

IT-05-88/1-PT 935
D 935- D 927 POK
23 APRIL 2008

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

Case No. IT-05-88/1

IN THE REFERRAL BENCH

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

Registrar: Mr. Hans Holthuis

Date Filed: 23 April 2008

THE PROSECUTOR

v.

MILORAD TRBIĆ

PUBLIC

PROSECUTOR'S FOURTH PROGRESS REPORT

The Office of the Prosecutor
Mr. Serge Brammertz

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

Case No. IT-05-88/1

THE PROSECUTOR

v.

MILORAD TRBIĆ

PUBLIC

PROSECUTOR'S FOURTH PROGRESS REPORT

1. Pursuant to the Referral Bench's Decision on Referral of Case Under Rule 11 *bis* with Confidential Annex ("Referral Decision") of 27 April 2007, the Prosecutor hereby files his fourth 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's Office of Bosnia and Herzegovina in this case six weeks after transfer of the evidentiary material. Thereafter, the Prosecution shall file a report every three months. These reports shall include information on the course of the proceedings before the competent national court after commencement of trial, and shall include any reports or other information received from any international organisations also monitoring the proceedings.¹

3. The third progress report in the *Trbić* case was filed on 23 January 2008.²

4. Following the agreement between the Chairman in Office of the Organisation for Security and Co-operation in Europe's Mission to Bosnia and Herzegovina (the "OSCE") and the Office of the Prosecutor ("OTP"), the Prosecutor received OSCE's third report on 18 April 2008.³ The Report outlines the main findings of trial

¹ Referral Decision, p. 26.

² *Prosecutor v. Milorad Trbić* ("Trbić case"), Case No. IT-05-88/1, Prosecutor's Third Progress Report, 23 January 2008.

³ OSCE's Third Report in the *Milorad Trbić* Case Transferred to the State Court pursuant to Rule 11 *bis*, April 2008 ("Report").

monitoring activities to date in the *Trbić* case, from the perspective of international human rights standards.

5. The OSCE has not noted any new issues of concern from a fair trial and human rights perspective.⁴

6. The OSCE summarises the proceedings in the *Trbić* case to date as follows:⁵

- The Court held 12 main trial hearings, during which it heard testimonies of 16 prosecution witnesses and one expert witness. The Court also held four status conferences. Both, the hearings and status conferences were held principally in public, except for hearing one witness in camera.
- On 3 March 2008, the Court held a site visit in the area where alleged crimes took place.
- The Defendant remains in custody on the bases of the risk of flight and threat to public security pursuant to a decision dated 19 March 2008.
- On 18 March 2008, the Trial Panel decided to allow the defense to start with its case at the following hearing, although the POBiH has not completed its case. As the POBiH tries to secure the testimony of remaining witnesses, the Trial Panel decided to allow the defense to start its case, in order to make the best use of the court time.
- The trial continued with a status conference on 14 April 2008 and a hearing on 15 April 2008.

7. The Prosecutor also takes note of the following two innovative procedural developments reported by OSCE. First, OSCE mentions that for the first time two witnesses testified after having been granted immunity by the Prosecutor's Office of BiH ("POBiH") under Article 84 of the Criminal Procedure Code of BiH ("CPC"). This provision allows a witness to provide testimony without fear of prosecution on the basis of its content, except in case of false testimony. The OSCE suggests that in future cases, the POBiH should inform the Trial Panel that a witness has been granted immunity, before it instructs the witness on his/her rights and obligations. In such cases a Trial Panel can give the witness correct instructions on his/her rights and avoid any misunderstandings.⁶

⁴ Report, Executive Summary, p. 1.

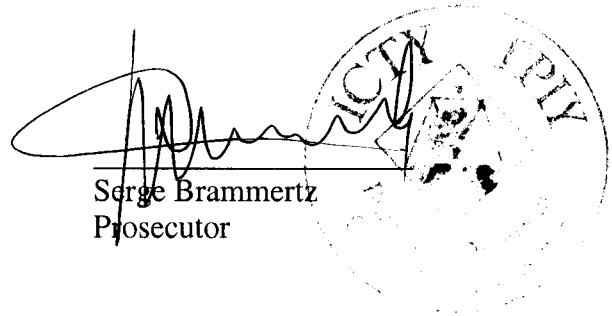
⁵ *Ibid.*

⁶ *Ibid.*

8. Second, OSCE reports that the Trial Panels from the *Trbić* and *Božić et al.* cases held a joint session when an expert witness called by the POBiH was heard. Taking into consideration that the time frame and crimes alleged in those two cases overlap, the OSCE welcomes this development and encourages parties to use this procedural innovation for reasons of judicial economy and efficiency and in accordance with the provisions of the CPC.⁷

9. Attached to this report is a copy of the OSCE's Report.

Word count: 676



Serge Brammertz
Prosecutor

Dated this twenty third day of April 2008
At The Hague
The Netherlands

⁷ Report, Executive Summary, pp. 1 and 2.

INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

Case No. IT-05-88/1

THE PROSECUTOR

v.

MILORAD TRBIĆ

PUBLIC

ANNEX

TO

PROSECUTOR'S FOURTH PROGRESS REPORT



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

**Third Report in the
Milorad Trbić Case**

Transferred to the State Court pursuant to Rule 11bis

April 2008

EXECUTIVE SUMMARY

The case of Milorad Trbić (hereinafter also “Defendant” or “Accused”) is the sixth case transferred from the ICTY to the BiH State Court pursuant to Rule 11*bis* of the ICTY Rules of Procedure and Evidence (RoPE). This constitutes the third report in this case that the OSCE Mission to Bosnia and Herzegovina (“OSCE BiH” or “Mission”) delivers to the ICTY Prosecutor, covering the period between 11 January 2008 and 9 April 2008.

