

UNITED
NATIONS

08 July 1999
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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-95-9-AR73.2

Date: 8 July 1999

Original: English

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

Order of: 8 July 1999

PROSECUTOR

v.

**BLAGOJE SIMIĆ
MILAN SIMIĆ
MIROSLAV TADIĆ
STEVAN TODOROVIĆ
SIMO ZARIĆ**

SCHEDULING ORDER

The Office of the Prosecutor

**Mr. Grant Niemann
Ms. Nancy Paterson
Mr. Christopher Staker**

Defence Counsel

**Mr. Branimir Avramović for Milan Simić
Mr. Igor Pantelić, for Miroslav Tadić
Mr. Deyan Ranko Brashich, for Stevan Todorović
Mr. Borislav Pisarević, for Simo Zarić**

Case No. IT-95-9-AR73.2

8 July 1999

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 by Counsel for the accused Stevan Todorović (“Defence”) before Trial Chamber III on 11 February 1999 (“Motion”);

NOTING Stevan Todorović’s assertion that he was unlawfully and forcibly abducted from the territory of the Federal Republic of Yugoslavia and brought to Bosnia and Herzegovina, where he was delivered into the custody of the Office of the Prosecutor (“Prosecution”) on or about September 1998;

NOTING the “Prosecutor’s Response to the ‘Notice of Motion for Evidentiary Hearing on Arrest, Detention and Removal of Defendant Stevan Todorović and for Extension of time to Move to Dismiss Indictment’ filed by Stevan Todorović on 10 February 1999 [sic]”, filed before Trial Chamber III on 22 February 1999;

FURTHER NOTING the “Memorandum of Law in Further Support for an Evidentiary Hearing as to Abduction and Detention of Accused Todorovic” filed by the Defence on 1 March 1999;

NOTING the hearing on the Motion on 4 March 1999 and the Trial Chamber’s oral order denying the Defendant’s request for an Evidentiary Hearing, subsequently affirmed in the “Decision Stating Reasons for the Trial Chamber’s Order of 4 March 1999 on Defence Motion for Evidentiary Hearing on the Arrest of the Accused Todorović” of 25 March 1999;

NOTING the “Accused Stevan Todorovic’s Motion for Leave to Appeal from a Certain Oral Order dated March 4, 1999 and a Decision dated March 25, 1999 which denied Motion for an Evidentiary Hearing on Abduction and Kidnapping and thereafter for Leave to file a Motion to Repatriate the Accused to the Country of Refuge” filed on 25 May 1999 (“Application for Leave to Appeal”);

NOTING the “Prosecution Response to the Motion for Leave to Bring an Interlocutory Appeal, Filed by the Accused Stevan Todorović, dated 24 May 1999”, filed on 8 June 1999;

NOTING the Decision of a Bench of the Appeals Chamber of 1 July 1999 granting the Defence Leave to Appeal pursuant to sub-Rule 73(B)(i) on the question of “whether the Trial Chamber erred in denying the Defence request for an evidentiary hearing and an order directing the Prosecutor to afford discovery”;

NOTING ALSO the “Notice of Motion for an Order Waiving the Provisions of Rule 116bis(C) and Allowing Oral Argument” and the “Statement in Support of Motion for an Order Waiving the Provisions of Rule 116bis(C) and Allowing Argument Pursuant to Rule 114”, filed on 5 July 1999, by which the Defence requests that the Appeals Chamber hear oral arguments on the appeal;

CONSIDERING the Defence’s desire to determine the extent to which the Prosecution, United Nations or state agencies were involved in his alleged abduction, which it contends may potentially call into question the lawfulness of his arrest;¹

CONSIDERING ALSO the Prosecution’s concern that divulging information concerning the Accused’s capture will “compromise the prospects of future arrests and will place lives at risk”;²

CONSIDERING the need to be further assisted by the Parties;

HEREBY ORDERS that the Parties submit briefs as follows:

- (1) The Defence shall file an Appeal Brief by 22 July 1999;
- (2) The Prosecution shall file a Response to the Appeal Brief by 5 August 1999;
- (3) The Defence may file a Reply to the Prosecutor’s Response by 12 August 1999;

AND ORDERS that the parties in their written briefs address the issues raised in the appeal including the following:

- (a) The legal standard applicable to a determination of when an evidentiary hearing and accompanying discovery should be granted;
- (b) Whether the Defence has met or failed to meet this standard and why;
- (c) The process by which the evidentiary hearing would proceed if the motion were granted;

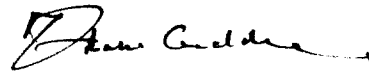
¹ See Application for Leave to Appeal.

² Transcript of Motion Hearing, 4 March 1999, p. 356.
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- (d) The process by which discovery would proceed if the motion were granted, including the following:
- (i) How discovery would be conducted; whether through interrogatories, affidavits, or some other form;
 - (ii) How sensitive Prosecution sources, if any, could be protected, including the potential applicability of sub-Rule 66(C).

The Appeals Chamber will thereafter decide whether to allow the Parties to present oral arguments on the appeal.

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



Mohamed Shahabuddeen
Vice-President

Dated this eighth day of July 1999
At The Hague,
The Netherlands.

[Seal of the Tribunal]