

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

Case No. IT-04-78-PT

IN THE REFERRAL BENCH

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

Registrar: Mr. John Hocking

Date Filed: 16 December 2009

THE PROSECUTOR

v.

RAHIM ADEMI
and
MIRKO NORAC

PUBLIC

PROSECUTOR'S SEVENTEENTH PROGRESS REPORT

The Office of the Prosecutor

Mr. Gavin Ruxton

THE INTERNATIONAL CRIMINAL TRIBUNAL
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PROSECUTOR'S SEVENTEENTH PROGRESS REPORT

1. Pursuant to the Decision for Referral to the Authorities of the Republic of Croatia Pursuant to Rule 11 *bis*, ("Decision") of 14 September 2005, the Prosecutor hereby files his seventeenth report in this case.

2. The Decision for Referral requires that following the initial report, six weeks after the transfer of material, the Prosecutor must file a report every three months on the course of proceedings before the appropriate Court in the Republic of Croatia.¹ The Office of the Prosecutor ("OTP") filed its sixteenth progress report on 16 September 2009.²

3. As previously advised, the ICTY Prosecutor reached an agreement with the Organisation for Co-operation in Europe ("OSCE") Office in Zagreb to monitor the proceedings, other than the pre-trial phase of the proceedings. Following this agreement, the Prosecutor received OSCE's most recent Report on 25 November 2008.³

4. The Report contains a discussion of the Supreme Court sessions in the appellate proceedings on 16 to 18 November 2009, summaries of the parties' appeals and responses and information regarding other developments. As the Prosecutor has

¹ Decision, para. 61.

² *Prosecutor v. Rahim Ademi and Mirko Norac*, Case No. IT-04-78-PT ("*Ademi and Norac case*"), Prosecutor's Sixteenth Progress Report, 16 September 2009.

³ OSCE Memorandum Republic of Croatia v. Rahim Ademi and Mirko Norac, II K-rz-1/06, Ref. AN-1/2009 (25) (hereinafter "Report").

already previously reported on the parties' appeals and responses,⁴ this report will focus on the Supreme Court's appellate sessions and other developments.

5. During the three Supreme Court appellate sessions, in accordance with the law and practice before the Supreme Court, a panel of five judges first heard the summary of the case as prepared by the Judge Rapporteur. The charges, defendants' defence statements and facts established by the first instance court as well as the accepted evidence were read during the first day's session. Subsequently, during the second day, the findings of the Court with regards to the six counts in the Indictment were summarized. Finally, on the third day the panel read the appeals lodged by the State Attorney's Office and defendant Norac, as well as the response by defendant Ademi to the State Attorney's appeal.

6. At the end of the third session, the Presiding Judge asked the parties whether they wanted to amend or clarify any point in their appeals/response. The Prosecutor and Ademi's attorney both confirmed their arguments submitted in writing without changes. Norac's attorney attempted to use exhibits and other documentation when presenting his appeal. The panel warned him several times to avoid repetition clarifying that they would study the whole case file and appeals in detail during private deliberation. The Supreme Court's decision will be issued in writing and distributed to the parties.⁵

7. OSCE also reported about media speculations regarding a potential Presidential pardon for Mirko Norac for his previous conviction. Mirko Norac was sentenced to 12 years imprisonment for his involvement in the war crimes committed in Gospić area in 1991 and has already served 9 out of 12 years. According to Croatian legislation Mirko Norac is eligible to request early pardon for this sentence, but it has been reported that he is not interested in requesting it.⁶

⁴ *Ademi and Norac case*, Prosecutor's Thirteenth Progress Report, 15 December 2008, pp. 2-5.

⁵ Report, p. 2.

⁶ Report, p .3.

