



**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: IT-95-9-T  
Date: 31 December 2001  
Original: English**

**DUTY JUDGE**

**Before: Judge David Hunt  
Registrar: Mr Hans Holthuis  
Decision of: 31 December 2001**

**PROSECUTOR**

v

**Blagoje SIMIĆ, Milan SIMIĆ, Miroslav TADIĆ & Simo ZARIĆ**

**DECISION ON MOTIONS FOR LEAVE TO APPEAL  
AND FOR RULE 73(C) CERTIFICATE**

**The Office of the Prosecutor:**

**Mr Gramsci Di Fazio  
Ms Aisling Reidy  
Mr Philip Weiner**

**Counsel for the Accused:**

**Mr Igor Pantelić and Mr Srdjan Vuković for Blagoje Simić  
Mr Slobodan Zečević and Ms Catherine Baen for Milan Simić  
Mr Novak Lukić and Mr Dragan Krgović for Miroslav Tadić  
Mr Borislav Pisarević and Mr Aleksandar Lazarević for Simo Zarić**

1. Two documents have recently been filed in the present case, in which the trial is part-heard before Trial Chamber II. The first is an application for leave to appeal against a decision of the Trial Chamber granting leave to the prosecution to amend its indictment;<sup>1</sup> the second seeks a certificate from the Trial Chamber pursuant to Rule 73(C) of the Rules of Procedure and Evidence (“Rules”) stating that such an appeal is “appropriate for the continuation of the [t]rial”.<sup>2</sup>

2. Rule 28(D)(ii) provides that:

Where a case has already been assigned to a Trial Chamber:

[...]

(ii) where the application is made within the normal Registry hours and the Trial Chamber is unavailable, it shall be dealt with by the duty Judge if satisfied as to its urgency or that it is otherwise appropriate to do so in the absence of the Trial Chamber.

The provisions of Rule 28 apply *mutatis mutandis* to applications before the Appeals Chamber. As it is currently the Tribunal’s Winter court recess, neither the Appeals Chamber nor Trial Chamber II is presently available to deal, respectively, with the Motion or the Request. Both documents have accordingly been referred to me as the duty judge designated by the President for the remainder the court recess.

3. There is no urgency in the Motion, in that the prosecution still has effectively until the beginning of the new Term to respond to the application for leave to appeal. It is not otherwise appropriate for me to deal with it at this stage. I decline to do so.

4. It has been submitted by the Defence that the grant of the certificate it seeks pursuant to Rule 73(C) “will expedite the proceedings before the Appeals Chamber”,<sup>3</sup> and it offers to withdraw the Motion for leave to appeal if such a certificate is granted and to file an appeal as of right pursuant to Rule 73(C). The Defence appears to be proceeding upon the basis that the certification procedure provided by Rule 73(C) for an appeal as of right is an alternative to obtaining leave to appeal from a bench of three judges of the Appeals Chamber pursuant to Rule 73(D).

5. If that is the belief of the Defence, it is a misconception. The two provisions are entirely separate. One relates to decisions rendered during the course of the trial on motions involving evidence and procedure; the other relates to decisions on all other motions (apart from preliminary motions) rendered at any time, before or during the course of the trial. Rule 73(B) provides that,

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<sup>1</sup> Joint Defense Motion for Leave to Appeal, 26 Dec 2001 [filed 27 Dec 2001] (“Motion”).

<sup>2</sup> Request for Certification Based on Rule 73(C), 26 Dec 2001 [filed 27 Dec 2001] (“Request”), par 4.

<sup>3</sup> Request, par 5.

subject to the certification procedure provided by Rule 73(C), decisions rendered during the course of the trial on motions involving evidence and procedure are *without* any interlocutory appeal at all, although such decisions may be assigned as grounds of appeal from the final judgment. Rule 73(C) permits appeals from such decisions only if the Trial Chamber certifies that an interlocutory appeal is appropriate for the continuation of the trial. Rule 73(D) permits appeals from decisions on any other motions (apart from preliminary motions) only if leave is granted by a bench of three judges of the Appeals Chamber.

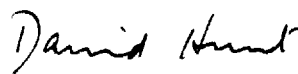
6. The existence of an interlocutory appeal from any decision of a Trial Chamber (apart from those on preliminary motions) therefore depends upon the category into which the precise relief granted by the impugned decision falls. A decision may, of course, deal with more than one issue, and the different types of relief granted by the impugned decision may cover different categories. But the particular impugned decision (that is, the precise relief granted from which a party seeks to appeal) can only fall within one or the other category. If the precise relief which granted the prosecution in the present case leave to amend its indictment involved evidence or procedure, then the Defence can appeal only if it obtains a certificate from the Trial Chamber pursuant to Rule 73(C) that an interlocutory appeal is appropriate for the continuation of the trial. It has no right to seek leave to appeal from that relief pursuant to Rule 73(D) from a bench of three judges of the Appeals Chamber.

7. It is not ordinarily appropriate that a duty judge who is not part of the relevant Trial Chamber should decide whether such a certificate is to be granted. The identification of the correct category into which the precise relief granted by the impugned decision falls can only be made with a full appreciation of the circumstances in which that decision was made. Nothing in the present case suggests that the relief sought is urgent or that it is otherwise appropriate that I should determine either of the issues as to whether a certificate is necessary or whether a certificate should be granted. Far from merely expediting the proceedings before the Appeals Chamber, the grant of that certificate may be a necessary prerequisite to the existence of an appeal. Both issues may safely await the return of the Trial Chamber from the current court recess in one week's time.

8. Accordingly, I decline also to deal with the Request for a certificate pursuant to Rule 73(C).

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

Dated this 31<sup>st</sup> day of December 2001,  
At The Hague,  
The Netherlands.



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Judge David Hunt  
Duty Judge

**[Seal of the Tribunal]**