

Y-96-23/2-PT  
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20 September 2006

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9B.

THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA

Case No. IT-96-23/2-PT

IN THE REFERRAL BENCH

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

Registrar: Mr Hans Holthuis

Date Filed: 20 September 2006

THE PROSECUTOR

v.

RADOVAN STANKOVIĆ

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PROSECUTOR'S FOURTH PROGRESS REPORT

**CONFIDENTIAL ANNEX**

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The Office of the Prosecutor

Ms. Carla Del Ponte

THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA

Case No. IT-96-23/2-PT

THE PROSECUTOR

v.

RADOVAN STANKOVIĆ

PROSECUTOR'S FOURTH PROGRESS REPORT

*CONFIDENTIAL ANNEX*

1. Pursuant to the Decision on Referral of Case Under Rule 11 *bis* of 17 May 2005 ("Decision") and the Referral Bench's Order of 11 September 2006,<sup>1</sup> the Prosecution hereby files its fourth progress report in this case.
2. The Confidential Third OSCE Report in this case<sup>2</sup> focuses exclusively on the application of witness protection measures in this case.
3. The OSCE summarises the proceedings in the *Stanković* case to date as follows:
  - Until 18 August 2006, six main trial sessions were held, during which 10 Prosecution witnesses were heard. On three occasions the sessions were postponed.
  - All hearings have been held *in camera*, with the exception of parts of two sessions which were declared open to the public. During these public sessions, case management issues were addressed and the acceptance of adjudicated facts was discussed.
  - At the first session, on 6 June 2006, the accused Stanković was removed from the courtroom due to disruptive behaviour immediately before the first protected witness began testifying. On 4 July 2006, the Trial Panel

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<sup>1</sup> *Prosecutor v. Radovan Stanković*, Case No. IT-96-23/2-PT, Order on Prosecution Request for an Extension of Time to File Fourth Progress Report, 11 September 2006.

<sup>2</sup> Confidential Third OSCE Report, Case of Defendant Radovan Stanković, Transferred to the State Court pursuant to Rule 11 *bis*, September 2006 ("Report").

decided that even if the accused refuses to attend the trial sessions although duly summoned, the trial would nonetheless continue. The accused has not attended his trial sessions, but is represented by two Defence Counsel appointed *ex officio* by the Court. It appears that the accused refuses to communicate with his counsel in general. On 28 June 2006, the Trial Panel decided to limit some aspects of the accused's right to communicate, in light of the inappropriate language used in his many submissions and the risk that he would reveal the personal details of protected witnesses to the public.

- On 13 July 2006, the Trial Panel accepted as proven three facts pertaining to the existence of an armed conflict and systematic attacks at specific points in time and places, which derived from the judgements of the ICTY Trial and Appeal Chambers in *Prosecutor v. Kunarac*.<sup>3</sup>

4. The OSCE makes a number of recommendations with respect to witness protection issues, such as practical training of the judicial and prosecutorial authorities, the creation of a co-ordination mechanism to support witnesses and competent actors, the formulation of guidelines, and the establishment of a working group to review and amend the Law on Witness Protection and Vulnerable Witnesses ("Law on Witness Protection").<sup>4</sup> The OSCE recommends that the Law on Witness Protection be amended to ensure a "better understanding of the legal principles and practical arrangements surrounding the application of witness protection measures, as well as the importance of harmonizing the Court's practices as much as possible."<sup>5</sup>

5. The OSCE Mission deems that it "has no reason to believe that witnesses are not adequately protected by the State Court in these proceedings. On the contrary, however, the court and parties in this case appear to be rather over-protective."<sup>6</sup> The Prosecutor submits that a balance must be struck between the public interest and the protection of witnesses, which should be assessed on a case by case basis.

6. "Without compromising the confidentiality of the proceedings, the OSCE will seek ways to make the competent authorities aware of this Report's findings and

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<sup>3</sup> Report, p. 2.

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

<sup>5</sup> Report, p. 10.

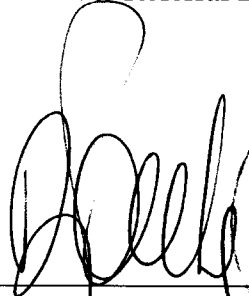
<sup>6</sup> Report, p. 2.


recommendations, as well as to reaffirm the Mission's willingness to support the relevant actors in improving the system of witness protection at the State Court and beyond."<sup>7</sup> The Prosecutor intends discussing some of the issues raised in the report with OSCE and the Bosnia and Herzegovina State Prosecutor and other judicial actors.

7. The Prosecutor understands and gives due regard to the issues identified in the OSCE report which are of value for the local actors, however, the Prosecutor considers that these issues do not appear to affect Stanković's right to a fair trial. In addition, the Prosecutor notes that the OSCE considers that "[u]ntil present, the State Court's application of this law [Law on Witness Protection] has not resulted in concerns regarding the defendant's or witnesses' rights as such."<sup>8</sup>

8. While the nature of the report is such that it would not raise any concerns relating to the referral of this case pursuant to Rule 11*bis*, in an effort to meet the requirements of the Trial Chamber's Decision,<sup>9</sup> the Prosecutor hereby submits Part I of the Report, attached as Confidential Annex A. Part II of the Report consists of summaries of the principal hearings, submissions by the parties, and decisions of the Court. The Prosecution will provide Part II of the Report if the Referral Bench deems it necessary.

Word count: 829

  
Carla De Ponte  
Prosecutor



Dated this twentieth day of June 2006  
At The Hague  
The Netherlands

<sup>7</sup> Report, p. 2.

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

<sup>9</sup> "[S]uch reports should comprise or include the reports of the international organisation monitoring or reporting on the proceedings pursuant to this Decision." Decision, p. 34.