

24 JANUARY 2008

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THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA

Case No. IT-97-25/1-PT

IN THE REFERRAL BENCH

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

Registrar: Mr. Hans Holthuis

Date Filed: 24 January 2008

THE PROSECUTOR

v.

MITAR RAŠEVIĆ  
SAVO TODOVIĆ

**PUBLIC REDACTED VERSION**

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PROSECUTOR'S SIXTH PROGRESS REPORT

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The Office of the Prosecutor:  
Mr. Serge Brammertz

THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA

Case No. IT-97-25/1-PT

THE PROSECUTOR

v.

MITAR RAŠEVIĆ  
SAVO TODOVIĆ

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**A Introduction**

1. In accordance with the "Decision on Referral of Case Under Rule 11 *bis* with Confidential Annexes I and II"<sup>1</sup> of 8 July 2005, and the Order on Prosecutor's Request for an Extension of Time to File the Sixth Progress Report of 17 January 2008<sup>2</sup> the Prosecutor hereby files his sixth progress report in this case.

2. The Decision on Referral ordered:

the Prosecutor to file an initial report to the Referral Bench on the progress made by the Prosecutor of Bosnia and Herzegovina in the prosecution of the Accused six weeks after transfer of the evidentiary material and, thereafter, every three months, including information on the course of the proceedings of the State Court of Bosnia and Herzegovina after commencement of trial, such reports to comprise or to include the reports of the international organisation monitoring or reporting on the proceedings pursuant to this Decision provided to the Prosecutor.<sup>3</sup>

3. The Fifth Progress Report in the *Rašević and Todović* case was filed on 17 October 2007.<sup>4</sup>

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<sup>1</sup> *Prosecutor v. Mitar Rašević and Savo Todović*, Case No. IT-97-25/1-PT, ("*Rašević and Todović* case"), Decision on Referral of Case Under Rule 11 *bis* with Confidential Annexes I and II, 8 July 2005 ("Decision on Referral").

<sup>2</sup> *Rašević and Todović*, Order on Prosecutor's Request for an Extension of Time to File the Sixth Progress Report, 17 January 2008.

<sup>3</sup> Decision on Referral, p. 46.

<sup>4</sup> See *Rašević and Todović* case, Prosecutor's Fifth Progress Report, 17 October 2007.

4. Following the agreement between the Chairman in the Office of the Organisation for Security and Co-operation in Europe's Mission to Bosnia and Herzegovina (the "OSCE") and the Prosecutor, the Prosecutor received OSCE's fifth report on 18 January 2008.<sup>5</sup> The Report outlines the main findings of trial monitoring activities to date in the *Rašević and Todović* case, from the perspective of international human rights standards. *REDACTED*.<sup>6</sup>

## **B Summary of proceedings during the reporting period**

5. The OSCE summarises the proceedings in the *Rašević and Todović* case as follows:

- During the reporting period from 3 October 2007 to 10 January 2008, the Court held seven main trial hearings in total, six of which were held in public. One hearing was held mainly in closed session. On 2 November 2007, the Court visited the KP Dom in Foča. In total, the Court heard the testimony of twelve witnesses; seven Prosecution witnesses and five for the Defence of Mitar Rašević. Out of these witnesses only two Prosecution witnesses and one witness for the Defence of Mitar Rašević testified without any protective measures.
- In two instances, on 9 and 30 October 2007, the Trial Panel restricted the distribution of audio and video records to third parties to ensure that the protected witness who testified on these days would not be recognised by the public because of his/her voice. Before, the Trial panel had granted to the witness to testify under pseudonym and behind a screen. OSCE noted that the Trial Panel's decision to prohibit the distribution of audio and video records to third parties did not adequately justify why this measure was necessary with regard to the witness in question.
- The Accused continued to remain in custody on the grounds of risk of flight and threat to public security.
- The next main trial hearing was scheduled for the 18 January 2008.<sup>7</sup>

<sup>5</sup> Fifth Report in the *Mitar Rašević and Savo Todović* Case Transferred to the State Court Pursuant to Rule 11bis, January 2008 (hereinafter "Report").

