

IN THE APPEALS CHAMBER

Before:

Judge Mohamed Shahabuddeen, Presiding
Judge Lal Chand Vohrah
Judge Rafael Nieto-Navia
Judge Patricia Wald
Judge Fausto Pocar

Registrar:

Mrs. Dorothee de Sampayo Garrido-Nijgh

Order of:

13 December 2000

THE PROSECUTOR

v.

BLAGOJE SIMIC
MILAN SIMIC
MIROSLAV TADIC
STEVAN TODOROVIC
SIMO ZARIC

ORDER ON MOTION FOR ADDITIONAL EVIDENCE

Representatives for NATO and the relevant States

Counsel for the Prosecutor:

Mr. Graham Blewitt

Counsel for the Accused:

Mr. Slobodan Zecevic, 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 ("the Appeals Chamber"),

NOTING the "Accused Stevan Todorovic's Rule 115 Motion for Additional Evidence" filed by the Counsel for Stevan Todorovic on 22 November 2000 ("the Motion" and "the Defence" respectively);

NOTING the "Scheduling Order" issued by the Appeals Chamber on 23 November 2000 ("the Scheduling

Order");

NOTING the "Submissions of the United Kingdom Regarding Accused Stevan Todorovic's Rule 115 Motion for Additional Evidence" filed by United Kingdom on 30 November 2000, "Opposition of the Government of Canada to Accused Stevan Todorovic's Rule 115 Motion for Additional Evidence" filed by Canada on 1 December 2000, "Response of the Government of Denmark to Scheduling Order of 23 November 2000" filed by Denmark on 1 December 2000, "Submission of the Federal Republic of Germany Regarding 'Accused Stevan Todorovic's Rule 115 Motion for Additional Evidence'" filed by Germany on 1 December 2000, "Response of the Netherlands to 'Accused Stevan Todorovic's Rule 115 Motion for Additional Evidence' filed on 22 November 2000 and the Scheduling Order of 23 November 2000" filed by the Netherlands on 1 December 2000, "Response of the Government of Norway to Scheduling Order of 23 November 2000" filed by Norway on 1 December 2000, "Opposition of the United States of America to Accused Stevan Todorovic's Rule 115 Motion for Additional Evidence" filed by the United States of America on 1 December 2000 (together "the Responses");

NOTING that the Scheduling Order gave liberty to Stevan Todorovic to reply to the Responses by 8 December 2000 and that no such reply was filed;

NOTING that the Defence "moves the Appeals Chamber pursuant to the provision of Rule 115 (A) that additional evidence be presented on review which was not available to it before the Trial Chamber to wit, did the States have actual notice of the application for the binding orders which had been served upon SFOR and did SFOR/NATO advise the States of the application";

NOTING FURTHER that, in the event that the Motion does not succeed, the Defence submits "that an appropriate remedy on the motion, or the Appeals Chamber acting *proprio motu*, is for the Appeals Chamber SsicC issue for SsicC following interrogatories to the States: (a) Was the Defense request for voluntary disclosure of evidence made upon SFOR known to the State seeking review? (b) Was the State seeking review aware of the Motion for Judicial Assistance served upon SFOR? and that the following interrogatories be propounded to NATO/SFOR: (a) Was the Defense request for voluntary disclosure of evidence made upon SFOR referred up to NATO chain of command and made known to the member States? (b) Was notice given NATO member States of the Motion for Judicial Assistance and was the Motion referred up to NATO chain of command and made known to the member States?";

CONSIDERING that the issue is whether the motion for judicial assistance should have been addressed to the States and to NATO, and that this issue is not affected by the circumstance, if it was the case, that as suggested by the Motion, they were aware of the motion for judicial assistance served upon SFOR;

CONSIDERING, therefore, that without dealing with other possible points, the Motion is misconceived;

HEREBY DENIES the Motion.

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

Judge Mohamed Shahabuddeen
Presiding

Dated this thirteenth day of December 2000
At The Hague,
The Netherlands.

[Seal of the Tribunal]