

**UNITED  
NATIONS**



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- 98-30/1-AR73.5

Date: 25 May 2001

Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Lal Chand Vohrah, Presiding  
Judge Mohamed Shahabuddeen  
Judge Rafael Nieto-Navia  
Judge Fausto Pocar  
Judge Liu Daqun

**Registrar:** Mr. Hans Holthuis

**Decision of:** 25 May 2001

**PROSECUTOR**

v.

**MIROSLAV KVOČKA  
MILOJICA KOS a/k/a "KRLE"  
MLAĐO RADIĆ a/k/a "KRKAN"  
ZORAN ŽIGIĆ a/k/a "ŽIGA"  
DRAGOLJUB PRCAĆ**

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**DECISION ON INTERLOCUTORY APPEAL BY THE ACCUSED ZORAN ŽIGIĆ  
AGAINST THE DECISION OF TRIAL CHAMBER I DATED 5 DECEMBER 2000**

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**Counsel for the Prosecutor:**  
Mr. Upawansa Yapa

**Defence Counsel:**  
Mr. Krstan Simić for Miroslav Kvočka  
Mr. Zarko Nikolić for Milojica Kos  
Mr. Toma Fila for Mlado Radić  
Mr. Slobodan Stojanović for Zoran Žigić  
Mr. Jovan Simić for Dragoljub Prcać

**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 SEIZED** of the “Interlocutory Appeal Against Trial Chamber I Decision on the Defense Motion Regarding Concurrent Procedures Before the International Criminal Tribunal for the Former Yugoslavia and International Court of Justice on the Same Questions issued on 5 December 2000” filed on 1 March 2001 (“the Interlocutory Appeal”),

**PURSUANT TO** the Statute and the Rules of Procedure and Evidence of the International Tribunal (“the Statute” and “the Rules” respectively),

**HEREBY RENDERS** its Decision.

## I. BACKGROUND

1. On 24 October 2000, the defence for the accused Zoran Žigić (“the Appellant”) filed a “Motion Regarding Concurrent Procedures Before International Criminal Tribunal for the Former Yugoslavia and International Court of Justice on the Same Questions” before Trial Chamber I (“the Motion”) in which reference was made to the “Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide” (“the Case Concerning the Application of the Genocide Convention”) currently pending before the International Court of Justice.<sup>1</sup> The Appellant requested the suspension of any decision by the International Tribunal on questions pending before the International Court of Justice or a ruling that the International Tribunal would not decide upon the same legal and factual questions as the International Court of Justice and further requested that the Trial Chamber obtain an advisory opinion from the International Court of Justice.

2. On 16 November 2000, the Prosecutor filed the “Prosecution’s Response to Zoran Žigić’s ‘Motion Regarding Concurrent Procedures Before International Criminal Tribunal for the Former Yugoslavia and International Court of Justice on the Same Questions’” in which it submitted that the Motion was fundamentally a challenge to the jurisdiction of the International Tribunal over the proceedings against Zoran Žigić and thus the Motion should be dismissed as untimely.

3. On 5 December 2000, Trial Chamber I issued the “Decision on the Defense ‘Motion Regarding Concurrent Procedures Before International Criminal Tribunal for the Former Yugoslavia and International Court of Justice on the Same Questions’” (“the Impugned Decision”) dismissing the Motion.

## II. THE APPEAL

### (A) Application for Leave to Appeal

4. On 12 December 2000, the Appellant filed the “Motion of the Accused Zoran Žigić for Leave to Appeal the Decision of Trial Chamber I of 5 Decemeber [sic] on the Defense ‘Motion Regarding Concurrent Procedures Before International Criminal Tribunal for the Former Yugoslavia and International Court of Justice on the Same Questions’” (“the Application for Leave

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<sup>1</sup> On 20 March 1993, the Government of the Republic of Bosnia-Herzegovina filed in the Registry of the International Court of Justice an application instituting proceedings against the Government of the Federal Republic of Yugoslavia in respect of a dispute concerning alleged violations of the Convention on the Prevention and Punishment of the Crime of Genocide adopted by the General Assembly of the United Nations on 9 December 1948, as well as various matters which Bosnia-Herzegovina claimed were connected therewith. The application invoked Article IX of the Genocide Convention as the basis of the jurisdiction of the Court.

to Appeal”) in which he submitted, *inter alia*, that, even if the question of a possible contradiction between the findings of the International Court of Justice and future decisions of the International Tribunal were based purely on speculation, he sought to prevent two United Nations judicial organs from making different findings on the same issues and that this constituted an issue of general importance to proceedings before the International Tribunal or in international law generally.<sup>2</sup>

5. On 21 December 2000, the Prosecution filed the “Prosecution’s Response to ‘Motion of the Accused Zoran Žigić for Leave to Appeal the Decision of Trial Chamber I of 5 December on the Defense Motion Regarding Concurrent Procedures Before International Criminal Tribunal for the Former Yugoslavia and International Court of Justice on the Same Questions’”.

