



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-94-2-AR73  
Date: 6 August 2003  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Theodor Meron, Presiding  
Judge Fausto Pocar  
Judge Mohamed Shahabuddeen  
Judge Mehmet Güney  
Judge Amin El Mahdi

**Registrar:** Mr. Hans Holthuis

**Decision of:** 6 August 2003

**PROSECUTOR**

v.

**DRAGAN NIKOLIĆ**

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**DECISION ON MOTION REQUESTING CLARIFICATION**

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

**Counsel for the Accused:**  
Mr. Howard Morrison  
Ms. Tanja Radosavljević

**THE APPEALS CHAMBER** of the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (respectively, “Appeals Chamber” and “International Tribunal”),

**NOTING** the “Decision On Interlocutory Appeal Concerning Legality of Arrest” issued by the Appeals Chamber on 5 June 2003 (“Decision”);

**BEING SEISED** of the “Motion Requesting Clarification of the Decision on Interlocutory Appeal Concerning Legality of Arrest” filed by counsel for Dragan Nikolić (“Defence”) on 20 June 2003 (“Request”) in which the Defence seeks “clarification or expansion of reasoning” of the Decision;

**NOTING** that the Defence seeks (i) “elaboration of what the Appeals Chamber contemplated” [at paragraph 31 of the Decision] in stating that the Defence “had not presented to the Appeals Chamber any alternative or more comprehensive [view] of the facts”, given that the case proceeded on the basis of facts agreed to before the Trial Chamber (“First Argument”); (ii) “clarification of what was comprised in the examination by the Appeals Chamber when it referred to ‘all of the facts in this case’” (“Second Argument”); and (iii) “clarification of exactly what test is contemplated by the Appeals Chamber” in determining whether a human rights violation is “egregious” (“Third Argument”);

**CONSIDERING** that the Appeals Chamber has an obligation to give reasoned opinions for its decisions but that this obligation does not require it to spell out every step in its reasoning;<sup>1</sup>

**CONSIDERING** that motions for clarification will be granted only in exceptional circumstances, for example, when the operative part of the decision made by the Appeals Chamber is involved, and more particularly where the motion does not request a reconsideration of the decision;

**CONSIDERING** that, as to the statements challenged in the First Argument, the Appeals Chamber, having examined the agreed facts, merely noted that as a matter of fact the Defence had not presented any alternative or a more comprehensive view of the facts that might show that the Trial Chamber erred in its assessment of them;

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<sup>1</sup> See, e.g., *Prosecutor v. Dragoljub Kunarac et al.*, Case No. IT-96-23 & IT-96-23/1-A, Appeals Chamber, Judgement, 12 June 2002, para. 42.

**CONSIDERING** that the statements challenged in the Second and Third Arguments require no clarification;

**HEREBY REJECTS** the Request and **DECLARES** it frivolous.

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

Dated this 6<sup>th</sup> of August 2003,  
At The Hague,  
The Netherlands.



Judge Theodor Meron  
Presiding Judge

[Seal of the Tribunal]