



International Tribunal for the Prosecution of
Persons Responsible for Serious Violations of
International Humanitarian Law Committed in
the Territory of Former Yugoslavia since 1991

Case No. IT-04-78-PT
Date: 3 November 2004
Original: English

IN A SPECIALLY APPOINTED TRIAL CHAMBER

Before: Judge Alphons Orie, Presiding
Judge O-Gon Kwon
Judge Kevin Parker

Registrar: Mr. Hans Holthuis

Decision: 3 November 2004

PROSECUTOR

v.

RAHIM ADEMI

and

MIRKO NORAC

**ORDER FOR FURTHER SUBMISSIONS ON THE GRAVITY OF
THE CRIMES AND THE LEVEL OF RESPONSIBILITY OF THE
ACCUSED**

The Office of the Prosecutor:

Carla del Ponte

Counsel for the Accused:

Čedo Prodanović for Rahim Ademi
Željko Olujić for Mirko Norac

Case No.: IT-04-78-PT

3 November 2004

THIS TRIAL CHAMBER (“the 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 Tribunal”);

NOTING the “Request by the Prosecutor under Rule 11 *bis*,” filed on 2 September 2004 (the “Request”), whereby the Prosecution requests that a Trial Chamber order the referral of the case to the authorities of Croatia, after having given the opportunity to the authorities of Croatia to be heard on the Request and the condition for the referral of the case against Rahim Ademi and Mirko Norac;

NOTING “Mirko Norac’s Response to the Prosecution’s Motion under Rule 11*bis*” filed on 14 September 2004;

NOTING that no response to the Request was received from the defence of Rahim Ademi;

NOTING the “Order Appointing a Trial Chamber for the Purposes of Determining Whether the Indictment Should be Referred to Another Court under Rule 11 *bis*”, filed on 7 September 2004, whereby the President appointed this Chamber to determine whether the case against Rahim Ademi and Mirko Norac shall be referred to the authorities of Croatia pursuant to Rule 11 *bis* of the Rules of Procedure and Evidence (the “Rules”);

NOTING that the crimes charged in the indictment were allegedly committed in Croatia and that the referral requested would fall within Rule 11 *bis* (A)(i) of the Rules; that the requirement under Rule 11 *bis* (A) is therefore met;

NOTING that Rule 11 *bis* (C) of the Rules provides that “[i]n determining whether to refer the case in accordance with paragraph (A), the Trial Chamber shall, in accordance with the Security Council resolution 1534 (2004), consider the gravity of the crimes charged and the level of responsibility of the accused”;

NOTING that the Security Council resolution 1534 (2004) refers to “the transfer of cases involving intermediate and lower rank accused to competent national jurisdictions;”¹

NOTING that the Security Council recommended the ICTY to concentrate “on the prosecution and trial of the most senior leaders suspected of being most responsible for crimes within the ICTY’s

¹ U.N. Doc. S/RES/1534 (2004), para. 6.

jurisdiction and [to transfer] cases involving those who may not bear this level of responsibility to competent national jurisdictions”;²

CONSIDERING that the indictment charges the two accused with two crimes against humanity, including persecutions and murder, and three violations of the laws or customs of war, including murder, plunder of personal property and wanton destruction of cities, towns or villages;

CONSIDERING that 29 unlawful killings of local Serb civilians, 5 unlawful killings of Serb soldiers, cruel and inhumane treatment of 5 individuals, and the destruction of 164 homes and 148 barns, are alleged in support of the charges pressed against the accused; that these criminal acts are presented as mere illustrative examples and do not necessarily accurately reflect the scale of the crimes alleged by the Prosecution;³

CONSIDERING that the accused are charged under all modes of liability listed under Article 7(1) of the Statute, as well as under Article 7(3) of the Statute; that the exact role and level of responsibility of the accused alleged in the commission of the crimes charged may not appear clearly upon a mere reading of the indictment;

NOTING that neither the Prosecution nor the defence have addressed detailed submissions to the gravity of the alleged offences or the level of responsibility of the accused in this case, or to the construction of those two concepts in the context of Rule 11 bis;

CONSIDERING that the Chamber would benefit from submissions on those matters, including whether the level of responsibility refers to the role of the accused in the commission of the alleged offences, or to the position and rank of the accused in the civil or military hierarchy, or both, and whether, in applying Rule 11 *bis* in this case, special weight should be given to any particular matters relating to the gravity of the alleged offences or the level or responsibility of the accused;

² U.N. Doc. S/RES/1503 (2003).

³ The Chamber notes in this respect that the indictment against Janko Bobetko, who was charged with crimes committed during the same operation, states that at least 100 Serbs were unlawfully killed (*The Prosecutor v. Janko Bobetko*, Indictment, Case No. IT-02-62, paras. 27-28).

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 11 *bis* of the Rules,

ORDERS the parties to file further submissions, dealing with the matters identified, by 10 November 2004.

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

Done this Third day of November 2004,
At The Hague,
The Netherlands

[Seal of the Tribunal]



Judge Alphons Orie, Presiding Judge