

UNITED  
NATIONS

IT-01-42-AR72  
A38-A35  
24 July 2002.

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AT



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-01-42-AR72

Date: 24 July 2002

Original: English

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**BEFORE A BENCH OF THREE JUDGES OF THE APPEALS CHAMBER**

Before: Judge Mohamed Shahabuddeen, Presiding  
Judge Asoka de Z. Gunawardana  
Judge Fausto Pocar

Registrar: Mr. Hans Holthuis

Decision of: 24 July 2002

**PROSECUTOR**

**v  
PAVLE STRUGAR  
MIODRAG JOKIĆ  
& OTHERS**

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**DECISION ON "DEFENCE INTERLOCUTORY APPEAL ON JURISDICTION"**

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**Counsel for the Prosecutor:**

Ms. Susan L. Somers  
Ms. Susan R. Lamb

**Counsel for the Defence:**

Mr. Goran Rodić  
Mr. Vladimir Petrović

**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 "International Tribunal"),

**BEING SEISED** of the "Defence Interlocutory Appeal on Jurisdiction" (the "Application") filed by counsel for Pavle Strugar (the "Applicant") on 21 June 2002, against the "Decision on the Defence Preliminary Motion Challenging Jurisdiction" rendered by Trial Chamber I on 7 June 2002 (the "Impugned Decision"), in which the Trial Chamber rejected the Applicant's "Defence Preliminary Motion" filed on 18 January 2002 (the "Motion");

**NOTING** the "Prosecution's Response to Defence Interlocutory Appeal on Jurisdiction" filed by the Office of the Prosecutor (the "Prosecution") on 1 July 2002;

**NOTING** the "Defence Reply to Prosecution's Response to Defence Interlocutory Appeal on Jurisdiction" filed by the Applicant on 5 July 2002;

**CONSIDERING** Rule 72(B)(i) of the Rules of Procedure and Evidence of the International Tribunal (the "Rules"), which stipulates that decisions on preliminary motions are without interlocutory appeal save in the case of motions challenging jurisdiction;

**CONSIDERING** Rule 72(D) of the Rules, which provides that, for the purpose *inter alia* of Rule 72(B)(i) of the Rules, a motion challenging jurisdiction refers exclusively to a motion which challenges an indictment on the ground that it does not relate to the personal, territorial or temporal jurisdiction of the International Tribunal, or to any of the violations enumerated in Articles 2, 3, 4, 5, and 7 of the Statute of the International Tribunal (the "Statute");

**CONSIDERING** Rule 72(E) of the Rules, which provides that an appeal brought under Rule 72(B)(i) of the Rules may not be proceeded with if a bench of three Judges, assigned by the President, decides that the appeal is not capable of satisfying the requirements of Rule 72(D) of the Rules, in which case the appeal shall be dismissed;

**NOTING** that the Applicant presents the following three grounds of appeal:

- (1) The Impugned Decision erred in law by finding that the International Tribunal has jurisdiction over the accused Strugar under Article 3 of the Statute for violations of Articles 51 and 52 of Additional Protocol I and Article 13 of Additional Protocol II and that, therefore, the related Counts 3, 6, 9 and 11 of the Indictment may stand (the "First Ground");
- (2) The Impugned Decision erred in law by failing to provide reasons for not accepting the Applicant's position that Article 3 is a residual clause, which should only be applied to violations not already covered by Articles 2, 4, and 5 of the Statute (the "Second Ground");
- (3) The Impugned Decision erred in finding that the Prosecution had a right to cumulatively charge the accused Strugar for violations of Additional Protocol I and Additional Protocol II in relation to the same conduct (the "Third Ground");

**CONSIDERING** that, in relation to the First Ground, the Motion rejected by the Impugned Decision challenged the Indictment on the basis that it does not relate to any of the violations indicated in Articles 2, 3, 4, 5 and 7 of the Statute;

**CONSIDERING** however that, in relation to the Second and Third Grounds, the Motion rejected by the Impugned Decision did not challenge the Indictment on the ground that it does not relate to any of the matters set out in Rule 72(D) of the Rules;

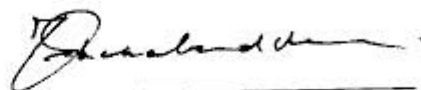
**FINDING** therefore that the First Ground, but not the Second and the Third Grounds of the Application, satisfies the requirements of Rule 72(D) of the Rules;

**HEREBY,**

1. **DECLARES** that the Applicant may pursue an interlocutory appeal in relation to the First Ground;
2. **DISMISSES** the appeal insofar as it concerns the Second and Third Grounds;
3. **INFORMS** the parties of their obligations to submit written briefs in accordance with the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the International Tribunal (IT/155 Rev.1) and the Practice Direction on the Length of Briefs and Motions (IT/184 Rev.1).

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

Dated this 24<sup>th</sup> day of July 2002,  
At The Hague,  
The Netherlands.



Mohamed Shahabuddeen  
Presiding Judge

**[Seal of the Tribunal]**