



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 RULE 11bis REFERRAL

Counsel for the Prosecution:

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

Counsel for the Appellant:

Mr. Aleksandar Lazarević

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1. The Appeals Chamber of the International Criminal 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) is seised of an appeal by Savo Todović (“Appellant”) against the “Decision on Referral of Case under Rule 11bis with Confidential Annexes I and II”, rendered by the Referral Bench on 8 July 2005 (“Impugned Decision”).¹

I. PROCEDURAL BACKGROUND

2. The Appellant was originally jointly charged with Mitar Rašević and Milorad Krnojelac in an indictment that was confirmed on 17 June 1997.² On 12 May 2004, pursuant to a decision of a Trial Chamber,³ the Prosecution filed an amended indictment against the accused Mitar Rašević only⁴ which was confirmed by the Trial Chamber.⁵

3. In November 2004, the Prosecution filed motions for the referral of the cases against the Appellant and Mitar Rašević to the authorities of Bosnia and Herzegovina pursuant to Rule 11bis of the Rules of Procedure and Evidence (“Rules”) while the Appellant was still at large⁶ and the President of the International Tribunal appointed a Referral Bench for the purpose of determining whether the cases should be referred to the authorities of Bosnia and Herzegovina.⁷

4. On 15 January 2005, the Appellant surrendered to the International Tribunal. On 14 April 2005, the Referral Bench issued a decision ordering the parties, and inviting the Government of Bosnia and Herzegovina to submit responses to specific questions.⁸ All the responses were filed on

¹ See *Prosecutor v. Mitar Rašević and Savo Todović*, Case No.: IT-97-25/1-AR11bis.1, Savo Todović’s Defence Notice of Appeal, 25 July 2005; Appellant’s Brief, 9 August 2005.

² *Prosecutor v. Krnojelac et al.*, Case No.: IT-97-25/1-I, Indictment, filed on 11 June 1997 and confirmed on 17 June 1997 (“Original Indictment”).

³ *Prosecutor v. Mitar Rašević*, Case No.: IT-97-25/1-PT, Decision Regarding Defence Preliminary Motion on the Form of the Indictment, 28 April 2004.

⁴ *Prosecutor v. Mitar Rašević*, Case No.: IT-97-25/1-PT, Amended Indictment, 12 May 2004.

⁵ *Prosecutor v. Mitar Rašević*, Case No.: IT-97-25/1-PT, Decision on the “Defence’s Preliminary Motion Pursuant to the Rules 50(C) and 72(A)(ii)” of 10 June 2004, 27 July 2004.

⁶ *Prosecutor v. Savo Todović*, Case No.: IT-97-25-1/I, Motion by the Prosecutor Under Rule 11 bis (A), 1 November 2004; *Prosecutor v. Mitar Rašević*, Case No.: IT-97-25/1-PT, Motion by the Prosecutor Under Rule 11 bis With Annexes I and II and Confidential Annexes III and IV, *Partly Confidential*, 4 November 2004 (together: “Motions for Referral”).

⁷ *Prosecutor v. Savo Todović*, Case No.: IT-97-25-1/I, Order Appointing a Trial Chamber for the Purpose of Determining Whether an Indictment Should be Referred to Another Court Under Rule 11 bis, 2 November 2004; see also Corrigendum to Order Appointing a Trial Chamber for the Purpose of Determining Whether the Indictment Should be Referred to Another Court Under Rule 11 bis, 3 November 2004; *Prosecutor v. Mitar Rašević*, Case No.: IT-97-25/1-PT, Order Appointing a Trial Chamber for the Purpose of Determining Whether the Indictment Should be Referred to Another Court Under Rule 11 bis, 5 November 2004.

⁸ *Prosecutor v. Mitar Rašević and Savo Todović*, Case No.: IT-97-25/1-PT, Decision for Further Information in the Context of the Prosecutor’s Motions Under Rule 11 bis, 14 April 2005.

