

25-75-16-T IT-01-47-AR73
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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: IT-01-47-AR73
Date: 1 February 2002
Original: English

BEFORE A BENCH OF THREE JUDGES OF THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Mohamed Shahabuddeen
Judge Mehmet Güney

Registrar: Mr. Hans Holthuis

Decision of: 1 February 2002

PROSECUTOR

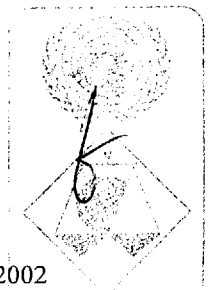
v

**ENVER HADŽIHASANOVIĆ
MEHMED ALAGIĆ
AMIR KUBURA**

DECISION ON APPLICATION FOR LEAVE TO APPEAL

Counsel for the Prosecutor:
Mr. Ekkehard Withopf

Counsel for the Defence:
Ms. Edina Rešidović and Mr. Stéphane Bourgon for Enver Hadžihasanović
Ms. Vasvija Vidović and Mr. John Jones for Mehmed Alagić
Mr. Fahrudin Ibrišimović and Mr. Rodney Dixon for Amir Kubura



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 SEISED OF a “Joint Application for Leave to Appeal from the Bench of the Tribunal” (“the Application”), filed by the Defence on 2 October 2001, against the “Ordonnance du Président relative à la Requête conjointe de la Défense dans *l’Affaire Le Procureur c/ Hadžihasanović et consorts* aux fins d’autoriser l’accès à des pièces confidentielles de l’affaire *le Procureur c/Kupreskić et consorts*” (“the Impugned Decision”) rendered on 25 September 2001, which rejected the Defence’s request for access to certain public and non-public material in the *Kupreskić* case;

NOTING the “Prosecution Response to ‘Joint Application for Leave to Appeal from the Bench of the Tribunal’ Filed by Enver Hadžihasanović, Mehmed Alagić and Amir Kubura on 2 October 2001”, filed on 12 October 2001;

NOTING that the Application is filed pursuant to Rule 73(D) of the Rules of Procedure and Evidence (“the Rules”), which provides that decisions within the meaning of 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

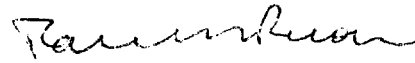
- (i) if the decision impugned would cause such prejudice to the case of the party seeking leave as could not be cured by the final disposal of the trial including post-judgement appeal;
- (ii) if the issue in the proposed appeal is of general importance to proceedings before the Tribunal or in international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

CONSIDERING, without the need to refer to the other elements of this provision, that the issue in the proposed appeal is of general importance to proceedings before the Tribunal because it concerns the question how to find a balance between the right of a party to have access to material to prepare its case and the need to guarantee the protection of witnesses;

HEREBY GRANTS the Application and gives leave to the Defence to file an interlocutory appeal against the Impugned Decision.

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

Dated this 1st day of February 2002,
At The Hague,
The Netherlands.



Judge Fausto Pocar
Presiding

[Seal of the Tribunal]

