



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-97-24-AR73.4
Date: 28 June 2002
Original: English
French

BEFORE A BENCH OF THE APPEALS CHAMBER

Before: Judge Claude Jorda, presiding
Judge Fausto Pocar
Judge Theodor Meron

Registrar: Mr. Hans Holthuis

Decision of: 28 June 2002

THE PROSECUTOR

v.

MILOMIR STAKIĆ

**DECISION ON THE PROSECUTION MOTION SEEKING LEAVE
TO APPEAL THE DECISION OF TRIAL CHAMBER II
ORDERING AN IDENTIFICATION PARADE**

Office of the Prosecutor:
Ms. Joanna Korner
Mr. Nicholas Koumjian

Defence Counsel:
Mr. Branko Lukić
Mr. John Ostojic

A 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 (hereinafter “the International Tribunal”),

NOTING the oral Decision rendered by Trial Chamber II on 25 April 2002 in which it ordered an identification parade to be held to test a witness’ ability to identify the accused (hereinafter “the impugned Decision”),

NOTING the Prosecutor’s oral Motion presented on 2 May 2002 (hereinafter “the oral Motion”) in which she requested the Trial Chamber to certify that an interlocutory appeal from the impugned decision is appropriate (hereinafter “the impugned Decision”),

NOTING the Trial Chamber’s oral Decision of 2 May 2002 (hereinafter the “oral Decision”) in which it rejected the Prosecutor’s oral Motion;

NOTING the Prosecution’s Request for Leave to Appeal Trial Chamber Order for Identification Parade filed on 7 May 2002 (hereinafter “the Prosecutor’s Request”) for leave to appeal from this decision pursuant to Rule 73(D) of the Rules of Procedure and Evidence (hereinafter “the Rules”) on the ground that, according to the Prosecutor, the impugned Decision raises an issue “of general importance to proceedings before the Tribunal or international law generally”;

NOTING the Accused Milomir Stakic’s Response and Objection to the Prosecutor’s Motion Seeking Leave to Appeal the Trial Chamber’s Order of an Identification Parade filed on 17 May 2002, in which the Accused states that the requirements of Rule 73(D) for leave to appeal are not satisfied in this case;

CONSIDERING that when the Prosecutor’s Motion was filed, Rules 73(B) and 73(C) set out in fact that:

- (B) Subject to paragraph (C), decisions rendered during the course of the trial on motions involving evidence and procedure (including, without limiting the generality of this Rule, orders and decisions under Rule 71, Depositions, and denial under Rule 98 *bis*, Motion for Judgement of Acquittal) are without

interlocutory appeal. Such decisions may be assigned as grounds for appeal from the final judgement.

- (C) The Trial Chamber may certify that an interlocutory appeal during trial from a decision involving evidence or procedure is appropriate for the continuation of the trial, upon a request being made within seven days of the issuing of the decision. If such certification is given, a party may appeal to the Appeals Chamber without leave, within seven days of the filing of the certification.

CONSIDERING that the Prosecutor's Motion addresses an issue involving "evidence and procedure" within the meaning of Rule 73(B) of the Rules, that the impugned Decision was rendered during the trial and that the Prosecutor should, therefore, have followed the procedure as set out in this Rule;

CONSIDERING that, in its oral Decision, the Trial Chamber rejected the oral Motion to certify that an appeal is appropriate within the meaning of Rule 73(C),

CONSIDERING that it was clear to the Prosecutor that the refusal of Trial Chamber II to certify the appeal could not be circumvented by a motion for leave to appeal from the impugned decision pursuant to Rule 73(D),

CONSIDERING that the Prosecutor's Motion is therefore frivolous within the meaning of Rule 46(C) of the Rules,

FOR THE FOREGOING REASONS,

REJECTS the Prosecutor's Motion.

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

Done this twenty-eighth day of June 2002
At The Hague
The Netherlands

(signed)

Judge Claude Jorda
Presiding Judge of the Appeals Chamber

[Seal of the Tribunal]