28 April 2005.⁹ On 9 May 2005, the Government of Serbia and Montenegro filed a submission requesting referral of the case to its authorities and that it be invited to participate in the hearing scheduled for 12 May 2005.¹⁰ On 12 May 2005, a hearing pursuant to Rule 11*bis* of the Rules was held.¹¹ In addition to the parties, representatives of the Governments of Bosnia and Herzegovina and of Serbia and Montenegro were present. Further submissions were filed following the Rule 11*bis* hearing.¹²

5. Meanwhile, on 23 March 2005, the Pre-Trial Judge of the Trial Chamber seized of the case, ordered the Prosecution to “file a motion for leave to amend the indictment [against the Appellant] by 29 April 2005, [and to] therein reconcile the indictment against [Savo] Todović and the amended indictment against [Mitar] Rašević.”¹³ The Trial Chamber subsequently considered that the charges against the Appellant and Mitar Rašević should be addressed in a joint indictment, and ordered the Prosecution to file a new motion for leave to amend and to join the Proposed Amended Indictment with the amended indictment against Mitar Rašević.¹⁴ The new motion was filed on 25 May 2005, and contained the proposed Joint Amended Indictment attached as Annex A.¹⁵

6. On 27 June 2005, the Appellant filed a motion before the Trial Chamber pursuant to Rule 72(A)(ii) of the Rules alleging defects in the form of the proposed Joint Amended Indictment and raising several objections, *inter alia*, on grounds of vagueness and lack of specificity, and requesting the Trial Chamber to order the Prosecution to amend the proposed Joint Amended

⁹ *Prosecutor v. Mitar Rašević and Savo Todović*, Case No.: IT-97-25/1-PT, Prosecution’s Further Submissions Pursuant to Chamber’s Decision of 14 April 2005, 28 April 2005; Savo Todović’s Defence Response to Prosecution’s 11*bis* Motion and Defence’s Submission of Further Information in Accordance with the Referral Bench’s Decision of 14 April 2005 and in the Context of the Prosecutor’s Motion under Rule 11*bis*, 28 April 2005; Response by the Government of Bosnia and Herzegovina (BiH) to Questions Posed by the Referral Bench in its Decision of 14 April 2005, 28 April 2005.

¹⁰ *Prosecutor v. Mitar Rašević and Savo Todović*, Case No.: IT-97-25/1-PT, Serbia and Montenegro’s Submission in the Proceedings under Rule 11*bis*, 9 May 2005.

¹¹ *Prosecutor v. Mitar Rašević and Savo Todović*, Case No.: IT-97-25/1-PT, Rule 11*bis* Motion Hearing, 12 May 2005 (“Rule 11*bis* Hearing”).

¹² See Impugned Decision, para. 12.

¹³ *Prosecutor v. Mitar Rašević and Savo Todović*, Case No.: IT-97-25/1-PT, Order, 23 March 2005, p. 2. On 20 April 2005, the Prosecution filed its Prosecution’s Motion for Leave to Amend the Original Indictment With Attached Annexes A and B and Confidential Annexes C and D. The proposed amended indictment against the Appellant (“Proposed Amended Indictment”) was annexed to the motion as Annex A.

¹⁴ *Prosecutor v. Mitar Rašević and Savo Todović*, Case No.: IT-97-25/1-PT, Order on the Partly Confidential Prosecution’s Motion for Leave to Amend the Original Indictment, 17 May 2005, p. 2.

¹⁵ *Prosecutor v. Mitar Rašević and Savo Todović*, Case No.: IT-97-25/1-PT, Prosecution’s Motion for Leave to Amend the Operative Indictments with attached Annexes A and B And Confidential Annexes C and D, 25 May 2005 (“Motion for Leave to File the Joint Amended Indictment”); Annex A: Proposed Joint Amended Indictment with Schedules A to E (“Joint Amended Indictment”).

Indictment in accordance with the objections raised within the motion.¹⁶ No decision on the motion of the Appellant has been so far taken by the Trial Chamber.¹⁷

7. Pending a decision of the Trial Chamber on the Appellant's challenge to the form of the proposed Joint Amended Indictment, the Referral Bench, following the briefing and the Rule 11bis Hearing, relied on the gravity of the crimes with which the Appellant is charged and the level of his responsibility in the proposed Joint Amended Indictment, and concluded that it was satisfied "on the information presently available" that the Appellant should receive a fair trial and that the death penalty would not be imposed or carried out.¹⁸ The Referral Bench held that the referral was appropriate and concluded that referral of the case to the authorities of Bosnia and Herzegovina should be ordered.¹⁹

