

IT-97-24-A
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**UNITED
NATIONS**



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: IT-97-24-A
Date: 6 September 2005
Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding Judge
Judge Fausto Pocar
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Andréia Vaz

Registrar: Mr. Hans Holthuis

Order of: 6 September 2005

PROSECUTOR

v.

MILOMIR STAKIĆ

ORDER CONCERNING WITNESS BT106

Counsel for the Prosecutor:
Mr. Mark McKeon

Counsel for the Defence:
Mr. Branko D. Lukić
Mr. John R. Ostojic

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;

BEING SEISED OF the “Prosecution’s Motion to Clarify Confidential Decision on Stakić’s Rule 115 Motion to Admit Additional Evidence on Appeal” filed on 27 July 2005 (“Motion”), in which the Prosecution submits that “there is nothing in the Confidential Decision to indicate that the Appeals Chamber intended to make an exception to the general rule that witness evidence is presented orally” and requests “that the Appeals Chamber clarify the Confidential Decision that the evidence of witness BT106 must be presented orally at the appeals hearing, and that the unsworn transcripts containing his statements are not admissible at the hearing.”¹;

NOTING “Milomir Stakić’s [Confidential] Motion to Admit Additional Evidence Before the Appeals Chamber pursuant to Rule 115”, filed by counsel for Milomir Stakić (“Defence”) on 3 February 2004, in which the Defence requested “that the Appeals Chamber enter an order granting leave for the Appellant to call additional witnesses, pursuant to Rule 115, to testify as to matters contained in the documentary evidence and explain the same, including witness BT106.”²;

NOTING the “Confidential Decision on Stakić’s Rule 115 Motion to Admit Additional Evidence on Appeal” filed on 25 January 2005 in which, *inter alia*, the Appeals Chamber ordered that “the testimony of Witness BT106 be admitted [into evidence] for the purpose of supporting Stakić’s appeal”³;

NOTING that at the Status Conference held on 21 June 2005, the Defence appeared to indicate that it does not intend to call witness BT106⁴;

NOTING that the Defence did not respond to the Motion;

FINDING that the position of the Defence as to whether it intends to call Witness BT106 to testify before the Appeals Chamber is unclear;

¹ Motion, paras 8, 9.

² Milomir Stakić’s Motion to Admit Additional Evidence Before the Appeals Chamber pursuant to Rule 115, p. 11.

³ Confidential Decision on Stakić’s Rule 115 Motion to Admit Additional Evidence on Appeal, para. 18.

⁴ Status Conference on Appeal, 21 June 2005, AT. 37(Private session) [Not official].


CONSIDERING that the Appeals Chamber may decide to call Witness BT106 *proprio motu* pursuant to Rule 98 of the Rules; and that the hearing of this witness may take place in the context of the hearing of the case which is now scheduled for Tuesday 4 October 2005 and Wednesday 5 October 2005⁵;

CONSIDERING that the Defence does have the right to call Witness BT106 (unless it chooses to withdraw his statement); and that, therefore, the Appeals Chamber, before considering other options, must be clear as to whether the Defence intends to exercise its right;

HEREBY ORDERS the Defence to file a brief and concise notice by Thursday 8 September 2005 indicating whether it intends to call Witness BT106 as its own witness.

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

Dated this 6th day of September 2005,
At The Hague,
The Netherlands.



Judge Theodor Meron
Presiding Judge

[Seal of the International Tribunal]

⁵ Scheduling Order of 26 August 2005.