



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-99-37-AR72.2

Date: 27 February 2004

Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Mohamed Shahabuddeen, Presiding  
Judge Fausto Pocar  
Judge Mehmet Güney

**Registrar:** Mr. Hans Holthuis

**Decision of:** 27 February 2004

**PROSECUTOR**

v.

**Milan MILUTINOVIĆ  
Nikola ŠAINOVIĆ  
Dragoljub OJDANIĆ**

**DECISION**

**Counsel for the Prosecutor:**

**Mr. Norman Farrell  
Mr. Geoffrey Nice  
Ms. Cristina Romano**

**Counsel for the Defence:**

**Mr. Eugene O' Sullivan and Mr. Slobodan Zečević for Milan Milutinović  
Mr. Toma Fila and Mr. Vladimir Petrović for Nikola Šainović  
Mr. Tomislav Višnjić, Mr. Peter Robinson and Mr. Vojislav Seležan 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 (“International Tribunal”),

**BEING SEISED OF** the “General Ojdanić’s Appeal from Decision on Motion Challenging Jurisdiction and Motion for Extension of Time to File Opening Brief” (“Appeal”) filed by counsel for Dragoljub Ojdanić (“Appellant”) on 13 May 2003 against the “Decision on Motion Challenging Jurisdiction” rendered by Trial Chamber III on 6 May 2003 (“Impugned Decision”), in which the Trial Chamber rejected the Appellant’s “General Dragoljub Odjanić’s Preliminary Motion to Dismiss for Lack of Jurisdiction: Kosovo” filed on 29 November 2002 (“Motion”);

**NOTING** the orders issued by this Bench of 15 July and 17 November 2003, and 16 January 2004;

**NOTING** the “General Odjanić’s Opening Brief” (“Brief”) filed by the Appellant on 30 January 2004;

**NOTING** the “Prosecution’s Response to Admissibility of ‘General Odjanić’s Opening Brief’ filed on 30 January 2004” filed by the Prosecution on 9 February 2004;

**CONSIDERING** Rule 72(B)(i) of the Rules of Procedure and Evidence of the International Tribunal (“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 (“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 Appellant presents the following four grounds of appeal:<sup>1</sup>

- 1) The Trial Chamber, by failing to dispose of the motion within sixty days of filing, violated Rule 72(A) (“First Ground”);
- 2) The Trial Chamber erred in its conclusion that the FRY was a member of the United Nations for the purposes of the jurisdiction of the Tribunal over crimes committed on its territory (“Second Ground”);
- 3) The Trial Chamber erred in its conclusion that the Security Council’s Chapter VII powers could be exercised to confer on the Tribunal jurisdiction over crimes committed on the territory of the FRY even if it was not a member of the United Nations at the relevant time (“Third Ground”);  
and
- 4) The Trial Chamber erred in failing to determine that the Tribunal’s jurisdiction over crimes committed on the territory of the FRY could not be based upon the principle of universal jurisdiction (“Fourth Ground”);

**CONSIDERING** that, with regard to the First Ground, appeals under Rule 72(D) of the Rules can only be lodged on the basis of decisions taken on motions challenging jurisdiction and not in cases of alleged violations of the deadlines set out in Rule 72(A) of the Rules;

**CONSIDERING** however that, with regard to the Second, Third and Fourth Grounds, there being, in the view of the Bench, some doubt as to whether the Impugned Decision may be regarded as having been taken on a motion challenging jurisdiction within the meaning of Rule 72(D)(ii) of the Rules, the Bench resolves this doubt in favour of the Appellant; subject, of course, to any ruling thereon that may be given by the full Bench;

**HEREBY,**

1. **DISMISSES** the Appeal insofar as it concerns the First Ground;
2. **DECLARES** that the Appeal may be proceeded with regard to the Second, Third, and Fourth Grounds;
3. **INFORMS** the parties that they may file written briefs as follows:
  - I. The Appellant may file a supplementary brief within ten days of the filing of this decision;

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<sup>1</sup> See Brief at pp. 5-6.

II. The Prosecution may respond within seven days from the date on which the supplementary brief is filed pursuant to (I), or, if no such supplementary brief is filed, it may submit, within four days after the expiry of the said period of ten days, a brief addressing the merits of the Second and Third Grounds.

III. The Appellant may reply to any brief filed by the Prosecutor under (II) within four days of the filing of that brief.

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



Mohamed Shahabuddeen  
Presiding Judge

Dated this 27<sup>th</sup> day of February 2004,  
At The Hague,  
The Netherlands.

**[Seal of the Tribunal]**