



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-05-88/1-PT

Date: 10 January 2007

Original: English

**BEFORE THE REFERRAL BENCH**

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

**Registrar:** Mr. Hans Holthuis

**Decision of:** 10 January 2007

**PROSECUTOR**

v.

**MILORAD TRBIĆ**

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**ORDER ON DEFENCE MOTION FOR EXTENSION OF TIME**

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**Office of the Prosecutor**

Ms. Carla Del Ponte  
Ms. Susan Somers  
Mr. Peter McCloskey  
Mr. Aleksandar Kontić

**Counsel for Milorad Trbić**

Mr. Stéphane Piletta-Zanin

**The Government of Bosnia and Herzegovina**

*per:* The Embassy of Bosnia and Herzegovina  
to the Netherlands, The Hague

**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 SEISED OF** the partly confidential “Request by the Prosecutor under Rule 11 *bis* for Referral of the Indictment to Another Court”, filed on 4 May 2006 (“Referral Request”), in which the Prosecution requests the Referral Bench to refer the case against Milorad Trbić (“Accused” or “Trbić”) to the authorities of Bosnia and Herzegovina pursuant to Rule 11 *bis* of the Rules of Procedure and Evidence of the Tribunal (“Rules”);<sup>1</sup>

**NOTING** the “Order for Further Submissions on Referral Request and Scheduling Order for Hearing” of 22 November 2006 (“Order for Submissions”), in which the Referral Bench scheduled a hearing on the Referral Request for Monday, 15 January 2007; and ordered the parties, and invited the Government of Bosnia and Herzegovina, to file written responses to a series of specific questions by Friday, 5 January 2007;

**BEING ALSO SEISED OF** the “Requête en vue d’obtention de délais suite à la décision intitulée ‘Order for Further Submissions on Referral Request and Scheduling Order for Hearing’ du 22.11.2006”, filed confidentially on 4 January 2007 (“Motion”), in which Trbić requests an extension of time beyond 5 January 2007 to file his response to the Order for Submissions,<sup>2</sup> and puts forth the following justifications for such an extension:

- a. the context of this case is complex and delicate;<sup>3</sup>
- b. the practical difficulties surrounding this case are evidenced by the status conference of 24 November 2006, where all three judges of Trial Chamber II—and not just the Pre-Trial Judge—were present and asked a number of questions,<sup>4</sup> most relating to Trbić’s fitness to stand trial;<sup>5</sup>
- c. on 20 July 2006 Judge Schomburg, acting as duty judge on behalf of the Appeals Chamber, issued a decision granting Trbić’s motion for a suspension of time to file his appeal against the Trial Chamber II’s decision severing Trbić’s case from that of the other accused in *Prosecutor v. Popović et al.* (“Time Extension Decision” and “Severance Decision”, respectively);<sup>6</sup> and the Appeals Chamber has not yet revoked this

<sup>1</sup> The Referral Bench became seized of Rule 11 *bis* proceedings in this case by virtue of an order dated 10 May 2006. See *Prosecutor v. Trbić*, Case No. IT-05-88-PT, Order Appointing a Referral Bench for the Purpose of Determining Whether the Indictment Should Be Referred to Another Court under Rule 11 *bis*, 10 May 2006, p. 2.

<sup>2</sup> Motion, p. 4.

<sup>3</sup> *Ibid.*, p. 3.

<sup>4</sup> *Ibid.*, p. 4.

<sup>5</sup> *Ibid.*, p. 5.

<sup>6</sup> *Ibid.*, 2. Trbić’s case was severed from *Popović et al.* on 26 June 2006. See *Prosecutor v. Popović, Beara, Nikolić, Borovčanin, Tolimir, Miletić, Gvero, Pandurević, and Trbić*, Case No. IT-05-88-PT, Decision on Severance of Case Against Milorad Trbić with Confidential and *Ex Parte* Annex, 26 June 2006 (“Severance Decision”). Certification to appeal the Severance Decision was granted by Trial Chamber II on 14 July 2006. See *Prosecutor v. Trbić*, Case No. IT-05-88/1-PT, Decision on “Requête de la Défense en certification d’appel

suspension of time or ruled on the merits of the Trial Chamber's severance decision;<sup>7</sup>  
and

