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14 FEBRUARY 2008

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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: 14 February 2008

THE PROSECUTOR

v.

GOJKO JANKOVIĆ

PUBLIC

PROSECUTOR'S NINTH PROGRESS REPORT

The Office of the Prosecutor:
Mr. Serge Brammertz

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

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

THE PROSECUTOR

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PROSECUTOR'S NINTH PROGRESS REPORT

A Introduction

1. Pursuant to the Decision on Prosecutor's Motion for Referral of Case Under Rule 11*bis* of 22 July 2005¹ ("Referral Decision") the Prosecutor hereby files his ninth and final progress report in this case.

2. The Referral Bench 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 any reports received by the Prosecution from the international organisation monitoring or reporting on the proceedings.²

3. The Eighth Progress Report in the *Janković* case was filed on 14 November 2007.³

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

¹ *Prosecutor v. Gojko Janković*, Case No. IT-96-23/2-PT, Decision on Prosecutor's Motion for Referral of Case Under Rule 11 *bis*, 22 July 2005.

² Referral Decision, p. 34.

³ *Prosecutor v. Gojko Janković*, Case No. IT-96-23/2-PT, Prosecutor's Eighth Progress Report, 14 November 2007.

Herzegovina (the “OSCE”) and the Prosecutor, the Prosecutor received OSCE’s eighth and final report in the *Janković* case on 8 February 2008.⁴

5. The OSCE in this case did not identify any issues of concern that could be assessed as infringing upon Gojko Janković’s right to a fair trial⁵.

B Summary of Proceedings

6. The OSCE summarises the main proceedings in the *Janković* case as follows:⁶

- The Defence appealed the first instance verdict on 14 April 2007.
- The appeal arguments were heard in a public session on 23 October 2007, in the presence of the Prosecutor, the Accused and the *ex officio* Defence Counsel.
- The Appellate Panel rendered the final verdict on 16 November 2007, largely confirming the first instance verdict. It found Gojko Janković guilty of crimes against humanity, and confirmed the sentence of 34 years of imprisonment.
- It maintained that Gojko Janković is guilty of multiple instances of rape, murder, torture, imprisonment and sexual slavery committed in the area of Foča in 1992. However, the Appellate Panel accepted in part the Defence appeal and modified the legal qualifications of some of the acts attributed to the Accused.
- While it upheld that the Trial Panel rightfully and completely established the state of facts under Counts 1 and 2, the Appellate Panel altered their legal qualification from forcible transfer of population to unlawful imprisonment. It also found that with regard to Count 3, the Defendant acted as accessory rather than an accomplice.

C Issues relating to the Foča Penal Correctional Institution (“PCI”)

7. Gojko Janković was transferred to serve his sentence in the Foča PCI on 20 November 2007.⁷

8. The OSCE confirms that it has no reason to believe that there should be any problems with the conditions of detention at the Foča PCI.⁸ It points out that since

⁴ Eighth and Final Report in the Case of Convicted Person *Gojko Janković* Transferred to the State Court pursuant to Rule 11*bis*, February 2008 (hereinafter “Report”).

⁵ Report, Summary of Developments, p. 2.

⁶ *Ibid.*

⁷ *Ibid.*

Radovan Stanković's escape from the Foča PCI, the institution has undergone a significant rearrangement of both management and procedures.⁹

9. OSCE mentions a controversy in the media surrounding the appointment of the new Director of the Foča PCI. Specifically, this concerns allegations that he had hindered investigations in a torture case and had been barred from taking up any positions in the field of law enforcement.¹⁰ However, according to recent media reports, the Ministry of Justice of Republika Srpska stated in response that the newly appointed director had been acquitted of all charges in the final verdict and does not appear on the list of decertified police officers, provided by the Ministry of Interior.¹¹

10. The Prosecutor notes, that OSCE is following the developments regarding this issue. The Prosecutor also takes note of OSCE's reiterated recommendations for a comprehensive reform of the penal sanctions system as first formulated by OSCE in its Report in the *Stanković* case.¹² These recommendations include but are not limited to the building of a secure prison at the State level.¹³ OSCE recommends in particular that high priority be given to strengthening human resource management.¹⁴

D Conclusion

11. The Prosecutor understands and gives due regard to the issues identified by OSCE in its Report which are of value for the local actors, however, the Prosecutor considers that these issues do not appear to have affected Gojko Janković's right to a fair trial.

