



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-AR73.3
Date: 18 October 2001
Original: English

BEFORE A BENCH OF THE APPEALS CHAMBER

Before: Judge Mehmet Güney, Presiding
Judge Fausto Pocar
Judge Asoka de Zoysa Gunawardana

Registrar: Mr. Hans Holthuis

Decision of: 18 October 2001

PROSECUTOR

v.

**MOMČILO KRAJIŠNIK
BILJANA PLAVŠIĆ**

DECISION ON APPLICATION FOR LEAVE TO APPEAL

Counsel for the Prosecutor:

Mr. Mark B. Harmon

Counsel for the Accused:

**Mr. Deyan Ranko Brashich, for Momčilo Krajišnik
Mr. Robert J. 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 “Notice of Motion for Leave to Appeal”, filed by counsel for Momčilo Krajišnik on 17 August 2001 (“the Application” and “the Defence” respectively);

NOTING the “Decision on Motion from Momčilo Krajišnik to Open Hearing on Plavšić Motion for Provisional Release” of Trial Chamber III issued on 16 August 2001 (“the Impugned Decision”), denying a request by the Defence to attend the hearing scheduled for 29 August 2001, on co-accused Plavšić’s motion for provisional release;

NOTING the “Prosecution Response to ‘Notice of Motion for Leave to Appeal’ filed by Momčilo Krajišnik (Rule 73 (D) of Rules of Procedure and Evidence)” on 24 August 2001;

NOTING that the Application is filed pursuant to Rule 73(D)(i) and (ii) of the Rules of Procedure and Evidence of the International Tribunal (“the Rules”) which provides for interlocutory appeals in the following two instances:

- (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; or
- (ii) if the issue in the proposed appeal is of general importance to proceedings before the Tribunal or in international law generally;

NOTING Rule 73(E) of the Rules which provides, *inter alia*, that applications “for leave to appeal shall be filed within seven days of the filing of the impugned decision”;

NOTING that the Application was filed within time;

CONSIDERING that it is for the Defence to satisfy the Bench that the Impugned Decision 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 or that the proposed appeal raises an issue of general importance to proceedings before the International Tribunal or in international law generally;

FINDING that the Defence has failed to establish any alleged prejudice arising from the Impugned Decision that could not be cured by the final disposal of the trial including post-judgement appeal;

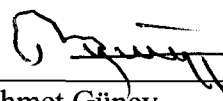
CONSIDERING HOWEVER that the issue raised by the Defence, gives rise to the general question whether the co-accused and his counsel are entitled to be present at a hearing of an application for provisional release of the other co-accused, and is an issue of general importance to proceedings before the International Tribunal;

HEREBY, by majority,

1. GRANTS Leave to Pursue an Interlocutory Appeal;

2. INFORMS the parties of their obligations to submit written briefs in accordance with the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the International Tribunal (IT/155).

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



Mehmet Güney,
Presiding Judge

Dated this 18th day of October 2001
At The Hague,
The Netherlands.

[Seal of the Tribunal]