- d. logic and the principle of procedural economy demand that certain questions be resolved before the Referral Bench proceeds with its evaluation of the Referral Request—that is, apparently, that the Appeals Chamber lift the suspension of time for Trbić to file his appeal against the Severance Decision and decide on the merits of Trbić's appeal (which he has not yet filed); and that Trial Chamber II issue a decision on Trbić's fitness to stand trial;<sup>8</sup>

**NOTING** the “Prosecutor’s Response in Opposition to ‘Requête en vue d’obtention de délais suite à la décision intitulée “Order for Further Submissions on Referral Request and Scheduling Order for Hearing” du 22.11.2006””, filed confidentially on 5 January 2007 (“Response”), in which the Prosecution requests that the Referral Bench deny the Motion on the following grounds:

- a. “there has been no demonstration that the procedural history of this case impinges on [Trbić’s] ability to have filed a Response within six weeks since the issuance of the Order [for Submissions]”;<sup>9</sup> and Trbić has therefore failed to show good cause pursuant to Rule 127 for the requested extension of time;<sup>10</sup>
- b. Trial Chamber II has made no finding that Trbić is unfit to stand trial, and that Chamber has not suspended pre-trial proceedings in this case;<sup>11</sup>
- c. “[t]he pending matters before [Trial Chamber II] do not necessarily bar the Referral Bench from receiving submissions by the parties and a hearing by the Referral Bench on matters relevant to referral”;<sup>12</sup> and
- d. even if Trial Chamber II were to find Trbić unfit to stand trial, such a finding “would not bar referral”;<sup>13</sup>

**NOTING** the “Determination suite a la ‘Prosecutor’s Response in Opposition to “Requête en vue d’obtention de délais suite à la décision intitulée ‘Order for Further Submissions on Referral Request and Scheduling Order for Hearing’ du 22.11.2006”””, filed confidentially on 8 January 2007 (“Reply”), in which Trbić reiterates a number of arguments made in the Motion;

**CONSIDERING** that, pursuant to Rule 126 *bis*, a party may not file a reply unless granted leave to do so by the relevant Chamber; that Trbić has not requested such leave; and that, in any event, the Reply adds nothing of substance to the Motion or the Referral Bench’s consideration of this matter;

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(art. 72(B)(ii) suite à la Décision de la Chambre datée du 26 juin 2006[)], 14 July 2006. *See also Prosecutor v. Trbić*, Confidential Urgent Order Granting Suspension of Time, 20 July 2006 (“Time Extension Decision”).

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

<sup>8</sup> *Ibid.*, p. 4.

<sup>9</sup> Response, para. 4.

<sup>10</sup> *Ibid.*, paras. 3, 7.

<sup>11</sup> *Ibid.*, para. 6.

<sup>12</sup> *Ibid.*, para. 5.

**CONSIDERING**, therefore, that it is unnecessary to grant leave for the Reply to be filed pursuant to Rule 126 *bis*;

**RECALLING** that the Order for Submissions was issued on 22 November 2006, that it established the deadline for responses as 5 January 2007, and that the parties and Bosnia and Herzegovina consequently had more than six weeks to prepare the requested material;

**NOTING** that the mere filing by one of the parties of a request for an extension of a given deadline does not have the effect of automatically suspending that deadline, and that the party remains under an obligation to respect the deadline unless the Trial Chamber issues a decision expressly suspending or extending it before its expiration;

**NOTING** that, for there to be any real prospect of a party's requested extension of time being granted before the expiration of the deadline in question, the party must file such a request within a reasonable period of time before the deadline's expiration, so that the Trial Chamber may have an adequate opportunity to deliberate and rule on the request;

**NOTING** that, even though Trbić has been aware of the issues raised in the Motion since at least 24 November 2006, and thus could have filed the Motion shortly after the Order for Submissions was issued, he waited until one day before the expiration of the time limit to file it, and he has not yet filed a substantive response to the Order for Submissions;

