



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 No. IT-97-25/1-AR11bis.1
Date: 23 February 2006
Original: English

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Mehmet Güney
Judge Liu Daqun
Judge Andréia Vaz
Judge Wolfgang Schomburg

Registrar: Mr. Hans Holthuis

Decision of: 23 February 2006

PROSECUTOR

v.

SAVO TODOVIĆ

**DECISION ON SAVO TODOVIĆ'S SUPPLEMENTAL
SUBMISSION CONCERNING THE RULE 11BIS APPELLATE
PROCEEDINGS**

Counsel for the Prosecution:

Ms. Susan L. Somers
Mr. Mark J. McKeon

Counsel for the Appellant:

Mr. Aleksandar Lazarević

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 (“Appeals Chamber” and “International Tribunal”, respectively),

NOTING the appeal¹ filed by Savo Todović (“Appellant”) against the “Decision on Referral of Case under Rule 11*bis* with Confidential Annexes I and II” rendered by the Referral Bench on 8 July 2005 (“Impugned Decision”);

BEING SEIZED of “Savo Todović’s Defence Supplemental Submission Concerning Certain New Information in the Context of the Ongoing Rule 11*bis* Appellate Proceedings” filed by the Appellant on 24 January 2006 (“Supplemental Submission”), in which the Appellant seeks leave to supplement the previous submissions made in his Appellant’s Brief and Reply Brief with certain information;²

NOTING the “Prosecutor’s Response to ‘Savo Todović’s Defence Supplemental Submission Concerning Certain New Information in the Context of the Ongoing Rule 11*bis* Appellate Proceedings’” filed on 31 January 2006 (“Prosecution’s Response”);

NOTING that no reply was filed by the Appellant;

NOTING that some of the information in the Supplemental Submission, which the Appellant seeks to submit includes, *inter alia*, the following assertions: (a) that “the Defence understands that the Detention Unit [of the Bosnia and Herzegovina State Court in Sarajevo] currently has no space to accommodate any new inmates;”³ (b) that on 21 December 2005, during the “Hayat” television news broadcast, the President of the Bosnia and Herzegovina State Court in Sarajevo stated that the funds and facilities available to the court were insufficient;⁴ and (c) that Counsel for the Appellant has been informed by Mr. Rupert Skilbeck from the Bosnia and Herzegovina State Court Criminal

¹ See *Prosecutor v. Mitar Rašević and Savo Todović*, Case No.: IT-97-25/1-AR11*bis*.1, Savo Todović’s Defence Notice of Appeal, 25 July 2005; Appellant’s Brief, 9 August 2005 (“Appellant’s Brief”); see also Defence Reply Brief, 26 August 2005 (“Reply Brief”).

² Supplemental Submission, paras 6, 7.

³ Supplemental Submission, para. 10. See also para. 8 where the Appellant submits that the general presumption was that —if transferred to Bosnia and Herzegovina—he would be transferred to the Detention Unit of the Bosnia and Herzegovina State Court in Sarajevo.

⁴ Supplemental Submission, para. 11.

Defence Section that the fees for professional services of counsel representing indigent accused persons can only be paid at the conclusion of each case;⁵

NOTING that the Prosecution submits in response that: (a) the Appellant has failed to state any grounds that would justify granting the relief sought, either substantial or procedural;⁶ (b) the Supplemental Submission does not supplement the legal arguments advanced in the Appellant's Brief but rather seeks to expand the factual record with entirely new material;⁷ and (c) the Appellant has contravened the Rules in light of the fact that he seeks to rely upon this new material without invoking Rule 115 of the Rules of Procedure and Evidence of the International Tribunal ("Rules");⁸

RECALLING that the Appeals Chamber has previously held that if an appellant requires a substantive amendment to supplement his Appellant's Brief, he or she may, pursuant to Rule 127(A)(ii) and (B) of the Rules, "file [the] said supplement with a request that the Appeals Chamber recognize the late filing of this part of the Appellant's Brief as validly filed on condition that the [appellant] provide[s] sufficient reasons constituting good cause for the Appeals Chamber to do so";⁹

CONSIDERING that the Supplemental Submission states that the Appellant "has come into possession of certain information" which is relevant to the present proceedings and in particular the "fair trial standard;"¹⁰

CONSIDERING that in order for the said information to become part of the record, it has to be admitted as additional evidence on appeal pursuant to Rule 115 of the Rules;¹¹

CONSIDERING that even if the Appellant had submitted the Supplemental Submission as additional evidence through the procedures envisaged in Rule 115 of the Rules, he has failed to provide sufficient arguments substantiating his assertions that the information and factual allegations raised therein are relevant to his appeal against the Impugned Decision and "raise

⁵ Supplemental Submission, para. 12.

⁶ Prosecution's Response, para. 2.

⁷ Prosecution's Response, para. 4.

⁸ Prosecution's Response, paras 6, 8.

⁹ *Prosecutor v. Željko Mejakić et al.*, Case No.: IT-02-65-AR11bis.1, Decision on Joint Defence Motion for Enlargement of Time to File Appellant's Brief, 30 August 2005, p. 3.

¹⁰ Supplemental Submission, paras 6, 7. The Appellant also claims that this information is relevant to issues relating to his pre-trial detention and funding.

¹¹ *Prosecutor v. Radovan Stanković*, Case No.: IT-96-23/2-AR11bis.1, Decision on Rule 11bis Referral, 1 September 2005, para. 37.

additional concerns [...] as to the fairness of proceedings before the [Bosnia and Herzegovina State Court in Sarajevo];”¹²

FINDING therefore that the Appellant has failed to demonstrate good cause for the Appeals Chamber to accept the Supplemental Submission as validly filed within the meaning of Rule 127(A)(ii) and (B) of the Rules;

FOR THE FOREGOING REASONS,

HEREBY DIMISSES the Supplemental Submission.

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

Done this twenty third day of February 2006,
At The Hague,
The Netherlands.



Judge Fausto Pocar
Presiding

[Seal of the International Tribunal]

¹² See Supplemental Submission, paras 6, 14.