6. On 28 December 2000, the Appellant filed the “Defense’s Reply to ‘Prosecution’s Response to Motion of the Accused Zoran Žigić for Leave to Appeal the Decision of Trial Chamber I of 5 December on the Defense ‘Motion Regarding Concurrent Procedures Before International Criminal Tribunal for the Former Yugoslavia and International Court of Justice on the Same Questions’” in which it was submitted that, due to the obvious importance of the issues raised in the Application for Leave to Appeal, the Chamber should be satisfied that the requirements of Rule 73(B)(ii) had been met.

(B) Granting of Leave

7. On 16 February 2001, a Bench of the Appeals Chamber issued the “Decision on Application by the Accused Zoran Žigić for Leave to Appeal the Decision of Trial Chamber I dated 5 December 2000” (“the Decision on Application for Leave to Appeal”). The Decision on Application for Leave to Appeal found that questions as to whether the proceedings in the Trial Chamber should be suspended pending determination of the same or an allied issue by the International Court of Justice and the impact of decisions by each judicial body on the other constitute issues of general importance to proceedings before the International Tribunal or in international law generally.

(C) Interlocutory Appeal

8. On 1 March 2001, the Appellant filed the Interlocutory Appeal, submitting the following:

- (1) The relationship between the International Court of Justice as “the principal judicial organ of the United Nations” and the International Tribunal could be seen as a relationship between the

Security Council and the International Court of Justice as set out in the United Nations Charter.<sup>3</sup>

- (2) The Appellant volunteers to waive his right to an expeditious trial, so that the proceedings can be adjourned without violating his right to a fair and expeditious trial.<sup>4</sup>

9. The Appellant requests the suspension of the proceedings before the International Tribunal pending a decision by the International Court of Justice on the same or allied issues being considered by both judicial organs. The Appellant asserts that the International Tribunal has no power to unilaterally decide upon the relationship between decisions of the International Tribunal and the International Court of Justice and further submits that the International Tribunal cannot decide on the same legal and factual questions as in the pending case before the International Court of Justice until an appropriate decision has been delivered by the General Assembly of the United Nations or an advisory opinion has been rendered by the International Court of Justice.<sup>5</sup>

10. On 12 March 2001, the Prosecution filed the "Prosecution's Response to the Interlocutory Appeal of Zoran Zigić" ("the Response to the Interlocutory Appeal") in which it advanced the following arguments:

- (1) There is no concurrent jurisdiction between the International Court of Justice and the International Tribunal.
- (2) The International Tribunal does not need to defer to the International Court of Justice.
- (3) The Prosecution opposes the Appellant's waiving of the right to an expeditious trial, in light of the "societal interest" of the international community to safeguard this guarantee.

11. With respect to the first argument, the Prosecution submits that the assertion that the International Court of Justice and the International Tribunal have concurrent jurisdiction is unfounded. Thus, it is unlikely that in the case at hand both institutions would be called upon to determine similar or allied issues. The Prosecution supports this argument by setting out the differences between the mandate and jurisdiction of both institutions.<sup>6</sup>

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<sup>2</sup> Application for Leave to Appeal, paras 5, 9, 14.

<sup>3</sup> Interlocutory Appeal, paras 12, 13.

<sup>4</sup> *Ibid*, para 15.

<sup>5</sup> *Ibid*, paras 16, 17.

12. The second argument raised by the Prosecution is that if both judicial organs had to decide legal questions relevant to each other or determine similar or allied issues, the International Tribunal would not be compelled to defer to the International Court of Justice on such issues, either by suspending its proceedings or by requesting an advisory opinion.<sup>7</sup> As there is no hierarchical relationship between the International Court of Justice and the International Tribunal, both institutions can apply and interpret international law, and, if they were to hear the same evidence, they could reach different conclusions.<sup>8</sup>

13. The third argument contends that the requirements for a fair and expeditious trial are cumulative and mutually interdependent. The Prosecution submits that, regardless of the Appellant's waiver, the Appeals Chamber is responsible for safeguarding the guarantee to a fair and expeditious trial as provided for by Article 20(1) of the Statute and the right to be tried without undue delay in Article 21(4)(c).<sup>9</sup> Further, the Prosecution submits that the international community's "societal interest" or "public interest" in an expeditious trial should be respected.<sup>10</sup>

14. On 16 March 2001, the Appellant filed the "Appellant's Reply to Prosecution's Response to the Interlocutory Appeal of Zoran Zigić" ("the Appellant's Reply") in which he submits that only the International Court of Justice or the General Assembly can make any pronouncement with respect to the character of the International Court of Justice as "principal judicial organ" of the United Nations, and that the issues raised in the Interlocutory Appeal prevail over the Appellant's right to an expeditious trial.<sup>11</sup>

### III. DISCUSSION

15. The Interlocutory Appeal was filed outside the time limits established by the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the International Tribunal (IT/155) ("the Practice Direction"). The Appellant did not apply for an extension of time. However, due to the importance of the issues raised in the Appeal, the Appeals Chamber has decided to admit the Interlocutory Appeal pursuant to Article 14 of the Practice Direction.