8. On 25 July 2005, the Prosecution filed a notice of appeal against the Impugned Decision setting forth one ground of appeal related to the obligation of monitoring the trial and reporting to the Referral Bench of its progress.²⁰ As the same ground had been raised by the Prosecution in its appeal against the decisions on referral in the *Stanković, Mejakić* and *Janković* cases, the Prosecution requested that these cases be assigned "to a single judicial bench of the Appeals Chamber, and that this issue be heard and resolved in a consolidated manner."²¹ The Prosecution filed its Appellant's Brief on 5 August 2005.²² The Appellant filed his Response Brief on 15 August 2005, indicating that he did not oppose the Prosecution's Appellant's Brief as the sixth

¹⁶ *Prosecutor v. Mitar Rašević and Savo Todović*, Case No.: IT-97-25/1-PT, Savo Todović's Defence Preliminary Motion on the Form of the Joint Amended Indictment, 27 June 2005 ("Motion on the Form of the Joint Amended Indictment").

¹⁷ The Pre-Appeal Judge provided the following explanation to the parties as to why no decision on the Motion on the Form of the Joint Amended Indictment had been taken by the Trial Chamber: "The Judges of the Chamber, whom I consulted, considered that one should await the decision on the question of the referral of the case to the judicial authorities of Bosnia-Herzegovina, because if this case were finally referred to the authorities of Bosnia-Herzegovina, it will be for the Prosecutor -- the local Prosecutor to draft an indictment since the referral has been ordered from a case file concerning facts. And the legal qualification of facts will be then done by the local prosecutor. Therefore, it appears to me difficult for the Judges of the Chamber to pronounce on legal issues when the local prosecutor has still to decide on these things according to his own indictment. This is the reason why we decided to await the decision of the Referral Bench. Since the Referral Bench has now to await a appeal we have to wait serenely the decision of the Appeals Chamber." Transcripts of Status Conference, 20 October 2005, T. 177.

¹⁸ Impugned Decision, para. 113.

¹⁹ *Ibid.*

²⁰ *Prosecutor v. Mitar Rašević and Savo Todović*, Case No.: IT-97-25/1-AR11bis.1, Prosecution's Notice of Appeal, 25 July 2005.

²¹ *Prosecutor v. Radovan Stanković*, Case No.: IT-96-23/2-AR11bis.1, *Prosecutor v. Mitar Rašević and Savo Todović*, Case No.: IT-97-25/1-AR11bis.1, *Prosecutor v. Željko Mejakić et al.*, Case No.: IT-02-65-AR11bis.2, *Prosecutor v. Gajko Janković*, Case No.: IT-96-23/2-AR11bis.2, Notice of Related Cases and Request to Join Issues for Appeal, 5 August 2005, para. 2.

²² *Prosecutor v. Mitar Rašević and Savo Todović*, Case No.: IT-97-25/1-AR11bis.1, Prosecution's Appellant's Brief, 5 August 2005.

ground of appeal raised by the Defence was “in part identical to the Prosecution’s single ground of appeal.”²³

9. The Appellant’s Notice of Appeal was filed on 25 July 2005, setting forth six grounds of appeal against the Impugned Decision and requesting, *inter alia*, that the case be tried before the International Tribunal.²⁴ Alternatively, if the Appeals Chamber determined that the case should be referred to the authorities of a State, the Appellant seeks that the case be referred to a State that complies with the conditions of Rule 11*bis* of the Rules, and preferably the State of Serbia and Montenegro.²⁵

10. On 9 August 2005, the Defence filed the Appellant’s Brief²⁶ to which the Prosecution responded on 19 August 2005,²⁷ and the Defence filed its reply on 26 August 2005.²⁸ Following the rendering of the Appeals Chamber’s decision in the *Stanković* case,²⁹ the Prosecution withdrew its appeals in the *Rašević and Todović, Mejakić and Janković* cases.³⁰

II. DISCUSSION

11. Rule 11*bis* of the Rules, as amended to reflect Security Council resolution 1534 (2004)³¹, provides in its relevant parts:

- (A) After an indictment has been confirmed and prior to the commencement of trial, irrespective of whether or not the accused is in the custody of the Tribunal, the President may appoint a bench of three Permanent Judges selected from the Trial Chambers (hereinafter referred to as the “Referral Bench”), which solely and exclusively shall determine whether the case should be referred to the authorities of a State:
 - (i) in whose territory the crime was committed; or
 - (ii) in which the accused was arrested; or
 - (iii) having jurisdiction and being willing and adequately prepared to accept such a case,

²³ *Prosecutor v. Mitar Rašević and Savo Todović*, Case No.: IT-97-25/1-AR11*bis*.1, Defence Response to Prosecution’s Appellant’s Brief, 15 August 2005, para. 4.