<sup>6</sup> *REDACTED*

<sup>7</sup> Report, p. 3.

## **C Issues raised in the Report**

6. The OSCE identified two main issues of note in this reporting period but concluded that the right to a fair trial of the Accused remained unaffected.

### **a) The Accused Savo Todović's complaints against his Defence Counsel**

7. The first issue concerns complaints conveyed by the Accused Savo Todović in two letters, one sent to the BiH State Court,<sup>8</sup> and the other, dated 22 November 2007, to the Office of the Prosecutor ("OTP"). In sum, the Accused claimed that his appointed Defence Counsel was not adequately representing him or indeed acting in his interest.

8. In his letter to the Trial Panel of the BiH Court, the Accused Todović complained that his principal Counsel had been absent from a number of key hearings and failed to employ legal remedies for his benefit. Specifically he asserted that they had failed to adequately cross-examine a witness on the 16<sup>th</sup> October.<sup>9</sup>

9. On 22 October, Defence Counsel for Savo Todović moved the Trial Panel to dismiss them from duty in light of the Accused's refusal to communicate with them.<sup>10</sup> After hearing the Accused Savo Todović and his Defence Counsel on 23 October 2007, the Trial Panel rendered a decision on 30 October 2007 stating that there was no evidence to suggest that the Defense Counsel was not carrying out its duties in a responsible manner. In addition, the Trial Panel found that the dismissal of the Defence Counsels and the assignment of a new counsel at such an advanced stage in the proceedings would be detrimental to the Defendant and the reasonable duration of the proceedings. The Trial Panel noted that the problems caused by the lack of communication and co-operation between the Accused and his Defence Counsel are not likely to be overcome with the appointment of a new counsel.<sup>11</sup>

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<sup>8</sup> According to OSCE the letter was dated 18 September 2007 but appeared to have been drafted later because it referred to events in October 2007 (Report, p. 2, footnote 3).

<sup>9</sup> Report, p. 4.

<sup>10</sup> Report, p. 4.

<sup>11</sup> Report, p. 5.

10. Subsequently, the Accused Todović sent a letter to the Prosecutor of the ICTY, asking the Prosecutor to request deferral of his case.<sup>12</sup> In this letter, the Accused Todović set out various examples to demonstrate why he was allegedly not adequately represented by his principal and co-counsel. OSCE notes that some of the claims in this letter were not directly adjudicated by the Trial Panel because they were not contained in the Accused's letter to the Trial Panel neither were they an issue at the hearing of 23 October 2007.<sup>13</sup> As set out in the OSCE's Report, claims such as alleged insufficient cross-examination, alleged failure to object or alleged unpreparedness of Defence Counsel appear to pertain to the strategy of the Defence and management of the case.<sup>14</sup>

11. With regard to the claim of absence of principal Counsel from trial hearings, OSCE reports that the principal Counsel of the Accused Todović had indeed been absent on a number of occasions claiming health reasons. However OSCE also noted that the Trial Panel found that the Accused had nonetheless been well represented during this time by the co-counsel. The OSCE opined that it did not have any reason to believe that the Defence Counsel was not fulfilling his duties.<sup>15</sup>

12. The Accused Todović also complained that his Defence Counsel had not appealed the Trial Panel's Decision of 26 April 2007 extending his detention on the same grounds as before (risk of flight and threat to public security).<sup>16</sup> In its decision of 30 October 2007, the Trial Panel found that the rights of the Accused were not violated since three previous appeals against decisions extending his pre-trial custody had been rejected as unfounded and that the facts regarding the issue of length of detention had not changed since the day the detention was ordered or extended for both Defendants.<sup>17</sup> The OSCE reiterates in this context concerns regarding the continued detention of the Accused, arguing that with regard to the existence of a threat to public or property security the reasoning in the decision of the Trial Panel is vague.<sup>18</sup>

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<sup>12</sup> Letter of 22 November 2007, received on 6 December 2007 (Report, p. 5)..