**CONSIDERING**, therefore, that Trbić is in violation of the Order for Submissions;

**CONSIDERING**, moreover, that, as the Presiding Judge of Trial Chamber II has already pointed out to Trbić and his Counsel,<sup>14</sup> the Time Extension Decision by its very terms only suspends the deadline for Trbić to file his appeal against the Severance Decision,<sup>15</sup> and has no bearing on any other proceedings in this case that are or may in the future be pending before Trial Chamber II, the Referral Bench, or the Appeals Chamber;

**CONSIDERING** that the Referral Bench has long been aware of the questions raised in Trial Chamber II concerning Trbić's fitness to enter a plea and to stand trial,<sup>16</sup> and that the possibility

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<sup>13</sup> *Ibid.*, para. 6.

<sup>14</sup> *Trbić*, Transcript of Status Conference, T. 25 (24 November 2006).

<sup>15</sup> *See* Time Extension Decision, *supra* note 6, p. 3 (Judge Schomburg acting as duty judge and ordering that "the time limits applicable to the case on appeal be suspended forthwith and until further notice") (emphasis added).

<sup>16</sup> For example, the Senior Legal Officer of Trial Chamber II, at the direction of the Referral Bench, discussed the Bench's awareness of Trial Chamber II's fitness proceedings in a confidential letter to Counsel for Trbić dated 25 August 2006. *See* Confidential Correspondence from John Cubbon to Stéphane Piletta-Zanin, 25 August 2006.

that Trial Chamber II might eventually find him unfit was taken expressly into account in the Order for Submissions;<sup>17</sup>

**CONSIDERING FURTHER** that an accused's lack of fitness to enter a plea and to stand trial does not necessarily preclude his referral to national authorities pursuant to Rule 11 *bis*;<sup>18</sup> and that, precisely because of the possibility that Trial Chamber II may eventually find Trbić unfit to enter a plea and to stand trial, the Referral Bench included in the Order for Submissions a number of specific questions concerning the provisions and practice of Bosnian criminal procedure relating to an accused's possible lack of fitness to enter a plea and to stand trial,<sup>19</sup> with a view to obtaining submissions that may aid the Bench in determining the feasibility and prudence of referring Trbić's case to Bosnia and Herzegovina notwithstanding a possible finding of lack of fitness;

**CONSIDERING**, therefore, that it is fully consistent with the interests of justice and the rights of the Accused for the current information-gathering process—including the filing of written responses to the Order for Submissions and the holding of the oral hearing as scheduled—to go forward as originally planned;

**CONSIDERING** that, as the Referral Bench noted in the Order for Submissions, all proceedings before the Tribunal must take place in public, unless good cause is shown to the contrary;<sup>20</sup>

**CONSIDERING** that, while the Motion contains sensitive information that has not been placed in the public domain, nothing in the Response contains any such information, and that no good cause exists for maintaining the confidential status of the Response;

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<sup>17</sup> Order for Submissions, p. 3.

<sup>18</sup> See, e.g., *Prosecutor v. Kovačević*, Case No. IT-42/2-I, Decision on Referral of Case Pursuant to Rule 11*bis* with Confidential and Partly *Ex Parte* Annexes, 17 November 2006, paras. 48, 63, 93 (noting that, even though Kovačević had been found unfit to enter a plea or to stand trial before the Tribunal, “the issues arising from [his] current mental health condition would not pose an obstacle for referral of the case to the Republic of Serbia”, and referring the case to those authorities) (quotation at para. 63).

<sup>19</sup> Order for Submissions, pp. 3–4.

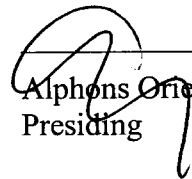
<sup>20</sup> See *ibid.*, p. 1 n. 5 and sources cited therein.

**PURSUANT TO** Rules 11 *bis*, 54, and 126 *bis* of the Rules,

**HEREBY ORDERS AS FOLLOWS:**

1. Leave to file the Reply is denied.
2. The Motion is denied.
3. Trbić shall file the written response ordered in the Order for Submissions forthwith.
4. The Registry shall lift the confidentiality of the Response.

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



Alphons Orie  
Presiding

Dated this tenth day of January 2007  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**