²⁴ *Prosecutor v. Mitar Rašević and Savo Todović*, Case No.: IT-97-25/1-AR11*bis*.1, Savo Todović’s Defence Notice of Appeal, para. 13(1).

²⁵ *Prosecutor v. Mitar Rašević and Savo Todović*, Case No.: IT-97-25/1-AR11*bis*.11, Savo Todović’s Defence Notice of Appeal, 25 July 2005, para. 13(2).

²⁶ *Prosecutor v. Mitar Rašević and Savo Todović*, Case No.: IT-97-25/1-AR11*bis*.1, Appellant’s Brief, 9 August 2005.

²⁷ *Prosecutor v. Mitar Rašević and Savo Todović*, Case No.: IT-97-25/1-AR11*bis*.1, Prosecutor’s Response Brief, 19 August 2005.

²⁸ *Prosecutor v. Mitar Rašević and Savo Todović*, Case No.: IT-97-25/1-AR11*bis*.1, Defence Reply Brief, 26 August 2005.

²⁹ *Prosecutor v. Radovan Stanković*, Case No.: IT-96-23/2-AR11*bis*.1, Decision on Rule 11*bis* Referral, 1 September 2005.

³⁰ *Prosecutor v. Mitar Rašević and Savo Todović*, Case No.: IT-97-25/1-AR11*bis*.1, *Prosecutor v. Željko Mejakić et al.*, Case No.: IT-02-65-AR11*bis*.2, *Prosecutor v. Gojko Janković*, Case No.: IT-96-23/2-AR11*bis*.2, Notice of Withdrawal of Appeals, 19 September 2005.

³¹ U.N. Doc. S/RES/1534 (2004), 26 March 2004, paras 4-5.

so that those authorities should forthwith refer the case to the appropriate court for trial within that State.

(B) The Referral Bench may order such referral *proprio motu* or at the request of the Prosecutor, after having given to the Prosecutor and, where applicable, the accused, the opportunity to be heard and after being satisfied that the accused will receive a fair trial and that the death penalty will not be imposed or carried out.

(C) In determining whether to refer the case in accordance with paragraph (A), the Referral Bench shall, in accordance with Security Council resolution 1534 (2004), consider the gravity of the crimes charged and the level of responsibility of the accused.

12. At the outset, the Appeals Chamber notes that the Impugned Decision is based on the proposed Joint Amended Indictment, which is still currently subject to a challenge by the Appellant pursuant to Rule 72 of the Rules and yet to be accepted by the Trial Chamber as the operative indictment against the Appellant.³² The Appeals Chamber considers, *proprio motu*, that this was an error of law. While neither party has raised this argument the Appeals Chamber, as the final arbiter of the law, will step in without guidance from the parties “where a Trial Chamber has made a glaring mistake.”³³

13. In the Impugned Decision, the Referral Bench acknowledged that “the Original Indictment remains formally current against the [Appellant],”³⁴ but determined that given the history of the indictments brought by the Prosecution and the pending motion to join the case against the Appellant and the case against Mitar Rašević in one indictment,³⁵ it would consider the merits of the Motion for Referral on the basis that the proposed Joint Amended Indictment would be the operative indictment for both the Appellant and Mitar Rašević.³⁶ In considering the proposed Joint Amended Indictment as the operative indictment for the purpose of the Impugned Decision, the primary emphasis of the Referral Bench appears to have been on the fact that the proposed Joint Amended Indictment reduces the number of counts against the Appellant and therefore, consideration of the proposed Joint Amended Indictment as the operative indictment would cause no prejudice to either the Appellant or Mitar Rašević.³⁷

³² See Motion on the Form of the Joint Amended Indictment.

