

IT-98-30/1-AR73.5
A26-A23
16 FEBRUARY 2001

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**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: 16 February 2001

Original: English

BEFORE A BENCH OF THE APPEALS CHAMBER

Before: Judge Lal Chand Vohrah, Presiding
Judge Mohamed Shahabuddeen
Judge Rafael Nieto-Navia

Registrar: Mr. Hans Holthuis

Decision of: 16 February 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**

**DECISION ON APPLICATION BY THE ACCUSED ZORAN ŽIGIĆ FOR LEAVE TO
APPEAL THE DECISION OF TRIAL CHAMBER I DATED 5 DECEMBER 2000**

Counsel for the Prosecutor:
Ms. Brenda Hollis

Defence Counsels:
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

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 Bench” and “the International Tribunal” respectively),

BEING SEIZED OF 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’” filed on 12 December 2000 (“the Defence” and “the Application for Leave to Appeal” respectively);

NOTING 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’” filed on 21 December 2000;

NOTING 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’” filed on 28 December 2000;

NOTING 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’” issued by Trial Chamber I on 5 December 2000 (“the Impugned Decision”), in which the Trial Chamber dismissed the Defence request for, *inter alia*, suspension of decision on questions pending before the International Court of Justice and an advisory opinion from that court;

NOTING that the Application for Leave to Appeal is filed pursuant to Rule 73 of the Rules of Procedure and Evidence of the International Tribunal (“the Rules”) which provides, *inter alia*, that applications “for leave to appeal shall be filed within seven days of the filing of the impugned decision” and allows for interlocutory appeals in the following two instances:

- (i) if the decision impugned would cause such prejudice to the case of the party seeking leave as could not be cured by the final disposal of the trial including post-judgement appeal;
- (ii) if the issue in the proposed appeal is of general importance to proceedings before the Tribunal or in international law generally;

NOTING that the Application for Leave to Appeal was filed within time;

NOTING that it is submitted in the Application for Leave to Appeal that the International Tribunal and the International Court of Justice have concurrent jurisdiction in respect of the same factual and legal questions, a condition which may result in contradictory findings, and that this question raises an issue of general importance under Rule 73(B)(ii);

CONSIDERING that it is for the Defence to show the Bench that the proposed appeal raises an issue of general importance to proceedings before the International Tribunal or in international law generally;

FINDING that there has been such showing in that the questions as to

- i) whether proceedings in the Trial Chamber should be suspended pending determination of the same or an allied issue by the International Court Justice; and
- ii) the impact of decisions by each judicial body on the other

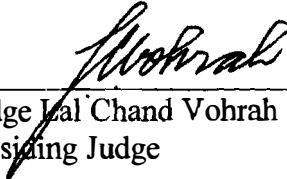
constitute issues of general importance to proceedings before the International Tribunal and in international law generally;

HEREBY,

1. GRANTS leave to pursue an interlocutory appeal;

2. INFORMS the parties of their obligations to submit written briefs in accordance with the Practice Direction on Procedure for the Filings of Written Submissions in Appeal Proceedings before the International Tribunal (IT/55) and the Practice Direction on the Length of Briefs and Motions (IT/184).

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



Judge Lal Chand Vohrah
Presiding Judge

Dated this sixteenth day of February 2001
At The Hague,
The Netherlands.

[Seal of the Tribunal]