

IN THE APPEALS CHAMBER

Before:

Judge Gabrielle Kirk McDonald, Presiding

Judge Mohamed Shahabuddeen

Judge Antonio Cassese

Judge Wang Tieya

Judge Rafael Nieto-Navia

Registrar:

Mrs. Dorothee de Sampayo Garrido-Nijgh

Decision of:

18 May 1999

PROSECUTOR

v.

**BLAGOJE SIMIC
MILAN SIMIC
MIROSLAV TADIC
STEVAN TODOROVIC
SIMO ZARIC**

DECISION AND SCHEDULING ORDER

The Office of the Prosecutor

Ms. Anne-Birgitte Haslund

Ms. Mary MacFadyen

Ms. Nancy Paterson

Defence Counsel

Mr. Branimir Avramovic, for Milan Simic

Mr. Igor Pantelic, for Miroslav Tadic

Mr. Deyan Ranko Brashich, for Stevan Todorovic

Mr. Borislav Pisarevic, for Simo Zaric

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");

NOTING the "Notice of Motion for Evidentiary Hearing on Arrest, Detention and Removal of Defendant Stevan Todorovic and for Extension of Time to Move to Dismiss Indictment", filed before Trial Chamber III by Counsel for the accused Stevan Todorovic ("Defence") on 11 February 1999 ("Motion");

NOTING that the Defence in the Motion in purported reliance on Rule 55 of the Rules of Procedure and Evidence of the International Tribunal ("Rules") sought the following orders from the Trial Chamber:

(i) an order "directing that a preliminary evidentiary hearing be had as to the facts and circumstances of the arrest, detention and delivery of the Defendant Stevan Todorovic to the jurisdiction of the Court on or about September 1998" ,

(ii) an order "directing the Prosecutor to make available to defence all documents and things in the Prosecutor s files as to manner, method and individuals who detained, arrested and delivered the Defendant Stevan Todorovic to the jurisdiction of the Court",

(iii) an order "directing the Prosecutor to Show Cause why an Order of dismissal of the Indictment as to Defendant Stevan Todorovic be not made and the Defendant Stevan Todorovic be not freed from custody absent proof that the arrest, detention and delivery of Defendant Stevan Todorovic was just and proper and in accordance with customary international law, practice and usage", and

(iv) an order "extending the time within which to move to dismiss on such grounds until twenty [] [days after] the completion of such hearing";

NOTING ALSO the subsequent oral and written submissions on the Motion made by the Defence and the Office of the Prosecutor ("Prosecution") before Trial Chamber III;

NOTING the oral decision denying the Motion rendered by Trial Chamber III on 4 March 1999 and affirmed in its written "Decision Stating reasons for Trial Chamber s Order of 4 March 1999 on Defence Motion for Evidentiary Hearing on the Arrest of the Accused Todorovic", issued on 25 March 1999 ("Decision");

NOTING that the Trial Chamber in the Decision identified "the issue at stake" as "whether or not to grant the accused s request for an evidentiary hearing as to the alleged kidnapping of the accused" and that the Motion was denied by the Trial Chamber on the ground that it did not "contain sufficient factual and legal material, and in particular does not provide a statement as to the factual circumstances of his arrest, to warrant an evidentiary hearing";

FURTHER NOTING the "Notice of Appeal and Appeal to the Appeal Chamber", filed on 30 March 1999 ("Appeal"), in which the Defence purports to seize the Appeals Chamber of an appeal against the Decision pursuant to Rules 107, 108 and 116*bis* and Sub-rule 72(B)(i) of the Rules;

NOTING the "Prosecution s Response to the Notice of Appeal and Appeal to the Appeal Chamber Filed by the Accused Stevan Todorovic on 30 March 1999", filed by the Prosecution on 7 April 1999;

CONSIDERING the interlocutory nature of the Appeal;

CONSIDERING that no right of interlocutory appeal can be founded on Rules 107, 108 or 116*bis* of the Rules;

CONSIDERING that Sub-rule 72(B)(i) provides a right of interlocutory appeal only against decisions on preliminary motions challenging jurisdiction;

FINDING that the Motion was not a preliminary motion as defined by Sub-rule 72(A) and, more specifically, that the four requests contained therein, as set out above, did not constitute a challenge to jurisdiction within the meaning of Sub-rules 72(A)(i) and 72(B)(i) of the Rules;

HEREBY REJECTS the Appeal on the basis that the Appeals Chamber at this time is not properly seized of the matter;

AND ORDERS, pursuant to Sub-rules 127(A)(i) and 127(B) of the Rules, that should the Defence wish to seek leave to appeal against the Decision before a bench of three Judges of the Appeals Chamber under Sub-rule 73(B) of the Rules, such an application shall be filed no later than 25 May 1999.

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

Gabrielle Kirk McDonald
Presiding

Dated this eighteenth day of May 1999
At The Hague,
The Netherlands.

[Seal of the Tribunal]