³³ *Prosecutor v. Zoran Kupreškić et al.*, Case No.: IT-95-16-A, Appeal Judgment, 23 October 2001, para. 27.

³⁴ Impugned Decision, para. 8.

³⁵ Motion for Leave to File the Joint Amended Indictment.

³⁶ Impugned Decision, para. 8.

³⁷ *Ibid.* “[t]he proposed Joint Amended Indictment is based upon the same basic factual substratum as the Original Indictment brought against the Accused Todović and the *Rašević* Amended Indictment. The major difference between the proposed Joint Amended Indictment and the Original Indictment is that the Joint Amended Indictment reduces the number of Counts against the Accused Todović from eighteen to twelve by eliminating six Counts, all cumulative to Counts charging the same behaviour as war crimes and crimes against humanity, alleging grave breaches under Article 2 of the Statute of the Tribunal. The proposed Joint Amended Indictment thus aligns the factual and legal allegations against both Accused with those in the *Rašević* Amended Indictment, and joins the two cases in the one Indictment. The Referral Bench is persuaded that consideration of the Joint Amended Indictment [...] as the operative indictment

14. While the Impugned Decision was taken on the basis that no prejudice would accrue to the Appellant, the Appeal Chamber considers that the fact that the Referral Bench based the Impugned Decision on an indictment, which was subject to challenge by the Appellant before the Trial Chamber and yet to be accepted by the Trial Chamber as the operative indictment, was an error of law invalidating the Impugned Decision for the following reasons. First, it was not within the mandate of the Referral Bench to consider the merits of the Motion for Referral “on the basis that the proposed Joint Amended Indictment will be the operative indictment for both Accused.”³⁸ This is a determination that falls squarely outside the competence of the Referral Bench which “solely and exclusively shall determine whether the case should be referred to the authorities of a State.”³⁹ By basing the Impugned Decision on an amended indictment that had yet to be accepted by the Trial Chamber, the Referral Bench pre-judged the Trial Chamber’s decision on the proposed Joint Amended Indictment.

15. Second, once cases have been referred by the International Tribunal to the State of Bosnia and Herzegovina pursuant to Rule 11*bis* of the Rules, the Prosecutor’s Office of Bosnia and Herzegovina (“BiH Prosecutor”) may only initiate criminal prosecution in the State Court of Bosnia and Herzegovina on the basis of an indictment that has *already been confirmed by the International Tribunal*. In 2004, the State of Bosnia and Herzegovina enacted the “Law on the Transfer of Cases from the ICTY to the Prosecutor’s Office of BiH and the Use of Evidence Collected by ICTY in Proceedings before the Courts in BiH” (“BiH Law on the Transfer of Cases”)⁴⁰ in order to receive cases referred by the International Tribunal. Article 2 of the BiH Law on the Transfer of Cases provides, in relevant part:

Article 2
Transfer of cases by ICTY

(1) If the International Criminal Tribunal for the former Yugoslavia (ICTY) transfers a case with a confirmed indictment according to Rule 11*bis* of the ICTY Rules of Procedure and Evidence [...] the BiH Prosecutor shall initiate criminal prosecution according to the facts and charges laid out in the indictment of the ICTY. The BiH Prosecutor shall adapt the ICTY indictment in order to make it compliant with the BiH Criminal Procedure Code, following which the indictment shall be forwarded to the Court of BiH. The Court of BiH shall accept the indictment if it is ensured that the ICTY indictment has been adequately adapted and that the adapted indictment fulfils the formal requirements of the BiH CPC.

(2) If the BiH Prosecutor adds charges or accused to the indictment, the Court of

against the two Accused for the purpose of referral results in no prejudice to either Accused. It will be convenient in this decision, therefore, to refer to the one case in which the two Accused are joined, rather than to two separate cases, so as to satisfy the expression of the Bench’s reasons. Nevertheless, where the relevant circumstances differ as between the two Accused, we have considered them separately.”

³⁸ Impugned Decision, para. 8.

³⁹ Rule 11*bis* (A).

⁴⁰ Official Gazette of Bosnia and Herzegovina, No. 37/03, 54/04, 61/04.

