



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- 00-39&40-AR72

Date: 27 June 2001

Original: English

**BEFORE A BENCH OF THE APPEALS CHAMBER**

**Before:** Judge Lal Chand Vohrah, Presiding  
Judge Mohamed Shahabuddeen  
Judge Rafael Nieto-Navia

**Registrar:** Mr. Hans Holthuis

**Decision of:** 27 June 2001

**PROSECUTOR**

v.

**MOMČILO KRAJIŠNIK  
BILJANA PLAVŠIĆ**

**DECISION ON APPLICATION BY THE ACCUSED BILJANA PLAVŠIĆ FOR LEAVE  
TO APPEAL THE DECISION OF TRIAL CHAMBER III DATED 27 APRIL 2001**

**Counsel for the Prosecutor:**

Mr. Mark B. Harmon  
Mr. Nicola Piacente

**Defence Counsels:**

Mr. Deyan Ranko Braschich  
Mr. Goran Nesković for Momčilo Krajišnik  
Mr. Robert Pavich for Biljana Plavšić

**THIS BENCH** of 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 (“the Bench” and “the International Tribunal” respectively),

**BEING SEISED OF** the “Motion for Leave to Appeal the Decision of the Trial Chamber on Motion from Biljana Plavšić for Separate Trial” filed by Biljana Plavšić (“the Applicant”) on 4 May 2001 (“the Application for Leave to Appeal”);

**NOTING** the “Prosecution Response to Motion for Leave to Appeal the Decision of the Trial Chamber on Motion from Biljana Plavšić for Separate Trial” filed on 11 May 2001;

**NOTING** the “Reply to the Prosecution Response to Motion for Leave to Appeal the Decision of the Trial Chamber on Motion from Biljana Plavšić for Separate Trial” observing that it was filed one day out of time, namely, on 16 May 2001, but nevertheless considering it in reaching the present decision;

**NOTING** the “Decision on Motion from Biljana Plavšić for Separate Trial” issued on 27 April 2001 (“the Impugned Decision”), disposing of the Applicant’s “Motion for Separate Trial” filed on 9 April 2001 (“the Motion”);

**CONSIDERING** that the Application for Leave to Appeal is filed pursuant to Rules 72(B)(ii) and 73(B)<sup>1</sup>(i)(ii) of the Rules of Procedure and Evidence of the International Tribunal (“the Rules”), although the Motion was filed before the Trial Chamber pursuant only to Rules 72 and 82 of the Rules;

**CONSIDERING** that the Application for Leave to Appeal cannot be brought pursuant to Rule 72 of the Rules since the time-limit for the Applicant to file any preliminary motions expired on 10 February 2001, whereas the Motion was filed on 9 April 2001;

**CONSIDERING** that, although the Motion was not formally filed pursuant to Rule 73 of the Rules, the Application for Leave to Appeal was and the Appeals Chamber in its discretion can consider whether or not a decision dismissing a motion, which was not formally brought before a

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<sup>1</sup> At the date of the Impugned Decision, Revision 19 of the Rules of Procedure and Evidence (IT/32/Rev.19) was in force. Amendments to Rule 73 entered into force on 4 May 2001 and the former Rule 73(B) is now Rule 73(D).

Trial Chamber under Rule 73 of the Rules, may nevertheless satisfy its provisions such that leave to appeal should be granted;

**NOTING** that the Application for Leave to Appeal submits, *inter alia*, (i) that the Impugned Decision should be reversed, in particular the finding that the Motion raised no new relevant arguments, (ii) that the Motion should be considered on its merits as the decision by the Trial Chamber on 4 April 2001 to proceed to trial in November 2001 would substantially prejudice the Applicant in light of the fact that she does not have the time or resources to adequately prepare her defence and (iii) that to delay the trial to accommodate the Applicant's needs might substantially prejudice the co-accused Momčilo Krajišnik's right to be tried without undue delay;

**CONSIDERING** that Rule 73(D) of the Rules provides that decisions on motions other than preliminary motions are without interlocutory appeal save with the leave of a bench of three Judges of the Appeals Chamber which may grant such leave

- (i) if the decision impugned would cause such prejudice to the case of the party seeking leave as could not be cured by the final disposal of the trial including post-judgement appeal;
- (ii) if the issue in the proposed appeal is of general importance to proceedings before the Tribunal or in international law generally;

**CONSIDERING** that it is for the Applicant to demonstrate to the Bench either that the Impugned Decision would cause such prejudice to its case as could not be cured by the final disposal of the trial including post-judgement appeal, or that the issue in the proposed appeal is of general importance to proceedings before the International Tribunal or in international law generally;


**CONSIDERING** that no final order has been issued regarding the schedule of the trial proceedings and that the Status Conference held on 4 April 2001 has only indicated a prospective time table wherein the trial may commence in the second half of November 2001;

**CONSIDERING** that it is for the co-accused Momčilo Krajišnik to raise the issue of his right to be tried without undue delay, if so desired;

**FINDING** that the Applicant has failed to show either that the Impugned Decision would cause prejudice to her case as described above or that the issue raised in the proposed appeal is of general importance to proceedings before the International Tribunal or in international law generally;

**HEREBY DISMISSES** the Application for Leave to Appeal.

Done in both English and French, the English text being authoritative.



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Lal Chand Vohrah  
Presiding Judge

Dated this twenty seventh day of June 2001  
At The Hague,  
The Netherlands.

**[Seal of the Tribunal]**