<sup>13</sup> Report, p. 5.

<sup>14</sup> Report, p. 6.

<sup>15</sup> Report, p. 7,

<sup>16</sup> Report, pp. 1 and 5.

<sup>17</sup> Report, p. 5.

<sup>18</sup> Report, pp. 5-6.

**b) Potential impact of non-existence of BCS transcripts of ICTY proceedings on economy and management of the trial**

13. The second issue that arose related to the economy of the trial proceedings. It concerns the lack of availability of written transcripts of oral witness testimonies before the ICTY in the local language. This has been a hindrance since it has caused repetitive or irrelevant testimony to be heard during trial. The issue surfaced at the hearing on 27 November 2007 where it became evident that the Prosecutor had not reviewed the relevant ICTY transcripts. This is likely to be problematic in the future since neither the Prosecutor in charge of this case nor her assigned staff speaks English.<sup>19</sup>

14. In relation to the issue's wider implications, the OSCE recommends a number of methods to overcome this problem. In light of the potential general impact of this issue also on proceedings at the entity level, the OSCE's recommends to have t the relevant materials translated into the local language or engaging English-speaking staff.<sup>20</sup>

**D REDACTED**

15. REDACTED.<sup>21</sup>

16. REDACTED.<sup>22</sup>

**E Conclusion**

17. The Prosecutor understands and gives due regard to the issues identified in the OSCE's Fifth Report as well as REDACTED which are of value for the local actors, however, the Prosecutor agrees with the findings made by OSCE that these issues do not appear to have affected the right to a fair trial of these Accused.<sup>23</sup>

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<sup>19</sup> Report, pp. 7-8.

<sup>20</sup> Report, p. 8.

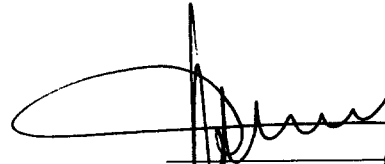
<sup>21</sup> REDACTED.


<sup>22</sup> REDACTED.

<sup>23</sup> Report, p. 2.

18. Attached to this report are the following annexes:
- (i) Annex A : a copy of the Report: and
  - (ii) *REDACTED*.

Word count: 1569

  
Serge Brammertz  
Prosecutor



Dated this twenty fourth day of January 2008  
At The Hague  
The Netherlands

INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA

Case No. IT-97-25/1-PT

THE PROSECUTOR

v.

MITAR RAŠEVIĆ  
SAVO TODOVIĆ

**PUBLIC REDACTED VERSION**

**ANNEX A**  
**TO**  
**PROSECUTOR'S SIXTH PROGRESS REPORT**





**Organization for Security and Co-operation in Europe  
Mission to Bosnia and Herzegovina**

**Fifth OSCE Report in the  
*Mitar Rašević and Savo Todović Case***

**Transferred to the State Court pursuant to Rule 11bis**

**January 2008**

## EXECUTIVE SUMMARY

The case of Defendants *Mitar Rašević* and *Savo Todović* (hereinafter also “Defendants”) is the fifth case transferred from the ICTY to the Court of BiH pursuant to Rule 11*bis* of the ICTY Rules of Procedure and Evidence (RoPE). This constitutes the fifth report that the OSCE Mission to Bosnia and Herzegovina (“OSCE BiH” or “Mission”) submits to the ICTY Prosecutor, covering the period from 3 October 2007 to 15 January 2008.

The present Report makes reference to two issues of note.

The first issue concerns the complaints that the Defendant Savo Todović conveyed to the State Court and the ICTY Prosecutor's Office, among other authorities, on the performance of his *ex officio* appointed Defence Counsel. The ICTY Prosecutor's Office requested the OSCE BiH to investigate the Defendant's claims and report its findings in the present submission. On the basis of the information available to the Mission to date, it cannot consider that the Defendant is represented by ineffective counsel or that he does not have an adequate opportunity to present his case.