During the reporting period, OSCE BiH has not noted any new issues of concern from a fair trial and human rights perspective.

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

- The Court held 12 main trial hearings, during which it heard the testimony of 16 prosecution witnesses and one expert witness. The Court also convened four times for the purpose of holding status conferences.¹ Hearings and status conferences were held principally in public, except for hearing one witness *in camera*. The Court and Parties also visited the areas where the alleged crimes were committed on 3 March 2008.
- Of the 16 witnesses who testified, six testified without any protective measures. The remaining ten testified under pseudonym, as well as with at least one additional measure: namely, nine of these witnesses testified from a separate room and with voice and/or image distortion, while one testified in closed session.²

Two of these witnesses also testified after having been granted immunity by the Prosecutor,³ This procedural possibility enables a witness to provide testimony without fear of prosecution on the basis of its content, except in the case of false testimony.⁴

As a minor observation resulting from monitoring the present case, it can be suggested that the Prosecutor inform the Trial Panel that a witness has been granted immunity, before the Trial Panel instructs the witnesses on their rights and obligations, so that the Court can also give the witness the correct instruction on rights and avoid any misunderstandings.⁵

- On 17 and 18 March, the Trial Panel heard the testimony of an expert witness called by the Prosecution. The hearing on 17 March was held in joint session with the Trial Panel and defence counsel in the case of *Božić et al.*⁶

This was the first joint session of trial panels of the BiH State Court, held for the purpose of judicial economy and efficiency. During this session, each Trial Panel addressed the motions and

¹ Main trial hearings were held on 15, 16, 21, 28, and 29 January, 4, 5, 11, 12, and 18 February, and 17 and 18 March 2008. Sessions held exclusively for status conference were on 22 January, 26 February, and 4 and 11 March 2008.

² The six witnesses who testified without any protective measures did so on 28 and 29 January, and 4, 5, 11 and 18 February. One witness on 15 January testified under pseudonym and in closed session. All other witnesses testified under pseudonym and from a separate room with voice and/or image distortion. They testified on 15, 16, 21, 28, and 29 January, and 4 February 2008. On 12 February, no witness was heard, as the one scheduled failed to appear.

³ On 28 January and 4 February 2008 respectively.

⁴ Article 84 of the Criminal Procedure Code of Bosnia and Herzegovina (BiH CPC).

⁵ In the present case, the Trial Panel instructed these two witnesses, as all others, on their general right to refuse to answer questions when a truthful reply would result in the danger of prosecution, according Article 84(1) BiH CPC. It is only after this that the Prosecutor informed the Panel that the witnesses were granted immunity and informed them about their rights Article 84(2) BiH CPC, without making express reference to the difference between the two warnings.

⁶ The defendants in the *Božić* case (X-KR-06/236) are charged with Crimes against Humanity for crimes committed against the Bosniak civilian population of the Srebrenica enclave in July 1995. The Prosecutor in the *Božić* case is the same as the one in this case.

objections of their respective parties, while later on, each Panel heard additional testimony from the expert witness in regular, separate sessions. This procedural innovation was a welcome development as it appeared to be carried out in an effective manner, respecting the rights of the parties to examine the evidence adequately. Panels and parties may be encouraged to opt for similar arrangements in order to protect further those witnesses who can be called to testify on the same or similar facts in more than one case, particularly when such protection is extended due to threat or vulnerability.

- The Defendant remains in custody on the basis of the risk of flight and the threat to public security pursuant to a decision dated 19 March 2008. Previously iterated concerns remain that the threat to public and property security -- as ground for custody -- has not been adequately substantiated.
- On 18 March, the Trial Panel decided to allow the Defence to commence with its case at the following hearing, although the Prosecution has not completed its case. The Prosecution is still attempting to secure the testimony of its remaining witnesses, who are unlikely to be able to testify in the following weeks. In order to make the best use of its time in the interim, the Panel decided to allow the Defence to begin with its case at the next hearing.
- The next main trial hearing is scheduled for 15 April 2008. A status conference is set for 14 April.

PART II**LIST OF RELEVANT HEARINGS - SUBMISSIONS - DECISIONS**

- (i) Main trial hearing, held on 15 January 2008.
- (ii) Main trial hearing, held on 16 January 2008.
- (iii) Prosecution Trial Motion on Admission of trial testimony investigation statements and expert reports in documentary form, dated 17 January 2008 (amended by motion on 8 February 2008).
- (iv) Main trial hearing, held on 21 January 2008.
- (v) Status conference, held on 22 January 2008.
- (vi) Main trial hearing, held on 28 January 2008.
- (vii) Main trial hearing, held on 29 January 2008.
- (viii) Decision of the Trial Panel on review of custody, dated 4 February 2008.
- (ix) Main trial hearing, held on 4 February 2008.
- (x) Main trial hearing, held on 5 February 2008.
- (xi) Main trial hearing, held on 11 February 2008.
- (xii) Main trial hearing, held on 12 February 2008.
- (xiii) Main trial hearing, held on 18 February 2008.
- (xiv) Status conference, held on 26 February 2008.
- (xv) Status conference, held on 4 March 2008.
- (xvi) Status conference, held on 11 March 2008.
- (xvii) Defence proposal of witnesses to be heard, dated 15 March 2008.
- (xviii) Main trial hearing, held on 17 March 2008.
- (xix) Main trial hearing, held on 18 March 2008.
- (xx) Decision of the Trial Panel on review of custody, dated 19 March 2008