

UNITED  
NATIONS

IF97-24-A  
A 4452 - A4448  
20 SEPTEMBER 2005

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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: 20 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

**Decision of:** 20 September 2005

**THE PROSECUTOR**

v.

**MILOMIR STAKIĆ**

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**DECISION TO SUMMON A WITNESS *PROPRIO MOTU***

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**Counsel for the Prosecutor:**  
Mr. Mark McKeon

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

Case No. IT-97-24-A

20 September 2005

**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,

**NOTING** the “Prosecution’s Motion to Clarify Confidential Decision on Stakić’s Rule 115 Motion to Admit Additional Evidence on Appeal” filed confidentially by the Prosecution on 27 July 2005;

**NOTING** the Scheduling Order issued by the Appeals Chamber on 26 August 2005, informing the parties that the hearing of this case will take place on Tuesday 4 October 2005 and Wednesday 5 October 2005;

**NOTING** the “Order Concerning Witness BT106”, issued by the Appeals Chamber on 6 September 2005;

**NOTING** “Milomir Stakić’s Submission Relative to Witness BT106, Pursuant to the Appeals Chamber’s Order of 6 September 2005” filed partly confidentially by counsel for Stakić (“Defence”) on 9 September 2005 (“Submission”);

**NOTING** the “Prosecution’s Response to Milomir Stakić’s Submission Relative to Witness BT106” filed by the Prosecution on 15 September 2005 (“Response”);

**CONSIDERING** that in the Submission, the Defence states that it does not intend to call Witness BT106;<sup>1</sup>

**CONSIDERING** that under Rules 98 and 107 of the Rules of Procedure and Evidence of the International Tribunal (“Rules”), the Appeals Chamber has the power to call a witness *proprio motu*;

**CONSIDERING** that in the “Confidential Decision on Stakić’s Rule 115 Motion to Admit Additional Evidence on Appeal” issued on 25 January 2005 (“Rule 115 Decision”), the Appeals Chamber, *inter alia*, ordered that “the testimony of Witness BT106 be admitted [into evidence] for the purpose of supporting Stakić’s appeal”;<sup>2</sup>

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<sup>1</sup> See Submission, para 4.

<sup>2</sup> Rule 115 Decision, para. 18.

**CONSIDERING** that in the Rule 115 Decision, the Appeals Chamber, when referring to the content of the statements by Witness BT106 which it admitted into evidence, held that “[t]hese statements are clearly relevant to the question of Stakić’s culpability for the crimes committed in Prijedor Municipality”;<sup>3</sup>

**FINDING** that hearing Witness BT106 may help the Appeals Chamber to assess the reliability of the admitted statements, which concern core issues of this case;

**HEREBY DECIDES**, pursuant to Rules 98 and Rule 107 of the Rules, to summon Witness BT106 as a witness *proprio motu*;

**NOTING** further that in the Submission, the Defence requests that (i) “the Defence be granted the authorization and necessary resources to travel to the jurisdiction where Witness BT106 is...and interview him...”; that (ii) “the appeals hearings scheduled for 4 October 2005 and 5 October 2005 be continued at least 30 days to permit the Defence to meet and interview the witness...” and (iii) “...the appeals hearing be extended an additional 2-3 days if Witness BT106 shall not testify *viva voce*, or 3-4 days if Witness BT106 is to testify *viva voce*, so as to permit adequate time for the Defence to introduce and present the necessary oral submissions and evidence” (“Requests”);<sup>4</sup>

**CONSIDERING** that the two-day period currently allotted for the appeal hearing is consistent with periods allotted in other similar cases and that the effectiveness of the parties’ submissions does not depend on their length;

**CONSIDERING** that the parties are neither required nor encouraged to repeat all of the arguments contained in the written submissions during the hearing of the appeal but to focus on the issues that they consider most important;

**CONSIDERING** further that the Defence has not identified any persuasive grounds to show that extra time is necessary for the adequate presentation of their arguments on the merits of this appeal;

**FINDING** that, in view of the foregoing, there are no cogent reasons for granting additional days for the hearing of the appeal on the merits;

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<sup>3</sup> Rule 115 Decision, para. 10.

<sup>4</sup> See Submission, para. 6.

**CONSIDERING** that there is no question that the Defence should be allowed to contact Witness BT106 or any other witness necessary for the preparation of its case;

**FINDING** however, that it is not the role of the Appeals Chamber to either provide “authorization” to contact a witness, nor to provide the means to facilitate that contact;

**CONSIDERING** that the issue of whether Witness BT106 should be heard was first raised by the Defence in its Rule 115 Motion<sup>5</sup> and, subsequently, by the Prosecution in communications to the Defence<sup>6</sup> and in a motion before the Appeals Chamber<sup>7</sup>, during the Status Conference held on 21 June 2005<sup>8</sup> and finally in the Order of the Appeals Chamber dated 6 September 2005;<sup>9</sup>

**CONSIDERING** that due diligence required the Defence to contact Witness BT106 to verify the context and reliability of Witness BT106’s statement, prior to asking the Appeals Chamber to admit this statement in the Rule 115 Motion;

**CONSIDERING** that the Defence has been on notice for several months of the possibility that Witness BT106 might be heard as this issue has been discussed among the parties at least since the 23 February 2005 Status Conference;<sup>10</sup>

**CONSIDERING** that, as noted in the Response, the Defence can still contact Witness BT106 in The Hague before the hearing;<sup>11</sup>

**FINDING** that, in light of all the above reasons, there is no basis for granting the Requests;

**HEREBY REJECTS** the Requests; **ORDERS** that Witness BT106 shall be present at the hearing on 4 October 2005 at 9a.m.; **DIRECTS** the Registry to take all the necessary measures to facilitate the

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<sup>5</sup>*Prosecutor v. Milomir Stakić*, Case No. IT-97-24-A, “Milomir Stakić’s Motion to admit additional evidence before the Appeals Chamber pursuant to Rule 115”, filed confidentially on 3 February 2004. On page 12, 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.”

<sup>6</sup>See Attachment to the Response.

<sup>7</sup>*Prosecutor v. Milomir Stakić*, Case No. IT-97-24-A, “Prosecution’s Motion to clarify Confidential Decision on Stakić’s Rule 115 Motion to admit additional evidence on Appeal” filed on 27 July 2005.

<sup>8</sup>Status Conference on Appeal, 21 June 2005, p. 37(Private session) [Not official].

<sup>9</sup>The Appeals Chamber stated “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 the 4<sup>th</sup> and 5<sup>th</sup> of October 2005”, see *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-A, “Order Concerning Witness BT106”, filed on 6 September 2005, p. 2.

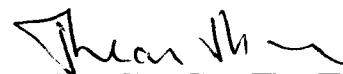
<sup>10</sup>See Response para. 5 and Attachment.

<sup>11</sup>See, Response para. 4.

presence of Witness BT106 at the hearing and **INFORMS** Witness BT106 that if desired, witness' counsel may be present during his testimony.

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

Dated this 20<sup>th</sup> day of September 2005,  
At The Hague,  
The Netherlands.

  
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Judge Theodor Meron  
Presiding Judge

**[Seal of the International Tribunal]**