Secondly, the fact that written transcripts of oral witness testimonies before the ICTY do not exist in local languages has apparently had an impact on the Prosecutor's preparation to present her case, and consequently on the economy of trial. The Trial Panel has prompted the Prosecutor in this case to notify in a more precise manner the Defence and the Court about the content of proposed witness testimonies and to be more selective in which witnesses she proposes, in order to avoid presenting irrelevant or repetitive testimony. At the 27 November 2007 hearing, it came to light that the Prosecutor had not reviewed the transcripts of what her witnesses had orally stated in the ICTY proceedings, due to the fact that these did not exist in the local language and there were not adequate resources to translate them.

The proceedings in the *Rašević and Todović* case during this reporting period may be summarised as follows:

- The Defendants remain in custody on the same grounds as initially ordered by the Preliminary Hearing Judge, namely the risk of flight and the threat to public security. As regards the justification of the existence of a threat to public security, the Mission reiterates its remarks and recommendations made in numerous previous reports.
- During this reporting period, the Court held eight main trial hearings. Seven of these hearings were held in public, although brief discussions on the application of protective measures were held *in camera* during these hearings. One hearing was held mainly in closed session.<sup>1</sup> On 2 November, the Court also visited the KP Dom in Foča (the place of the alleged criminal offences). In total during this reporting period, the Court heard the testimony of 13 witnesses: seven prosecution witnesses and six witnesses for the Defence of Mitar Rašević. Of the prosecution witnesses, only two (court experts) testified without protective measures. Of the defence witnesses, two testified without any protective measures.<sup>2</sup>

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<sup>1</sup> Hearings were held on 9, 16, 23, and 30 October, 27 November, and 11 and 18 December. The hearing on 11 December was held mainly in closed session.

<sup>2</sup> Five witnesses for the prosecution testified with a pseudonym. Two of these also testified behind a screen to prevent the public from visually identifying them. Three defence witnesses testified with a pseudonym, while the Court asked journalists to use only the initials of a fourth defence witness. This witness also testified primarily in closed session.

- Twice, on 9 and 30 October 2007, the Trial Panel decided to restrict the distribution of the audio and video record to third parties. Audio recordings are generally considered as the principal record of a trial at the State Court. The reason for ordering so in the latter hearing was that the protected witness expressed concern that the public would recognise his/her voice, although there was already an order for the person to testify under a pseudonym and behind a screen.

Regarding the 9 October hearing, the witness requested to testify in closed session, although there was an order for the person to testify under a pseudonym. After consultation with the witness in closed session, the Trial Panel refused the request. Upon reopening the hearing to the public, the Panel noted that the witness was concerned about the possibility that he might have some unpleasant situations in case he met persons who might treat his testimony in a positive or negative way. The Court perceived this concern to be hypothetical in nature and actually shared by almost all witnesses, hence the testimony was given in open session. Nevertheless, the Court prohibited distribution of the audio record to third parties. The Trial Panel's decision did not describe in which way this witness's situation might be different from that of other witnesses, and hence justify why this measure may be necessary. In this respect, trial panels should be urged to provide specific justification when rendering decisions on witness protection measures.

- The next main trial hearing is scheduled for 22 January 2008.

### **A. Observations Regarding the Complaints of Defendant Savo Todović Against his *Ex Officio* Appointed Defence Counsel**

The ICTY Prosecutor's Office received a letter from the Defendant Todović complaining about the effectiveness of his Defence Counsel. By its letter dated 17 December 2007 and received on 3 January 2008, the ICTY Prosecutor's Office requested the OSCE BiH to investigate these claims and to report the Mission findings in the present submission. Accordingly, this Section makes mention of the relevant facts in chronological order and addresses each complaint raised by the Defendant in his letter to the ICTY Office of the Prosecutor.

