



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-AR73.4

Date: 6 May 2002

Original: English

BEFORE A BENCH OF THE APPEALS CHAMBER

Before: Judge Asoka de Zoysa Gunawardana, Presiding
Judge Mehmet Güney
Judge Theodor Meron

Registrar: Mr. Hans Holthuis

Decision of: 6 May 2002

PROSECUTOR

v.

**MOMČILO KRAJIŠNIK
BILJANA PLAVŠIĆ**

DECISION ON APPLICATION FOR LEAVE TO APPEAL

Office of the Prosecutor:

Mr. Mark B. Harmon
Mr. Alan W. Tieger

Counsel for the Accused:

Mr. Deyan Ranko Brashich and Mr. Nikola Kostich for Momčilo Krajišnik
Mr. Robert J. Pavich, Mr. Eugene O'Sullivan and Mr. Peter Murphy 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 “Biljana Plavšić’s Motion for Leave to Appeal the Trial Chamber’s Decision on Prosecution Motion for Leave to Amend the Consolidated Indictment” and “The Krajišnik Defense’s Notice of Motion for Leave to Appeal” filed by counsel for Biljana Plavšić and counsel for Momčilo Krajišnik respectively (together “the Applicants”), on 11 March 2002 (together “the Application”);

NOTING the “Prosecution Response to Defence Motions for Leave to Appeal the Trial Chamber’s Decision on Prosecution Motion for Leave to Amend the Consolidated Indictment” filed by the Office of the Prosecutor (“the Prosecution”), on 21 March 2002;

NOTING the “Decision on Prosecution’s Motion for Leave to Amend the Consolidated Indictment” rendered on 4 March 2002 (“the Impugned Decision”), in which Trial Chamber III (“the Trial Chamber”) granted the Prosecution leave to amend the consolidated indictment;

NOTING that the Applicants argue, *inter alia*, that the Amended Consolidated Indictment of 7 March 2002 (“the Amended Consolidated Indictment”) is so lacking in specificity that the Applicants cannot prepare their cases and that the degree of specificity required in an indictment is a matter of general importance in international law generally;

NOTING that the Application was filed under Rule 73(D)(i) and (ii) of the Rules of Procedure and Evidence of the International Tribunal (“the Rules”);

CONSIDERING that the Application in effect constitutes a request for leave to file an appeal from a decision on preliminary motions challenging the form of the Amended Consolidated Indictment and as such this Application should have been filed pursuant to Rule 72 rather than Rule 73 of the Rules;

NOTING that, pursuant to Rule 72(B) of the Rules, decisions on preliminary motions, excepting those that are filed objecting to jurisdiction, are without interlocutory appeal, unless leave to appeal is granted by a bench of three Judges of the Appeals Chamber upon “good cause” being shown;

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CONSIDERING that “good cause” within the meaning of Rule 72(B)(ii) of the Rules requires that the party seeking leave to appeal under that provision satisfies the Bench that the Trial Chamber arguably committed an error, abused its discretion, or that its application raises an issue of great significance for the Tribunal or international law;¹

CONSIDERING that the Trial Chamber has previously considered and dismissed the two motions filed by counsel for Momčilo Krajišnik (“the Krajišnik Defence”) challenging the form of the indictment, on the basis of lack of specificity,² that the Appeals Chamber has previously dismissed an application for leave to appeal by the Krajišnik Defence from the first of those decisions,³ and that the instant Application alleging lack of specificity in the Amended Consolidated Indictment has been filed in spite of those decisions, which held that the Prosecution had sufficiently pleaded the material facts;

CONSIDERING that the Impugned Decision established that the Amended Consolidated Indictment provides even greater particularisation than the earlier indictments, which the Trial Chamber and the Appeals Chamber previously held to be sufficiently precise;

FINDING that good cause within the meaning of Rule 72(B)(ii) of the Rules has not been shown;

HEREBY DISMISSES the Application.

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

Dated this sixth day of May 2002
At The Hague,
The Netherlands.



Asoka de Zoysa Gunawardana
Presiding Judge

[Seal of the Tribunal]

¹ *Prosecutor v Brđanin and Talić*, Decision on Request to Appeal, 16 May 2000 and Decision on Application for Leave to Appeal, 18 January 2002 and *Prosecutor v Krajišnik*, Decision on Application for Leave to Appeal the Trial Chamber’s Decision Concerning Preliminary Motion on the Form of the Indictment, 13 September 2000. See also *Prosecutor v Delalić et al.*, Decision on Application for Leave to Appeal (Separate Trials), 14 October 1996.

² *Prosecutor v Krajišnik*, Decision Concerning Preliminary Motion on the Form of the Indictment, 1 August 2000, and Decision on Motion from Momčilo Krajišnik to Compel the Prosecution to Provide Particulars, 8 May 2001.

³ *Prosecutor v Krajišnik*, Decision on Application for Leave to Appeal the Trial Chamber’s Decision Concerning Preliminary Motion on the Form of the Indictment, 13 September 2000.