BiH shall confirm the indictment in accordance with the requirements of the BiH CPC, but only in relation to the additional charges or accused.

16. Under the BiH Law on the Transfer of Cases, a case that is referred from the International Tribunal to Bosnia and Herzegovina must be transferred from the authorities of the State to the State Prosecutor's Office and the State Court for disposition, wherein the War Crimes Chamber is conferred with the jurisdiction to try a case referred by this International Tribunal.⁴¹ Once a case has been forwarded by the State authorities to the BiH Prosecutor, Article 2 of the BiH Law on the Transfer of Cases makes clear that the latter shall adapt the indictment as confirmed by the International Tribunal in order to make it compliant with the Criminal Procedure Code of Bosnia and Herzegovina, before forwarding the indictment to the State Court of Bosnia and Herzegovina.⁴² However, Article 2 does not explicitly allow the BiH Prosecutor to drop the charges laid out in the indictment already confirmed by a Judge of the International Tribunal, nor does it allow for the referred indictment to be re-confirmed by a Judge of Bosnia and Herzegovina. Only charges added, or accused joined, will be subject to confirmation by the State Court of Bosnia and Herzegovina.⁴³

17. In this case, the Appeals Chamber considers that if the Impugned Decision were to be upheld and the case referred, it follows from the BiH Law on the Transfer of Cases that the BiH Prosecutor would not be allowed to initiate criminal prosecution pursuant to the proposed Joint Amended Indictment absent a decision of the Trial Chamber on the Motion on the Form of the Joint Amended Indictment ordering that the Joint Amended Indictment be the operative indictment against the Appellant. Therefore, the BiH Prosecutor would only be able to initiate criminal proceedings against the Appellant on the basis of the original confirmed indictment against him.

18. The Appeals Chamber has found that due to the fact that the Impugned Decision is based on an indictment which is currently subject to a challenge by the Appellant and yet to be accepted by the Trial Chamber as the operative indictment, this amounts to an error of law which invalidates the Impugned Decision, hence such error also has an impact upon the decision to refer the case against Mitar Rašević to the authorities in Bosnia and Herzegovina. However, since Mitar Rašević has not

⁴¹ Agreement between the High Representative for BiH and Bosnia and Herzegovina on the Establishment of the Registry for Section I for War Crimes and Section II for Organized Crime, Economic Crime and Corruption of the Criminal and Appellate Division of the Court of BiH and the Special Department for War Crimes and the Special Department for Organized Crime, Economic Crime and Corruption of the Prosecutor's Office of BiH, Official Gazette of Bosnia and Herzegovina 16/02, International Agreements 11/04; Law on the Court of Bosnia and Herzegovina and Laws on Amendments, Official Gazette of Bosnia and Herzegovina, No. 16/02, 42/03, 42/03, 9/04, 4/04, 35/04, 61/04, Art. 24.

⁴² BiH Law on the Transfer of Cases, Article 2(1).

⁴³ See BiH Law on the Transfer of Cases, Article 2(2).

appealed the Impugned Decision ⁴⁴ which therefore has become final with respect to him, it cannot be annulled in so far as Mitar Rašević is concerned. Accordingly, the Appeals Chamber considers that the execution of the Impugned Decision should be suspended in so far as it concerns the referral of the case against Mitar Rašević to the authorities of Bosnia and Herzegovina, until the Motion on the Form of the Joint Amended Indictment has been disposed of and a decision confirming which indictment shall therefore be regarded as the operative indictment is rendered by the Trial Chamber.

III. DISPOSITION

19. The Appeals Chamber **QUASHES** the Impugned Decision with respect to the Appellant; **REMITTS** the matter to the Referral Bench for further consideration consistent with this Decision; **DIRECTS** the Referral Bench to defer issuance of any further decision on referral of this case pursuant to Rule 11*bis* of the Rules until the Trial Chamber renders a decision on the Motion on the Form of the Joint Amended Indictment, and **SUSPENDS** the execution of the Impugned Decision with respect to 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.

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

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



Judge Fausto Pocar
Presiding

[Seal of the International Tribunal]

⁴⁴ See IT-97-25/1-PT, Defence Motion on the Decision on Referral of Case under Rule 11*bis* from 8 July 2005, 25 July 2005.