12. This is the Prosecutor's last report regarding monitoring of proceedings in the *Janković* case. The case was finalized by the decision of the Appellate Panel of 16 November 2007. The OTP informed OSCE that upon finalization of the case OTP's

⁸ *Ibid.*

⁹ Report, p. 3.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.* See also: *Prosecutor v. Radovan Stanković*, Case No. IT-96-23/2-PT, Prosecutor's Seventh Progress Report ("Stanković's Report"), 27 June 2007.

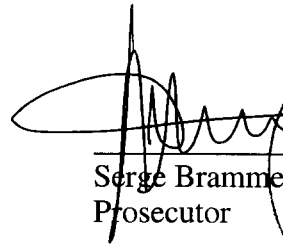
¹³ Report, p. 3.

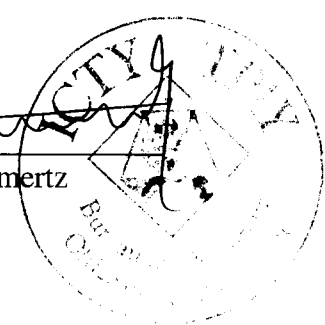
¹⁴ This includes transparent recruitment procedures, internal and external oversight mechanisms for the prevention and sanctioning of disciplinary offences as well as continuous training to staff at all levels on issues regarding security procedures, prison regime and human rights (Report, p. 3).

monitoring activities and the obligation to submit reports to the Referral Bench came to an end.

13. Attached to this report and marked as Annex A is a copy of the Report.

Word count: 918


Serge Brammertz
Prosecutor



Dated this fourteenth day of February 2008
At The Hague
The Netherlands

INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

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

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ANNEX A
TO
PROSECUTOR'S NINTH PROGRESS REPORT



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

**Eighth and Final Report in the
Case of Convicted Person *Gojko Janković*
Transferred to the State Court pursuant to Rule 11bis**

February 2008

SUMMARY OF DEVELOPMENTS

This constitutes the eighth and last¹ Report of the OSCE Mission to Bosnia and Herzegovina (“OSCE-BIH” or “Mission”) in the case of Gojko Janković, the second case transferred from the ICTY to the BiH State Court pursuant to Rule 11*bis* of the ICTY Rules of Procedure and Evidence, covering the period between the beginning of November 2007 and the end of January 2008. In the course of its monitoring activities during the reporting period, the OSCE BIH did not identify any issues of concern that could be assessed as infringing upon the Defendant’s right to a fair trial. Therefore, this report is limited to highlighting the main developments in these proceedings.

- It may be reiterated that the Defence appealed the first instance verdict on 14 April 2007. Following this, the Appellate Panel held a public session on 23 October 2007 in the presence of the Prosecutor, the Accused and the *ex officio* Defence Counsel to hear the appeal arguments.
- The written final verdict was rendered on 16 November 2007. The Appellate Panel confirmed for the most part the first instance verdict, finding Gojko Janković guilty of crimes against humanity committed in the area of Foča and sentencing him to 34 years of imprisonment. In sum, the Court confirmed that Janković is guilty of multiple instances of murder, rape, torture, imprisonment and sexual slavery committed in 1992 in the area of Foča,² and confirmed the sentence of long term imprisonment of 34 years that was initially imposed. The Appellate Panel accepted in part the Defence appeal and modified the first instance verdict as regards the legal qualification of certain offences attributed to the Accused.

More specifically, the Appellate Panel found that the Trial Panel established rightfully and completely the state of facts under Counts 1 and 2 of the first instance verdict. However, it revised the legal qualification of these acts and concluded that the facts under the said counts of crimes against humanity do not constitute the elements of forcible transfer of population, but rather amount to unlawful imprisonment. Moreover, the Appellate Panel modified the Trial Panel’s legal qualification of the facts described in Count 3 and found that the Defendant did not commit the acts as accomplice, but as an accessory.

- On 20 November 2007, Gojko Janković was transferred to serve his sentence in the Penal Correctional Institution (PCI) of Foča.