It should be underscored that the Mission's mandate in monitoring trial proceedings focuses on concerns that relate to human rights and to the effectiveness of the justice system insofar as it has an impact on the compliance of proceedings with fair trial standards, including the right to effective defence. Its work is not intended to substitute that of the courts, or of the parties in how they present their cases.

#### ***Relevant Facts***

According to the Trial Panel in this case, Defendant Savo Todović submitted a letter to the Trial Panel complaining about the work of his Defence Counsel and asking the Trial Panel to "respond adequately."<sup>3</sup> The principal complaint of the Defendant was that his Defence Counsel was unprepared for the cross-examination of a prosecution witness on 16 October 2007. The Defendant also claimed that his principle Counsel was absent from several hearings when the most crucial witnesses gave evidence and alleged that his Counsel failed to employ legal remedies for his benefit.

On 22 October, principle and co-counsel of Savo Todović moved the Court to dismiss them from duty because of the difficulties they face in view of the Defendant's refusal to communicate with them. As the Court noted in its decision on this motion, the Defendant has consistently refused co-operation and communication with his Defence Counsel.

On 23 October, the Trial Panel heard the Defendant and his Defence Counsel regarding their submissions. In response to the Defendant's aforementioned complaints, the Defence Counsel stated that on 16 October 2007, they were prepared to conduct examination of the scheduled witness and did indeed do so. Second, although the Defendant's principle counsel did not appear at several hearings, the co-counsel attended the hearings and prepared for those hearings in advance in co-operation with the principle counsel.<sup>4</sup> Nevertheless, despite the motion to be dismissed, the Defence Counsel opined that the Defendant would be harmed by their dismissal because of the advanced stage of the proceedings and because, as noted in the Court's decision on dismissal, the Defendant pledged to refuse co-operation and communication with any potential new counsel. The Counsel also believed that the appointment of new attorneys would cause delay in the proceedings.

Further during the 23 October hearing, the Defendant also alleged that his Defence Counsel "missed" the time limit for filing an appeal against a decision of the Panel extending custody and never challenged any witnesses in a manner favourable to the Accused. When prompted by the Trial Panel to elaborate on these allegations, the Defendant declined. No further discussion was

<sup>3</sup> Defendant Todović's submission is dated 18 September 2007, but it must have been drafted later because it refers to events that occurred in October.

<sup>4</sup> The Principle counsel for Savo Todović did not attend five hearings: on 20 July, 2 and 27 August, 18 September, and 30 October.

held on these points.

The Trial Panel rendered a decision on 30 October refusing to dismiss the principle and co-counsel of Savo Todović. The Court understood the pertinent question to be whether the Defendant's lawyers were carrying out their duties in a responsible manner. It found that the law does not define what it means to carry out the defence duty in an irresponsible manner, but reasoned that this should be understood as the absolute inefficiency of defence counsel, which is reflected in non-performance, incomplete performance, or belated performance of its duties. According to the Panel, extrinsic issues of quality or of relative inefficiency are more appropriately addressed by the Bar Associations, and not by the Court. Based on the examples that the Defendant gave to illustrate his Counsel's ineffectiveness, the Court could not find that the lawyers were carrying out their duties in an irresponsible manner. The Panel also decided that their dismissal and the assignment of new counsel at such an advanced stage in the proceedings would be detrimental to the Defendant and the reasonable duration of the proceedings. The Court also noted that the lack of communication and co-operation between the Defendant and his Defence Counsel poses problems that are not likely to be overcome with the appointment of new counsel, since the Defendant refuses to select such new counsel himself and has indicated that he would not co-operate with any new representation in any event.

In a letter to the Chief Prosecutor of the ICTY dated 22 November 2007, but apparently received on 6 December 2007, the Defendant Todović asked the ICTY Office of the Prosecutor to submit a request for the deferral of his case. This letter principally mentions six examples which, it claims, demonstrate that his principal and co-counsel do not represent his interests in the proceedings properly. It must be emphasised that some of the claims in this letter have not been directly adjudicated by the Trial Panel, because they were not contained in the Defendant's letter to the Trial Panel or in the Defence Counsel's motion, and did not arise during the discussion on dismissal of Defence Counsel that took place on 23 October 2007.

