

**A BENCH OF THE APPEALS CHAMBER**

**Before:**

**Judge Claude Jorda, Presiding  
Judge Mohamed Bennouna  
Judge Fausto Pocar**

**Registrar:**

**Mrs. Dorothee de Sampayo Garrido-Nijgh**

**Decision of:**

**25 October 2000**

**THE PROSECUTOR**

**v.**

**DUSKO TADIC**

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**DECISION ON THE APPLICATION  
FOR LEAVE TO APPEAL**

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**The Office of the Prosecutor:**

**Mr. Upawansa Yapa**

**Defence Counsel:**

**Mr. Vladimir Domazet for Milan Vujin**

**Interested Party:**

**Mr. Anthony Abell**

**THIS BENCH** of the Appeals Chamber (hereinafter the "Bench") 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 (hereinafter "the Tribunal"),

**NOTING** the Judgment on allegations of contempt against prior counsel, Milan Vujin, pronounced on 31 January 2000 (hereinafter "the Judgment"),

**NOTING** the Application for leave to appeal against the Judgment on allegations of contempt against prior counsel, Milan Vujin, IT-94-1-A-R77, filed by Milan Vujin (hereinafter "the Appellant") and filed in English on 7 February 2000 (hereinafter "the Application for leave to appeal"),

**NOTING** the Response by the interested party (hereinafter "the Interested Party"), Dusko Tadic, to the Application for leave to appeal filed in English on 17 February 2000,

**NOTING** the Respondent's Reply to the Response by the Interested Party, Dusko Tadic, to the

Application for leave to appeal filed in English on 22 February 2000,

**NOTING** the Order of the President assigning Judges to a bench of the Appeals Chamber dated 8 March 2000,

**PURSUANT** to Article 25 of the Statute of the Tribunal and Rules 77 and 107 of the Rules of Procedure and Evidence (hereinafter "the Rules"),

**CONSIDERING** that the Application for leave to appeal was filed on 7 February 2000 in accordance with the time-limit set forth under Rule 77(J) of the Rules,

**CONSIDERING** that Rule 77(J) of the Rules states that "SaCny decision rendered by a Trial Chamber under this Rule shall be subject to appeal in cases where leave is granted by a bench of three Judges of the Appeals Chamber upon *good grounds* being shown [...]" (emphasis added),

**CONSIDERING** that the Judges of the Appeals Chamber found the Appellant guilty of contempt of the Tribunal pursuant to Rule 77 of the Rules and, accordingly, instructed him to pay a fine of Dfl 15,000 and invited the Registrar of the Tribunal to consider striking him off the list of assigned counsel kept pursuant to Rule 45 of the Rules,

**CONSIDERING** that the Appellant wishes to appeal the Judgment because he believes, firstly, that the Judges did not correctly assess the facts of the case or properly evaluate the facts presented at the hearing and so occasioned a miscarriage of justice,

**CONSIDERING** that the Appellant also contends that the sanction of striking him off the list of assigned counsel is not provided for in the text of Rule 77 of the Rules,

**CONSIDERING** that the Appellant lastly holds that the provisions of Rules 77(J) of the Rules run contrary to the "principles of penal legislature recognized throughout the world" in that they do not authorise him to lodge an appeal directly with the Appeals Chamber without prior authorisation,

**CONSIDERING** that the Appellant is of the view that he has thus advanced grounds which provide justification for granting his Application for leave to appeal,

**CONSIDERING** that the Interested Party contests the right to appeal on the ground that the contempt conviction handed down by the Appeals Chamber is not subject to appeal since it was rendered by the highest authority at the Tribunal, that the gravity of the contempt justifies the request for striking off the list and, more generally, that the Judgment of the Appeals Chamber is sufficiently justified in fact and grounded in law,

**CONSIDERING** that the Bench first notes that the Judgment was rendered by the Judges of the Appeals Chamber ruling in the first instance,

**CONSIDERING** that Rule 107 of the Rules states that "[t]he rules of procedure and evidence that govern proceedings in the Trial Chamber shall apply *mutatis mutandis* to proceedings in the Appeals Chamber",

**CONSIDERING** that the Bench furthermore underscores that the provisions of Rule 77(J) of the Rules do not suppress all rights to appeal but require only that "[the appeal be] granted by a bench of three Judges of the Appeals Chamber, upon *good grounds* being shown" (emphasis added),

**CONSIDERING** that the provisions of Rule 72(B)(ii) of the Rules provide for the possibility of an interlocutory appeal also in cases "where leave to appeal is, upon *good cause* being shown, granted by a bench of three Judges of the Appeals Chamber" (emphasis added),

**CONSIDERING** that the Bench finds that the notion of *good cause* in Rule 72 of the Rules is similar to

that of *good grounds* in Rule 77 of the Rules insofar as the two texts pursue the same goals - that is to do such that clearly ungrounded appeals are not reviewed by the full bench of the Appeals Chamber,

**CONSIDERING** that the Bench recalls that, in accordance with the Tribunal's case-law, in order to be authorised to lodge an appeal on the basis of Rule 72 of the Rules, the requesting party must demonstrate that there is, inter alia, a "basis [...] for suggesting [...] error on the part of the Trial Chamber in reaching its decision"<sup>1</sup>,

**CONSIDERING** that the Bench thereby concludes that the notion of "good grounds" in Rule 77 of the Rules must be interpreted in the light of this case-law of the Tribunal,

**CONSIDERING** that the Bench also holds that, in view of the arguments advanced by the Appellant regarding errors of law and fact, he has sufficiently demonstrated the existence of good grounds within the meaning of Rule 77(J) of the Rules,

**CONSIDERING** that the Bench thereby concludes that the arguments advanced in support of the Application for leave to appeal justify a more thorough review by the Appeals Chamber,

**FOR THE FOREGOING REASONS,**

**GRANTS** the Application for leave to appeal,

**RECALLS** that the filing of appeals submissions is governed by the provisions set down in the "Practice Direction on the Procedure for the filing of Written Submissions in Appeals Proceedings before the International Tribunal (IT/155)" dated 1 October 1999.

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

Done this twenty-fifth day of October 2000  
At The Hague  
The Netherlands

(signed)

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Claude Jorda  
Presiding Judge of the  
Bench of the Appeals Chamber

**[Seal of the Tribunal]**

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1. Decision on Application for leave to appeal the Trial Chamber's Decision concerning the preliminary Motion based on the form of the indictment, *The Prosecutor v. Krajisnik*, Case no.: IT-00-39-AR72, 19 September 2000.