According to the information that the Mission has at its disposal, there is no reason to believe at this stage that there should be any problems with the conditions of detention at the Foča Penal Correctional Institution.

¹ OSCE BiH has been notified by the ICTY Office of the Prosecutor that the OTP’s monitoring activities and obligation to report to the Referral Bench are considered to be over after the final verdict is issued in a transferred case.

² In April 1992, following the attack against Brežine/Zubovići, Janković ordered the civilians to be arrested and taken away into captivity, where they were interrogated and beaten, and then transferred to the Foča Prison camp. Further, the Accused was found to be in charge of an operation on 3 July 1992 on the Kremenik hill, where he ordered civilians to be captured. These civilians were interrogated and brutally beaten, while seven male captives were shot. On the same date, Janković and other soldiers brought women and children to Buk Bijela, where some women were gang raped. Furthermore, from the summer of 1992, he raped, enslaved, or enabled others to rape a number of Bosniak women and girls. The Accused was acquitted on two counts of participating in the rape of another female person in the period between 7 April and May 1992, and capturing, torture and murder of one captured elderly man by soldiers under the command of the Defendant at Buk Bijela on 3 July 1992.

It may be worth mentioning that Radovan Stanković, the first “Rule 11bis” defendant transferred to BiH from the ICTY, escaped on 25 May 2007 from the custody of Foča prison guards soon after he was sentenced to 20 years' long-term imprisonment. Following Stanković's escape, the management and procedures in Foča Prison have been changed, and persons who were found to bear responsibility for this escape were dismissed, while some are under criminal investigation. However, recently, the media reported on certain concerns regarding the background of the newly appointed Director of the said institution.³

In sum, according to press releases on 17 and 18 September 2002, the new Director, who served as Chief of Staff at the state border police in 2002, was decertified by the International Police Task Force (IPTF) and was banned from employment, either then or in the future, in any position within any law enforcement agency in Bosnia Herzegovina. The reason for this decision was reported to be the fact that he hindered investigations into a case of torture of a juvenile, who later committed suicide.

According to the recent media reports, the Office of the High Representative has addressed the RS Ministry of Justice inquiring about this appointment and expressing concerns. Eventually, the RS Ministry of Justice responded that the concerned individual was not on the list of the decertified police officers provided by the Ministry of Interior, and that he had been acquitted by a final verdict in the criminal proceedings against him for abuse of office.

The Mission is following developments in this regard. At present, it reiterates its recommendations formulated in the Second OSCE-BIH Report in the case of Radovan Stanković.⁴ In particular, it is recommended that a comprehensive reform of the penal sanctions system should give high priority to strengthening human resource management. This should include transparent recruitment procedures, internal and external oversight mechanisms for the prevention and sanctioning of disciplinary offences, and continuous training to staff at all levels on issues regarding security procedures, prison regime, and human rights.

³ “Dismissed Police Officer to Head Foca Prison, BIRN 23 January 2008, <http://www.bim.ba/en/99/10/7500/>”, last accessed 2February 2008; “RS Justice Ministry Defends Appointment of Sinisa Golijanin,” BIRN, 25 January 2008, <http://www.bim.ba/en/99/10/7554/>, last accessed February 2008.

⁴ See OSCE-BIH, Sixth Report – Case of convicted person Radovan Stanković – Transferred to the State Court pursuant to Rule 11bis, June 2007. Namely,

- That the State Court will need to be satisfied that existing correctional institutions, to which a specific prisoner may be referred, have in place all necessary measures and procedures for ensuring both the secure confinement of prisoners and their personal security.
- The State and entity ministries of justice need to increase the supervision of penal institutions and enhance the co-ordination among themselves.
- Accordingly, the Ministries of Interior and Security need to ensure that there are appropriate and speedy procedures in place to immediately react to possible escapes. The Mission notes that, apart from the *ad hoc* solutions that authorities may find, there is a need to address the problems in the penal sector in a more sustainable manner. The OSCE-BIH observes that a number of developments are taking place in relation to the reform of the justice sector, including the penal sanctions sector, under the auspices of the State Ministry of Justice and with the involvement of relevant entity ministries. In this context, the Mission underscores the need for a comprehensive reform of the sector for execution of criminal sanctions, including but not limited to the building of a secure prison at the State level.