***Relevant Observations on the Points Raised by Defendant Todović in His Letter to the ICTY Prosecutor's Office***

In his letter to the ICTY Prosecutor's Office, the Defendant raised the following points:

- (1) That the Defence Counsel failed to appeal the Trial Panel's Decision to continue his detention.

It should be noted that, indeed, the Defence did not appeal the Decision of 26 April 2007 extending Todović' detention, while the reasons for not doing so are not known. However, the Defence Counsel had appealed a previous decision extending pre-trial custody and has appealed subsequent ones.<sup>5</sup>

As regards this matter, in its Decision of 30 October 2007, the Trial Panel found that: "[...] considering that on all three occasions these appeals were rejected as unfounded and that the facts regarding the issue of the length of detention until now have not changed since the day the detention was ordered, or extended for both Defendants, it is clear that the rights of the Accused Todović were not infringed upon by not appealing the decision of the two-month revision of detention." [Unofficial translation]

The Mission is not in a position to know whether new facts challenging detention were indeed available to the Defence. However, in relation to the justification of the said decisions extending

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<sup>5</sup> See appeals dated 28 June, 31 August, and 24 October 2007.

detention, the OSCE BiH reiterates its concerns about the vague reasoning of the existence of a threat to public and property security, on the basis of human rights standards. It should be noted that the lack of proper justification of this ground has formed the subject of the defence appeals, which were rejected.

(2) That the Defence Counsel has been coming to the hearings utterly unprepared and on two occasions even unaware of which witnesses would testify, although duly informed by the Court. And (3) that the Defence Counsel has not cross-examined any of the witnesses regarding facts relevant to the Defendant's case.

These two points appear to pertain to the strategy of the Defence and to the management of the case and evidence presented. In this regard, the Trial Panel opined that it did not have the reason to believe that the Counsel was not carrying out their duties responsibly or that they were not prepared, also keeping in mind the refusal of the Defendant to communicate with his lawyers. On the basis of information available to the Mission through its observations and other sources, it cannot conclude that the Counsel manifestly failed to carry out their duties in these domains. One can indeed reasonably expect that a defence strategy will be more solid if there is proper communication between accused and his counsel. In the circumstances, although the Accused did not appear to communicate his concerns to his Counsel, the Mission has noted that the Counsel has appeared open to communicate with the Accused. In addition, the Defendant was present during every witness testimony and had the opportunity to cross-examine the proposed witnesses himself, which in fact he did on almost every occasion.

(4) That the Defence Counsel never reacted or objected when some of the witnesses offended the Accused.

In general, victims-witnesses often consider being cross-examined by a defendant to be a trying experience. As regards this particular case, an observer could describe the situation in the courtroom as tense when the Defendant poses questions to witnesses or makes comments. The Trial Panel has frequently interrupted cross-examinations conducted by the Defendant to remind the Defendant and witnesses that they cannot speak at the same time for the interpreters' sake. Although this may not be desirable and could be avoided through better trial management and behaviour of all actors involved, the Panel has endeavoured to keep order in the courtroom. On at least one occasion, the Presiding Judge orally warned a witness not to speak to the Defendant Todović in a, presumably, inappropriate manner.

(5) That the Defence Counsel never objects when the Prosecutor puts leading questions to witnesses.

On occasion, the Prosecution has indeed posed questions to witnesses that can be characterised as leading. However, considering the facts that the Prosecutor's leading questions appear intended to elicit, there is no clear reason to believe that these questions jeopardise the fair trial rights of the Defendant. It may be said that many prosecution witnesses in this case have the status of an injured party and are elderly or have health problems, hence the suggestive questions may facilitate and the testimony of these witnesses to some extent. Nonetheless, it would be proper to limit suggestive questions in the future.

