and to prohibit cross-examination by the co-accused;

**NOTING** the “Response by Milojica Kos to the Request to the Trial Chamber to issue a decision on use of Rule 90H filed on behalf of Miroslav Kvočka on 1 December 2000”, filed on 8 December 2000, opposing the Motion insasmuch as it concerns cross-examination by co-accused and requesting the Trial Chamber to allow each accused to cross-examine all defence witnesses, and the “Prosecution’s Response to accused Kvočka’s ‘Request to the Trial Chamber to issue a decision on use of Rule 90H’”, filed on 19 December 2000 which opposes the Motion in full;

**CONSIDERING** that the Trial Chamber may admit any relevant evidence which it deems to have probative value pursuant to Rule 89 (C) of the Rules of Procedure and Evidence of the Tribunal (“the Rules”);

**CONSIDERING** that, pursuant to Rule 90 (H) of the Rules, cross-examination shall be limited to the subject-matter of the evidence-in-chief and matters affecting the credibility of the witness and, where the witness is able to give evidence relevant to the case for the cross-examining party, to the subject matter of that case, although the Trial Chamber may, in the exercise of its discretion, permit enquiry into additional matters;

**CONSIDERING** that it goes against the plain wording of Rule 90 (H) to limit the scope of Prosecution cross-examination further as requested in the Motion, particularly in context of the current matter, in which the case against each accused may affect the others since crimes of multiple participation, joint liability and superior responsibility are alleged;

**CONSIDERING** the right of each accused to examine or have examined the witnesses against him as enshrined in Article 21 of the Statute of the Tribunal;

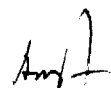
**CONSIDERING** that a witness presented by an accused may give evidence against one of his co-accused, so that the co-accused has a right to cross-examine that witness, and further that to prohibit all cross-examination by a co-accused as requested in the Motion could exclude relevant evidence;

**CONSIDERING** that the Trial Chamber has a duty to exercise control over the mode and order of interrogating witnesses and presenting evidence so as to make the interrogation and presentation effective for the ascertainment of the truth and to avoid needless consumption of time, pursuant to Rule 90 (G) of the Rules;

**HEREBY DENIES** the Motion and **ORDERS** as follows:

- 1) Defence witnesses shall be questioned in the following sequence:
  - a) Examination in chief;
  - b) Cross-examination by the defence of the co-accused, if relevant, in accordance with paragraph (2) below;
  - c) Cross-examination by the Prosecutor;
  - d) Re-examination;
  - e) Questions from the judges.
  
- 2) When a witness presented by the defence of one accused mentions another accused, the defence of that co-accused shall be entitled to cross-examine the witness. In other circumstances, co-accused wishing to cross-examine the witness shall make an application to the bench explaining the relevance of the proposed questioning.

Done in English and French.



Almiro Rodrigues  
Presiding Judge

Dated this eleventh day of January 2001,  
At The Hague  
The Netherlands.

[Seal of the Tribunal]