



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-PT
Date: 31 May 2006
Original: English

IN THE REFERRAL BENCH

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

Registrar: Mr. Hans Holthuis

Decision of: 31 May 2006

PROSECUTOR

v.

**SAVO TODOVIĆ
MITAR RAŠEVIĆ**

DECISION ON RULE 11*bis* REFERRAL

The Office of the Prosecutor:

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

Counsel for the Accused:

Mr. Aleksandar Lazarević for Savo Todović
Mr. Vladimir Domazet for Mitar Rašević

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 (“Tribunal”);

BEING SEIZED of the “Motion by The Prosecutor under Rule 11*bis* with Annexes I, II, III and Confidential Annexes IV, V, and VI”, filed 1 November 2004 in the case against the Accused Savo Todović (“Accused”) (“Todović Motion for Referral”), and the “Motion by The Prosecutor under Rule 11*bis* with Annexes I and II and Confidential Annexes III and IV”, filed 4 November 2004 in the case against the Accused Mitar Rašević (“Rašević Motion for Referral”);

NOTING the “Decision on Referral of Case under Rule 11*bis* with Confidential Annexes I and II” rendered by the Referral Bench and filed partly confidentially on 8 July 2005 (“Referral Bench Decision”), in which the Referral Bench, pursuant to Rule 11*bis* of the Rules of Procedure and Evidence (“Rules”), ordered the case of *Prosecutor v. Mitar Rašević and Savo Todović* to be referred to the authorities of the State of Bosnia and Herzegovina, so that those authorities should forthwith refer the case to the appropriate court for trial within Bosnia and Herzegovina;

NOTING the “Decision on Rule 11*bis* Referral” rendered by the Appeals Chamber on 23 February 2006 (“Appeals Chamber Decision”), in which the Appeals Chamber:

- a) quashed the Referral Bench Decision with respect to the Accused Savo Todović,
- b) remitted the matter to the Referral Bench for further consideration consistent with the Appeals Chamber Decision,
- c) directed the Referral Bench to defer issuance of any further decision on referral of this case pursuant to Rule 11*bis* of the Rules until Trial Chamber II (“Trial Chamber”) seized of the Accused’s Defence Preliminary Motion on the Form of the Joint Amended Indictment (“Motion on the Form of the Joint Amended Indictment”) renders a decision, and
- d) suspended the execution of the Referral Bench’s Decision with respect to the Accused Mitar Rašević until a decision on the Motion on the Form of the Joint Amended Indictment has been rendered and a decision confirming the operative indictment is issued;

NOTING the “Order on Operative Indictment” subsequently issued by the Trial Chamber on 7 April 2006 (“Order on Operative Indictment”), in which the Trial Chamber ordered that the Second Joint Amended Indictment shall be the operative indictment (“Operative Indictment”) in the

case against the Accused Savo Todović and Mitar Rašević;

NOTING the “Order to File Submissions on Effect of Operative Indictment in Rule 11*bis* Referral of the Case Against the Accused Savo Todović”, issued by the Trial Chamber on 27 April 2006 (“Order to File Submissions”), in which the Trial Chamber ordered the parties to address what effect the Operative Indictment had on the conclusions reached by the Referral Bench Decision with respect to the gravity of the crimes charged and the level of responsibility of the Accused Savo Todović, and with respect to the consideration of referral to Bosnia and Herzegovina;

NOTING the “Prosecutor’s Submission Pursuant to Chamber’s Order to File Submissions on Effect of Operative Indictment in Rule 11*bis* Referral of the Case Against the Accused Savo Todović of 27 April 2006”, filed 4 May 2006, in which the Office of the Prosecutor (“Prosecution”) submits that the Operative Indictment:

- a) only specified and clarified the position of the Accused and details of the alleged crimes, but had no effect on the Referral Bench’s findings of 8 July 2005 as to the gravity of the crimes charged or the level of responsibility of the Accused Savo Todović, and
- b) had no effect on the Referral Bench’s findings of 8 July 2005 relating to the consideration of referral to Bosnia and Herzegovina, including considerations of a fair trial, non-imposition of the death penalty, the applicable law, witness protection and conditions of detention;

NOTING the “Defence’s Submission on Effect of Operative Indictment in Rule 11*bis* Referral of the Case Against the Accused Savo Todović” filed 11 May 2006 (“Defence’s Submission”), in which Defence Counsel for the Accused Savo Todović (“Defence”) submits:

- a) that while the Operative Indictment clarified the allegations against the Accused and the level of his responsibility, it did not change the Defence’s earlier position that the gravity of the crimes charged and the level of responsibility of the Accused Savo Todović render the case inappropriate for referral, and
- b) that due to concerns expressed in the First Report prepared by the Organization for Security and Cooperation in Europe Mission to Bosnia and Herzegovina in the case of Gojko Janković¹ (“OSCE Report”), relating to the consideration of referral to Bosnia and Herzegovina, the Referral Bench should reconsider its position taken in the Referral Bench Decision and deny the Todović Motion for Referral in its entirety;

¹ *Prosecutor v. Gojko Janković* (IT-96-23/2-PT), Prosecutor’s Second Progress Report, 3 May 2006, Annex A: OSCE First Report, Case of Defendant Gojko Janković, Transferred to the State Court Pursuant to Rule 11*bis*, April 2006.

NOTING in the Referral Bench Decision, the following order (“Order”) in the Disposition:

ORDERS the Prosecution to continue its efforts in cooperation with the Organization for Security and Cooperation in Europe, or another international organisation of notable standing, to ensure the monitoring and reporting on the proceedings of this case before the State Court of Bosnia and Herzegovina. If arrangements for monitoring and reporting should prove ineffective, the Prosecutor should seek further direction from the Referral Bench;

RECALLING in this respect the Appeals Chamber’s decisions in *Prosecutor v. Radovan Stanković*, *Prosecutor v. Gojko Janković* and *Prosecutor v. Željko Mejakić et al.*;²

CONSIDERING that both the Prosecution and the Defence agree that the amendments provided by the Operative Indictment have no effect on the Referral Bench’s findings of 8 July 2005 as to the gravity of the crimes charged or the level of responsibility of the Accused Savo Todović,

CONSIDERING the merits of the Todović Motion for Referral in light of the Operative Indictment;

CONSIDERING FURTHER the submissions of the Prosecution and Defence, in particular the OSCE Report as requested by the Defence;

FINDING that the Order should have read:

ORDERS the Prosecution to continue its efforts to ensure the monitoring and reporting on the proceedings of this case before the State Court of Bosnia and Herzegovina;

FINDING that the conclusions reached by the Referral Bench with respect to the gravity of the crimes charged and the level of responsibility of the Accused Savo Todović and with respect to the consideration of referral to Bosnia and Herzegovina remain unchanged from those set forth in the Referral Bench Decision;

FINDING FURTHER that while the relevant effect of the OSCE Report is to recommend some changes or improvements in some areas, it does not provide a basis for changing the conclusion of the Referral Bench that the conditions exist for a fair trial if this case is referred to Bosnia and Herzegovina.

FOR THE FOREGOING REASONS,

PURSUANT to Rule 11*bis* of the Rules;

² *Prosecutor v. Radovan Stanković*, Case No. IT-96-23/2.AR11*bis*.1, Decision on Rule 11 *bis* referral, 1 Sep 2005, paras 55-59; *Prosecutor v. Gojko Janković*, Case No. IT-96-23/2-AR11*bis*.2, Decision on Rule 11 *bis* referral, 15 Nov 2005, paras 58-62; *Prosecutor v. Željko Mejakić et al.*, Case No. IT-02-65-AR11*bis*.1, Decision on joint Defence appeal against decision on referral under Rule 11 *bis*, 7 Apr 2006, paras 95-96.

ORDERS that the disposition of the earlier Referral Bench “Decision on Referral of Case under Rule 11 *bis* with Confidential Annexes I and II”, rendered 8 July 2005, amended for the reasons specified hereinabove to replace the following Disposition:

ORDERS the Prosecution to continue its efforts in cooperation with the Organization for Security and Cooperation in Europe, or another international organisation of notable standing, to ensure the monitoring and reporting on the proceedings of this case before the State Court of Bosnia and Herzegovina. If arrangements for monitoring and reporting should prove ineffective, the Prosecutor should seek further direction from the Referral Bench;

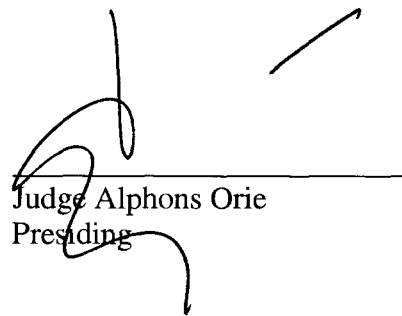
by:

ORDERS the Prosecution to continue its efforts to ensure the monitoring and reporting on the proceedings of this case before the State Court of Bosnia and Herzegovina;

be reinstated insofar as it pertains to Savo Todović.

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

Done this thirty-first day of May 2006,
At The Hague,
The Netherlands



Judge Alphons Orie
Presiding

[Seal of the Tribunal]