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<sup>6</sup> Response to the Interlocutory Appeal, paras 20, 22, 26, 27, 30, 33-37.

<sup>7</sup> *Ibid*, paras 16, 24.

<sup>8</sup> *Ibid*, paras 18, 48, 50, 46.

<sup>9</sup> *Ibid*, paras 49-51.

<sup>10</sup> *Ibid*, para 54.

<sup>11</sup> Appellant's Reply, paras 9, 11, 13, 14.

16. The issue as to whether the International Tribunal should follow a decision issued by the International Court of Justice on a question of law has been considered by the Appeals Chamber in the *Čelebići* judgement where it held that:

The Appeals Chamber agrees that “so far as international law is concerned, the operation of the desiderata of consistency, stability, and predictability does not stop at the frontiers of the Tribunal. [...] The Appeals Chamber cannot behave as if the general state of the law in the international community whose interests it serves is none of its concern”.<sup>12</sup> However, this Tribunal is an autonomous international judicial body, and although the ICJ is the ‘principal judicial organ’ within the United Nations system to which the Tribunal belongs, there is no hierarchical relationship between the two courts. Although the Appeals Chamber will necessarily take into consideration other decisions of international courts, it may, after careful consideration, come to a different conclusion.<sup>13</sup>

17. The Appeals Chamber considers that there is no reason to depart from these conclusions. No legal basis exists for suggesting that the International Tribunal must defer to the International Court of Justice such that the former would be legally bound by decisions of the latter.

18. Nonetheless, decisions of the International Court of Justice addressing general questions of international law are of the utmost significance and the International Tribunal will consider such decisions, giving due weight to their authority. However, the International Tribunal has its own competence. Thus, the International Tribunal would consider any decisions of the International Court of Justice, subject to its competence to make its own findings. As a result the International Tribunal may arrive at different conclusions, and differences in holdings may occur. This does not justify suspension of the present proceedings until the International Court of Justice has decided any matters pending before that Court.

19. The Impugned Decision considered that staying the proceedings in the instant case until the International Court of Justice has made a final determination in the Case Concerning the Application of the Genocide Convention would deprive the Appellant of his right to a fair and expeditious trial.<sup>14</sup> Recognising that the suspension of the proceedings could impact adversely on his right to a fair and expeditious trial, the Appellant offers to waive this right.

20. The Appeals Chamber has a primary obligation to ensure that the accused has a fair *and* expeditious trial - a fundamental guarantee – as set out in Articles 20(1) and 21(4) of the Statute and

<sup>12</sup> Separate Opinion of Judge Shahabuddeen, appended to Decision, *Le Procureur v Laurent Semanza*, ICTR, Case No.: ICTR-97-20-A, Appeals Chamber, 31 May 2000, para 25.

<sup>13</sup> *Prosecutor v. Zejnil Delalić et al*, Appeal Judgement, Case No.: IT-96-21-A, 20 February 2001, para 24.

<sup>14</sup> Impugned Decision, page 4.

embodied in the major international human rights instruments. The right to an expeditious trial is an inseparable and constituent element of the right to a fair trial.

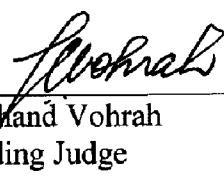
21. Procedural equality requires that the concept of a fair trial be applied taking into account the interests of both parties. The Prosecution acts on behalf of and in the interests of the international community.<sup>15</sup> Thus, as the international community has an interest in the enforcement of such guarantee, it cannot be deprived of it by the mere circumstance that the Appellant would like to waive his own entitlement to a fair trial.

22. Finally, the Appeals Chamber considers that it is not necessary for it to await the rendering of an advisory opinion by the International Court of Justice or the issuing of a decision by the General Assembly of the United Nations before it decides on any legal or factual questions, even if these happen to be the same as questions raised in any pending case before the International Court of Justice.

#### V. DISPOSITION

23. For the foregoing reasons the Appeals Chamber, **DISMISSES** the Interlocutory Appeal.

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

  
Lal Chand Vohrah  
Presiding Judge

Dated this twenty fifth of May 2001  
At The Hague,  
The Netherlands.

[Seal of the Tribunal]

<sup>15</sup> *Prosecutor v. Zlatko Aleksovski*, Decision on Prosecutor's Appeal on Admissibility of Evidence, Case No.: IT-95-14/1-AR73, 16 February 1999, para 25.