



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-AR65

Date: 16 July 2002

Original: French

BEFORE A BENCH OF THE APPEALS CHAMBER

Before: Judge Claude Jorda, Presiding
Judge David Hunt
Judge Mehmet Güney

Registrar: Mr Hans Holthuis

Decision of: 16 July 2002

PROSECUTOR

v.

**NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ**

DECISION GRANTING LEAVE TO APPEAL

Counsel for the Prosecutor
Mr Norman Farrell

Counsel for the Accused
Mr Toma Fila and Mr Zoran Jovanović for Nikola Šainović
Mr Tomislav Višnjić, Mr Vojislav Seležan and Mr Peter Robinson for Dragoljub Ojdanić

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,

NOTING the Decision on Applications of Nikola Šainović and Dragoljub Ojdanić for Provisional Release rendered by Trial Chamber III on 26 June 2002 (“Impugned Decision”), whereby the Trial Chamber granted provisional release to Šainović and Ojdanić pursuant to Rule 65 of the Rules of Procedure and Evidence (“Rules”);

BEING SEIZED OF the Prosecution’s Provisional Application for Leave to File an Interlocutory Appeal, filed on 27 June 2002 (“Application”), in which it applied to a bench of the Appeals Chamber for leave to appeal the Impugned Decision pursuant to Rule 65(D), (E), (F) and (G) of the Rules;

NOTING the Defence’s Joint Opposition to Application for Leave to File Interlocutory Appeal, filed on 5 July 2002 (“Defence’s Joint Opposition”);

NOTING the Prosecution’s Reply to Joint Opposition to Application for Leave to File an Interlocutory Appeal, filed on 8 July 2002 (“Prosecution’s Reply”);

NOTING the Defence’s Joint Motion to Strike Paragraphs 7-12 of the Prosecution’s Reply, filed on 9 July 2002, whereby the Defence submits that paragraphs 7-12 of Prosecution’s Reply went beyond the scope of its Application and can therefore not be raised for the first time in reply;

CONSIDERING that because, as suggested by the Defence, paragraphs 7-12 of the Prosecution’s Reply are not in reply to the Defence’s Joint Opposition, they shall be disregarded for the purpose of the present appeal;

CONSIDERING that, in special cases, “good cause” pursuant to Rule 65(D) may include situations where it is felt that there is a need for a full bench of the Appeals Chamber to give an opinion as to issues relating to provisional release which arise in this particular case;

HEREBY GRANTS leave to appeal the Impugned Decision.

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

(signé)

Judge Jorda
Presiding Judge

Dated 16 July 2002
At The Hague,
The Netherlands.

[Seal of the Tribunal]