(6) That the Defendant's principal Counsel did not appear at hearings when witnesses, deemed by the Defendant to be crucial, testified.

The Defendant's principal Counsel did not appear at five hearings in this case: on 20 July, 2 and 27 August, 18 September, and 30 October 2007. He claimed health reasons for his absences. Nevertheless, as the Trial Panel found, it appears that the two Counsels co-operate well and that the co-counsel was present at all these hearings. To this extent, although continuous presence of all counsel is desirable, there is no reason to believe that the Defendant did not receive effective defence during these hearings, due to the absence of the lead Counsel.

In addition to the above claims regarding his Defence Counsel's effectiveness, the Defendant made two additional remarks: First, he stated that the Trial Panel's decision on dismissal of his Defence Counsel found that his concerns are insignificant. In this regard, the Mission notes the jurisprudence of the European Court of Human Rights. Namely, that states must guarantee that *ex officio* appointed counsel must not be only nominated, but must provide actual assistance to the defendant. When a state is made aware about a situation where counsel has not provided practical and effective assistance, the state must either replace counsel or cause counsel to fulfil its duties.<sup>6</sup> In the *Todović* case, the Trial Panel was put on notice by the Defendant about the possible failures of his Defence Counsel to provide adequate and effective assistance to him. Although the Defendant failed to make an explicit motion for the dismissal of his Defence Counsel, the Trial Panel inquired into the situation and ultimately held that it could not find that Defence Counsel was irresponsibly exercising its duties. In this respect, the Trial Panel appears to have satisfied the state's obligation under international human rights standards to examine the Defendant's complaints.

Finally, the Defendant has stated that he has not received the Mission's reports on his case in a while. All OSCE reports on *libis* cases have been delivered to OKO and to the defence counsels of all defendants, also with the understanding that these can be in turn be delivered to the accused persons as well. The Mission remains willing to provide its reports to all interested actors, including the accused persons themselves.

## B. ISSUE RELATED TO THE ECONOMY OF PROCEEDINGS

The Mission further observes an administrative issue that may impact upon the economy and management of the trial. Namely, written transcripts of oral witness testimonies before the ICTY do not exist in the local language. Since the Prosecutor responsible for this case does not speak English, she has not had the opportunity to review these transcripts and be fully prepared to receive the relevant witnesses. This has seemingly caused repetitive or irrelevant testimony to be heard during trial.

More specifically, during the hearing on 27 November, the Court and the Defence asked the Prosecutor to tell them to which specific counts the proposed witnesses would testify. The Mission notes that the Trial Panel has on several occasions prompted the Prosecutor to be more selective in her choice of witnesses and to be more precise in notifying the Defence and Trial Panel about the relevance of their testimony. During this hearing, the Prosecutor stated that she could not assist the Panel in this regard, because the written investigative statements reviewed by her are often brief. Therefore, it came to light that the Prosecutor had not reviewed the relevant transcripts of the oral testimonies before the ICTY. She stated that this was due to resource-related difficulties to translate them, adding that although she had tried to have the English transcripts of the testimony translated into a local language prior to the adaptation of the indictment, she was unable to do so. Furthermore, she noted that none of the staff under her direct control speak English. Because of

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<sup>6</sup> *Artico v. Italy*, Judgement of the European Court of Human Rights, 13 May 1980, para. 33.

these difficulties, the Prosecutor continued that she has only reviewed the written statements that the witnesses had made before the ICTY investigators and not the oral testimonies that they gave before the ICTY. Although it is unclear whether the Prosecutor's Office had obtained the local language audio of the ICTY testimonies of witnesses called to testify in this case, the audio was apparently not reviewed.

The Panel noted the importance of properly preparing a case in order to ensure the efficiency of proceedings and to avoid inconveniencing witnesses without reason. According to the Court, the failure of the Prosecutor to provide this information confounded the Trial Panel's exercise of its duties.

