



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-95-12-PT
Date: 8th September 2005
Original: English

IN THE REFERRAL BENCH

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

Registrar: Mr. Hans Holthuis

Decision: 8th September 2005

PROSECUTOR

v.

IVICA RAJIĆ

**DECISION FOR FURTHER INFORMATION IN THE CONTEXT OF
THE PROSECUTOR'S MOTION FOR REFERRAL OF THE CASE
UNDER RULE 11bis**

The Office of the Prosecutor:

Mrs. Carla Del Ponte

The Government of Bosnia and Herzegovina

per: The Embassy of Bosnia and Herzegovina
to The Netherlands, The Hague

Counsel for the Accused:

Mr. Željko Olujić
Ms. Doris Košta

THE REFERRAL BENCH 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”, filed *partly confidentially* on 28th July 2005, whereby the Prosecution requests that the Referral Bench order the referral of the case against Mr. Ivica Rajić (“the Accused”) to the authorities of Bosnia and Herzegovina;

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 17th August 2005, whereby the President appointed this Referral Bench to determine whether the case against the Accused shall be referred to the authorities of Bosnia and Herzegovina pursuant to Rule 11*bis* of the Rules of Procedure and Evidence (“the Rules”);

NOTING the “Response to the Request by the Prosecution under Rule 11*bis* for Referral of the Indictment to Another Court”, (“the Response”) filed by the Defence Counsel for the Accused on 8th August 2005, whereby the Defence opposes the Prosecution’s Request for Referral and submits, alternatively, that the case be referred to the Republic of Croatia should the Referral Bench decide to grant the Request;

NOTING the Prosecution’s “Request For Leave To Reply To Defence Response To The Request By The Prosecution Under Rule 11*bis* For Referral Of The Indictment To Another Court”, filed on 15th August 2005, in which the Prosecution submits that the Referral Bench should disregard the Defence Response and opposes any intervention by the Republic of Croatia in this proceeding;

CONSIDERING that pursuant to Rule 11*bis* of the Rules and in view of Security Council Resolutions 1534(2004) and 1503(2003) the evaluation of whether a case should be referred to the authorities of a State is a two-step process, requiring consideration of (1) whether the gravity of the crimes charged and the level of responsibility of the Accused renders the case appropriate for referral because it involves intermediate or lower-rank accused, and (2) whether the State to which the Prosecution seeks to refer the case is a competent national jurisdiction whose legal system is compatible with the requirements of Rule 11*bis*(B);

CONSIDERING that the Referral Bench wishes to obtain submissions on both the issue of the gravity of the crimes and the level of responsibility of the Accused and the compatibility of the legal system of Bosnia and Herzegovina with Rule 11*bis*(B);

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 11*bis* and 54 of the Rules,

I. ORDERS the Parties and **INVITES** the Government of Bosnia and Herzegovina to file submissions by 19th September 2005 at noon on the following questions, including their views on the weight to be given to each of them:

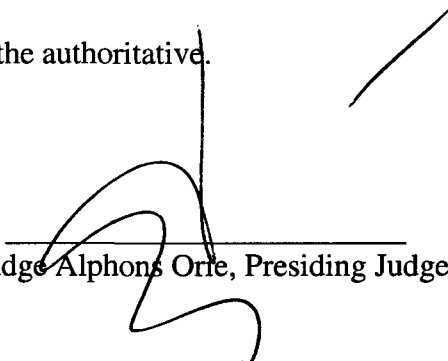
1. Is the gravity of the crimes charged in the Indictment compatible with referral of the case to another court under Rule 11*bis* of the Rules?
2. Is the level of the responsibility of the Accused compatible with referral of the case to another court under Rule 11*bis* of the Rules? In particular, does Rule 11*bis*(C) refer 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 to both?

II. In relation to the compatibility of the legal system of Bosnia and Herzegovina with Rule 11*bis*(B), **ORDERS** the Parties and **INVITES** the Government of Bosnia and Herzegovina to file written submissions on any matter which the Parties or the Government of Bosnia and Herzegovina respectively may deem relevant to the proceedings for referral in the present case by 19th September 2005 at noon. With respect to any matter previously discussed by the Referral Bench in the following decisions: *Prosecutor v. Radovan Stanković, Case No IT-96-23/2-PT*, “Decision on Referral of Case under Rule 11*bis*”, 17 May 2005; *Prosecutor v. Mitar Rašević and Savo Todović, Case No IT-97-25/1-PT*, “Decision on Referral of Case under Rule 11*bis* with Confidential Annexes I and II”, 8 July 2005; *Prosecutor v. Željko Mejakić, Momčilo Gruban, Dušan Fuštar and Duško Knežević, Case No IT-02-65-PT*, “Decision on Prosecutor’s Motion for Referral of Case pursuant to Rule 11*bis*” 20 July 2005; and *Prosecutor v. Gojko Janković Case No IT-96-23/2-PT*, “Decision on Referral of Case under Rule 11*bis*”, 22 July 2005, submissions may be made by reference to views expressed in one or more of those decisions, to which may be added any further element or argument which it is desired to raise;

III. ORDERS the Parties to prepare oral submissions on the Prosecution’s request for referral at the hearing scheduled for 20th September 2005, and **INVITES** the Government of Bosnia and Herzegovina to indicate whether they would like to make further submissions orally at the hearing on the Prosecution’s Request; and

IV. REQUESTS the Registrar to transmit this decision immediately to the Government of Bosnia and Herzegovina.

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



Judge Alphons Orre, Presiding Judge

Dated this eighth day of September 2005
At The Hague,
Netherlands

[Seal of the Tribunal]