

**UNITED
NATIONS**



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-99-37-AR73
IT-01-50- AR73
IT-01-51- AR73
Date: 9 January 2002
ENGLISH
Original: French

BEFORE A BENCH OF THE APPEALS CHAMBER

Before: Judge Claude Jorda, Presiding
Judge David Hunt
Judge Fausto Pocar

Registrar: Mr. Hans Holthuis

Decision of: 9 January 2002

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

**DECISION ON PROSECUTION APPLICATION FOR LEAVE TO FILE AN
INTERLOCUTORY APPEAL**

The Office of the Prosecutor:

Ms. Carla Del Ponte
Mr. Geoffrey Nice
Mr. Dirk Ryneveld
Ms. Hildegaard Uertz-Retzlaff

Amici Curiae:

Mr. Steven Kay
Mr. Branislav Tapušević
Mr. Michail Wladimiroff

The Accused:

Mr. Slobodan Milošević

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,

BEING SEIZED OF a “Prosecution’s Application for Leave to File an Interlocutory Appeal”, filed on 20 December 2001 (“the Application”);

NOTING that neither the Accused nor the *amici curiae* has responded to the Application, although they were entitled and had the opportunity to do so;

NOTING the “Decision on Prosecution’s Motion for Joinder” (“the impugned Decision”) rendered on 13 December 2001 by Trial Chamber III, whereby the Trial Chamber refused to join the Indictment against the accused relating to crimes alleged to have been committed in Kosovo (“the Kosovo Indictment”) with the Indictments relating to crimes alleged to have been committed in Bosnia and Croatia;

NOTING that the Application is filed pursuant to Rule 73(D) of the Rules of Procedure and Evidence (“the Rules”), which provides that decisions arising from proceedings under Rule 73(D) 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.

NOTING that the application for leave to appeal was filed within time;

CONSIDERING that it is for the Prosecutor to show the Bench that the proposed appeal causes an irreparable prejudice or raises an issue of general importance to proceedings before the Tribunal or in international law generally;

FINDING that the correct interpretation of Rule 49 of the Rules dealing with the joinder of crimes in one indictment has not been determined by the Appeals Chamber and that clarification of that

rule may be important to proceedings before this Tribunal so that the issue may be said to be one of general importance to proceedings before the Tribunal pursuant to Rule 73(D)(ii);

HEREBY GRANTS leave to the Prosecution to file an interlocutory appeal against the impugned Decision,

BUT EMPHASISES that this grant of leave to appeal should not be understood as preventing the Trial Chamber, if it so decides, commencing the trial of the Kosovo Indictment on the date it has already fixed.

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

(signed)

Judge Jorda
Presiding Judge

Dated this ninth day of January 2002
At The Hague,
The Netherlands.

[Seal of the Tribunal]