It should also be noted that the present case is fundamentally similar to the ICTY case of *Krnjelac*, who was the warden of the KP Dom where the Defendants are alleged to have committed the crimes being adjudicated in this case, and under whom they are alleged to have served. The majority of the prosecution witnesses in this case have also testified in that and other cases before the ICTY. Particularly in light of this, if the Prosecutor has sufficient knowledge of the witnesses' previous testimonies before the ICTY, the Defendants' right to speedy trial could be better served, and any likely distress and potential repeated traumatising of witnesses called to testify in this case unnecessarily could be avoided.

In view of the above, it is recommended that:

- The State Court Registry, in co-operation with the State Prosecutor's Office and OKO, examine possible solutions in order to ensure that the parties have effective access (in a language that they understand) to witnesses' oral testimony given before the ICTY prior to calling such witnesses to testify before the State Court. Solutions may include translating these transcripts into the local language in due time or engaging English-speaking staff, as necessary. Considering that such transcripts may also prove useful to war crime trials held at the entity level, the input of all relevant actors, including relevant Ministries, is important.
- Any translated materials should be accessible to all interested actors, including at the entity level, for future proceedings. A suitable management tool in which to store and make accessible all presented evidence in original and translated form could prevent unnecessary duplications.



## PART II

### LIST OF RELEVANT HEARINGS - SUBMISSIONS - DECISIONS

- (i) Decision of the Trial Panel to accept certain facts as adjudicated, dated 2 October 2007 and issued on 31 October 2007.
- (iii) Proposal of material evidence submitted by the Defence Counsel of Defendant Todović, dated 9 October 2007.
- (iv) Main trial hearing, held on 9 October 2007.
- (vi) List of witnesses of the Defence of Mitar Rašević, dated 12 October 2007.
- (vii) Main trial hearing, held on 16 October 2007.
- (ix) The Defendant Todović' submission complaining about the work of his Defence Counsel, dated 18 September 2007, but referring to events that occurred on 16 October 2007.
- (xi) Submission of the Defence Counsel of the Defendant Todović seeking to withdraw from the case, dated 22 October 2007.
- (xii) Main trial hearing, held on 23 October 2007.
- (xiii) Decision of the Trial Panel on review of custody, dated 23 October 2007.
- (xv) Appeal of the Defence Counsel of the Defendant Todović against the decision on review of custody, dated 24 October 2007.
- (xvii) Proposal of additional material evidence submitted by the Defence Counsel of the Defendant Todović, dated 29 October 2007.
- (xix) Decision to refuse the Defendant Todović and the Defence Counsel motions for the dismissal of the Defence Counsel, dated 30 October 2007.
- (xx) Main trial hearing, held on 30 October 2007.
- (xxi) Prosecution response to the Defence Appeal against the Decision on review of custody, dated 1 November 2007.
- (xxii) Report on crime scene investigation with accompanying photo-documentation, dated 2 November 2007.
- (xxiii) Decision of the Appellate Panel refusing the Defence Appeal as unfounded, dated 9 November 2007.
- (xxiv) List of witnesses of the Defence of Todović, dated 15 November 2007.
- (xxv) Decision to exclude public from a part of main trial hearing, dated 27 November 2007.
- (xxv) Main trial hearing, held on 27 November 2007.
- (xxvi) Main trial hearing, held on 11 December 2007.
- (xxvii) Main trial hearing, held on 18 December 2007.
- (xxviii) Decision of the Trial Panel on review of custody, dated 19 December 2007.
- (xvi) Appeal of the Defence Counsel of the Defendant Todović against the decision on review of custody, dated 24 December 2007.
- (xvii) Prosecution response to the Defence Appeal against the Decision on review of custody, dated 28 December 2007.

INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA

Case No. IT-97-25/1-PT

THE PROSECUTOR

v.

MITAR RAŠEVIĆ  
SAVO TODOVIĆ

***REDACTED***