



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-01-42/2-I

Date: 20th January 2005

Original: English

IN THE SPECIALLY DESIGNATED CHAMBER

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

Registrar: Mr. Hans Holthuis

Order: 20th January 2005

PROSECUTOR
v.
VLADIMIR KOVAČEVIĆ

**ORDER ON THE PROSECUTOR'S REQUEST FOR REFERRAL TO
NATIONAL AUTHORITIES UNDER RULE 11 *bis***

The Office of the Prosecutor:

Ms. Carla del Ponte

Serbia and Montenegro

per: The Embassy of Serbia and Montenegro;
The Hague, The Netherlands

Counsel for the Accused:

Ms. Tanja Radosavljević

THIS 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* for referral of the indictment to another court,” (“the Request”) filed on 28th October 2004, whereby the Prosecution requests that a Trial Chamber order the referral of the case against Vladimir Kovačević (“Accused”) to the authorities of Serbia and Montenegro pursuant to Rule 11*bis* of the Rules of Procedure and Evidence of the International Tribunal (the “Rules”);

NOTING the President’s “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 2nd November 2004, whereby the President designated this Chamber to determine whether the case against the Accused shall be referred to the authorities of Serbia and Montenegro;

NOTING that the indictment attached to the Request is not the current version dated 17th October 2003;

NOTING the “Decision on Provisional Release” issued by Trial Chamber I on 2nd June 2004, which ordered the provisional release of the Accused to Serbia and Montenegro for medical treatment for an initial period of six months, as extended on 2nd December 2004 until further notice, pending the submission of expert medical experts reports on the health of the Accused in order for the Trial Chamber to determine the ability of the Accused to enter a plea and to stand trial;

CONSIDERING that neither the Tribunal’s Statute nor the Rules contain provisions establishing the legal effects of a finding that an accused is incapable of entering a plea or standing trial, and that the legal status of such an accused is therefore yet to be determined by the Trial Chamber under Rule 54 of the Rules;

CONSIDERING that an accused who is found unfit to enter a plea and to stand trial may also be incapable of giving adequate instructions to his or her Defence counsel or to take advice from the counsel for the purposes of handling the procedural and legal issues either at trial or in related applications such as this;

CONSIDERING that the indictment attached to the Request should be replaced by the Second Amended Indictment of 17th October 2003, in which the charges against the Accused are confined to the shelling of Dubrovnik on 6th December 1991;

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 11*bis* of the Rules,

DEFERS its Decision on the Request until further Order;

ORDERS the Prosecution, within two weeks of receipt of this Order,

- (1) to resubmit the Request with the Second Amended Indictment of 17th October 2003;
- (2) to file a written submission stating its position with respect to the legal situation that would arise if the Accused's temporary unfitness to enter a plea and to stand trial were to become more permanent, and to address in this submission the following questions:
 - (a) Would it then be preferable in that situation, and why so, to
 - either *refer* the case to a State under Rule 11*bis* in that situation for any further action,
 - or to *withdraw* the indictment against the Accused before this Tribunal in which case it would be left to any State that may exercise national jurisdiction over the case to decide whether or not it will do so?
 - (b) Would there be any legal impediment against a referral of a case against an Accused who is, at the time of the referral proceedings, unable to instruct counsel, enter a plea and stand trial?

ORDERS the Defence within four weeks from receipt of this Order:

- (1) to clarify its position on its right to appear before the Tribunal on behalf of the Accused if the Accused is found unfit to give adequate instructions to counsel or to take advice for the purpose of entering a plea and standing trial;
- (2) to file a written submission on the issue of whether a case can be referred to national authorities for trial under Rule 11*bis* of the Rules as long as the ability of the Accused to enter a plea and to stand trial cannot be, or has not been, determined; and

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

This twentieth day of January 2005
The Hague,
The Netherlands



Judge Alphons Orie, Presiding Judge

(Seal of the Tribunal)