



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-AR72

Date: 25 March 2003

Original: English

BEFORE A BENCH OF THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge David Hunt
Judge Asoka de Zoysa Gunawardana

Registrar: Mr Hans Holthuis

Decision of: 25 March 2003

PROSECUTOR

v

MILAN MILUTINOVIĆ, NIKOLA ŠAINOVIĆ & DRAGOLJUB OJDANIĆ

DECISION PURSUANT TO RULE 72(E) AS TO VALIDITY OF APPEAL

Counsel for the Prosecutor
Mr Norman Farrell

Counsel for Dragoljub Ojdanić
Mr Tomislav Višnjić, Mr Vojislav Seležan and Mr Peter Robinson

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 (“International Tribunal”),

NOTING the Third Amended Indictment (“Indictment”),¹ which charges Dragoljub Ojdanić (“Ojdanić”), Chief of the General Staff of the Armed Forces of the Federal Republic of Yugoslavia, with deportation (a crime against humanity under Article 5(d) of the Statute), other inhumane acts (forcible transfer, a crime against humanity under Article 5(i) of the Statute), murder (a crime against humanity under Article 5(a) of the Statute and a violation of the laws or customs of war under Article 3 of the Statute) and persecutions (a crime against humanity under Article 5(h) of the Statute);

NOTING that Ojdanić is charged both as a superior pursuant to Article 7(3) of the Statute and for planning, instigating, ordering, committing and otherwise aiding and abetting in the planning, preparation or execution of those crimes, pursuant to Article 7(1);²

NOTING that the Indictment alleges that his liability pursuant to Article 7(1) stems, *inter alia*, from his part in a joint criminal enterprise;³

NOTING that the Indictment alleges that the crimes mentioned above and charged against Ojdanić were within the object of the joint criminal enterprise or, alternatively, that the offence of murder and persecutions were natural and foreseeable consequences of the joint criminal enterprise and that Ojdanić was aware that such crimes were the likely outcome of the joint criminal enterprise;

NOTING the “Decision on Dragoljub Ojdanić’s Preliminary Motion to Dismiss for Lack of Jurisdiction: Joint Criminal Enterprise”, rendered on 13 February 2003, whereby Trial Chamber III dismissed the submission made by Ojdanić that the International Tribunal does not have jurisdiction under Article 7 of the Statute over persons who are alleged to be members of a joint criminal enterprise;

¹ IT-99-37-I, 5 September 2002.

² Indictment, pars 16-52.

³ Indictment, pars 16-18.

BEING SEISED of “General Ojdanić’s Appeal from Denial of Preliminary Motion to Dismiss for Lack of Jurisdiction: Joint Criminal Enterprise”, filed on 28 February 2003, whereby Ojdanić appeals against the decision of the Trial Chamber;

NOTING the order of the President dated 6 March 2003 assigning judges to a Bench of the Appeals Chamber in accordance with Rule 72(E);⁴

NOTING the “Prosecution’s Response to ‘General Ojdanić’s Appeal from Denial of Preliminary Motion to Dismiss for Lack of Jurisdiction: Joint Criminal Enterprise’”, dated 10 March 2003 (“Prosecution’s Response”);

NOTING the “Reply Brief: ‘General Ojdanić’s Appeal from Denial of Preliminary Motion to Dismiss for Lack of Jurisdiction: Joint Criminal Enterprise’”, dated 13 March 2003;

NOTING that Article 72(D) of the Statute provides that a motion challenging jurisdiction refers exclusively to a motion which challenges an indictment on the ground that it does not relate to, *inter alia*, any of the persons indicated in Article 7 or any of the violations indicated in Article 7;

NOTING that, pursuant to Rules 72(B)(i) and 72(E), motions challenging the jurisdiction of the Tribunal proceed directly to the Appeals Chamber, subject only to a ruling by a bench of three judges of the Appeals Chamber as to its validity;⁵

NOTING that the Prosecution concedes that Ojdanić’s grounds of appeal constitute a challenge to jurisdiction pursuant to Rule 72;⁶

CONSIDERING that, if Ojdanić’s submissions were correct, there would be no legal basis upon the facts pleaded in the Indictment in relation to an alleged joint criminal enterprise to hold him responsible pursuant to Article 7(1) on that basis;

HEREBY DECLARES that the appeal has been validly filed insofar as it challenges the jurisdiction of the Tribunal in relation to Ojdanić’s individual criminal responsibility for his alleged participation in a joint criminal enterprise charged pursuant to Article 7(1) of the Statute;

⁴ Ordonnance du Président Portant Nomination de Juges à un Collège de la Chambre d’Appel.

⁵ *Prosecutor v Hadžihasanović et al*, IT-01-47-AR72, Decision Pursuant to Rule 72(E) as to the Validity of Appeal, 21 Feb 2003, par 9.

⁶ Prosecution’s Response, par 2.

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



Judge Fausto Pocar
Presiding

Done this 25th day of March 2003,
At The Hague,
The Netherlands.

[Seal of the Tribunal]