



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-96-23/2-PT
Date: 13 September 2006
Original: English

IN THE REFERRAL BENCH

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

Registrar: Mr. Hans Holthuis

Decision of: 13 September 2006

PROSECUTOR

v.

DRAGAN ZELENOVIĆ

**DECISION ON DEFENCE MOTION TO VACATE ORDER FOR
FURTHER INFORMATION IN THE CONTEXT OF
PROSECUTOR'S MOTION PURSUANT TO RULE 11BIS**

The Office of the Prosecutor:

Ms. Carla del Ponte
Ms. Hildegard Uertz-Retzlaff

Counsel for the Accused:

Mr. Zoran Jovanović

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 “Defence Motion to Vacate Order for Further Information in the Context of Prosecutor’s Motion Pursuant to Rule 11*bis*” (“Motion”), filed by Counsel for Dragan Zelenović (“Defence” and “Accused”, respectively) on 8 September 2006, requesting that the Referral Bench postpone the deadline to file written submissions set in the “Order for Further Information in the Context of Prosecutor’s Motion Pursuant To Rule 11*bis*” (“Order”) of 17 August 2006, for a period of 45 days starting from 22 September 2006;

NOTING the submission of the Defence that it needs more time to analyse material disclosed by the Office of the Prosecutor (“Prosecution”) and “to take statements from the potential witnesses which would, as in the case of Prosecution witnesses, contain clear position related to the necessity of order for protective measures and in order for the Defence to give explanation with arguments with reference to the issue and act in accordance with the Order of the Referral Bench”;¹

NOTING that the matters in respect of which submissions are to be made by the Defence pursuant to the Order are confined to the following questions:

- “1. Would the substantive law applicable to the case be the criminal code that was in force in April 1992 or the current criminal code?
2. What are the mechanisms by which the courts in Bosnia and Herzegovina could apply international treaty or customary law in domestic proceedings?
3. What protective measures are expected to be needed for (Defence) witnesses in view of a potential hearing in Bosnia and Herzegovina?
4. Does the level of intrastate mutual assistance in criminal matters, or as far as necessary interstate mutual assistance, sufficiently facilitate a fair trial, especially with respect to summoning witnesses and taking witnesses’ depositions?
5. Would any issue of due process arise if the Tribunal indictments are received without prior investigations in Bosnia and Herzegovina? Can the proceedings in this case continue from the

¹ Motion, para. 12.

stage they currently are before the Tribunal or is there a need for some pre-trial investigatory steps to be taken or repeated?

6. Would it be possible for counsel presently retained to continue to represent the Accused if the case is transferred to Bosnia and Herzegovina?

7. Would observers sent by the Prosecution, in accordance with Rule 11*bis*, be considered by the Defence an appropriate and sufficient tool to monitor and fairness of the proceedings before BiH State Court?

8. Any other relevant issue, including matters which would have been addressed in a response to the Motion.”;²

CONSIDERING that the evaluation of whether a case should be referred to the authorities of a State pursuant to Rule 11*bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”), in contrast with the preparation of a case for trial as such, is based on the case made by the Prosecution in respect of (1) the gravity of the crimes charged and the level of responsibility of the Accused and (2) whether the State to which the Prosecution seeks to refer the case is a competent domestic jurisdiction whose legal system is compatible with the requirements of Rule 11*bis* (B);

CONSIDERING that at this stage, there is thus no need for the Defence to conduct its own investigation or take statements from potential witnesses in order to answer the Referral Bench’s questions;

² Order for Further Information in the Context of Prosecutor’s Motion Pursuant To Rule 11*bis*, 17 August 2006, pp. 5, 6.

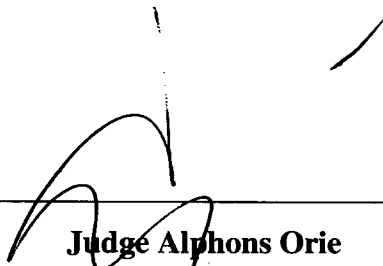
FOR THE FOREGOING REASONS**PURSUANT TO** Rules 11*bis* and 54 of the Rules**DENIES** the Motion and **ENJOINS** the Defence to file written submissions in response to the Referral Bench's Order no later than 22 September 2006.

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

Dated this thirteenth day of September 2006

At The Hague

The Netherlands



Judge Alphons Orié
Presiding Judge

[Seal of the Tribunal]