8. Attached and marked as Annex A is a copy of the Report.

Word count: 556



Gavin Ruxton
Chief of Trial Division

Dated this sixteenth day of December 2009
At The Hague
The Netherlands

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ANNEX A
TO
PROSECUTOR'S SEVENTEENTH PROGRESS REPORT



Organization for Security and Co-operation in Europe
Office in Zagreb

MEMORANDUM

DATE:	25.11.2009
SUBJECT:	Republic of Croatia v. Rahim Ademi and Mirko Norac, II K-rz-1/06 Supreme Court hears appeals; final decision pending
REF:	AN-1/2009 (25)

I. Introduction

In three sessions between 16 and 18 November 2009, the Supreme Court publically heard the appeals in the case against Rahim Ademi and Mirko Norac. In mid-September 2008, the Zagreb County Court issued its written verdict in this case¹ and the State Attorney as well as defendant Norac lodged their appeals within two weeks. Ademi filed a response to the State Attorney's appeal. Given that neither Ademi nor Norac are detained in this case, there are no applicable legal deadlines in which the appeal must be decided.²

Relevant previous reports form our Office to the OTP:

- Summary of the verdict, Report AN-8/2008 (22).
- Summary of the State Attorney's appeal, Report AN-9/2008 (23).
- Summary of Norac's appeals, Report AN-10/2008 (24).

II. Supreme Court sessions – 16-18 November 2009

During the three sessions, in accordance with the law and the practice before the Supreme Court, a five-judge Panel first heard the summary of the case as prepared by the Judge Rapporteur.³ The charges, defendants' defense statements and facts established by the first instance court as well as the accepted evidence were read during the first day's session. Subsequently, the findings of the Court with regards to the six counts in the Indictment were summarized. Finally, on the third day the Panel read the appeals lodged by the State Attorney's Office and defendant Norac, as well as the response by defendant Ademi to the State Attorney's appeal. Subsequently, the Presiding Judge asked the Parties whether they wanted to amend or clarify any point in their appeals/response. The Prosecutor and Ademi's attorney both confirmed their

¹ Although legal provisions prescribe that the written verdict must be issued within 2 months of the pronouncement of the oral verdict, the Zagreb County Court issued its verdict in mid-September 2008, three and a half months after the oral pronouncement. However, according to Croatian practice, the written verdict has the date from the oral pronouncement, 30 May 2008.

² Defendant Norac is currently serving a 12-year sentence for a separate war crimes conviction in 2003 relating to crimes in Gospić in 1991.

³ The sessions were held in accordance with the law. Art. 374 prescribes that "(t)he session of the panel shall begin with the report of the reporting judge on the facts of the case. The panel may request from the parties present at the session necessary explanations on the appeal allegations". The Panel, however, further deliberates and decides on the appeal during their private sessions.

arguments submitted in writing without changes. Norac's attorney attempted to again use exhibits and other documentation when presenting his appeal. The Panel, however, warned him several times to avoid repetition clarifying that they would study the whole case file and appeals in detail during private deliberation.

The Supreme Court's decision will be issued in writing subsequently and distributed to the Parties.

A. Summary of appeals and Ademi's response

1. State Attorney's appeal

In late September 2008, the State Attorney filed an appeal against Ademi's acquittal on all counts, Norac's acquittal on one count, and the sentence imposed on Norac for the two counts for which he was convicted. The Prosecutor submitted that procedural violations were committed,⁴ that the Court took a biased approach favouring the 1st Accused⁵ and, in particular, that the Court had a selective approach to witness testimonies and material evidence. In addition, it argued that the Court did not adequately establish the scope of Norac's responsibility by applying a narrow form of command responsibility ('Garantenstellung')⁶ and failed to consider the preventive aspect of command responsibility when determining the sentence. Finally, the Prosecutor challenged the levity of Norac's sentence invoking procedural violations⁷ and requesting that the sentence be increased.

2. Rahim Ademi's response to State Attorney's appeal

Ademi's response to the State Attorney's appeal filed in October 2008 challenged the Prosecutor's claims that Domazet was not in command or that Ademi must have been the commander during Domazet's absence. The Response stated that Ademi had no factual command authority since he was only formally signing Bobetko's orders. The Response also noted that the State Attorney is in fact defending Admiral Domazet by not accepting the clear evidence provided in the war journals regarding his several commanding functions during the Operation. Finally the Response refuted that Ademi had any commanding authority over the special police and then pointed to the State Attorney's failures in investigating the real perpetrators of the crimes.

⁴ Article 367(1)(11) stipulates that a substantive violation of criminal procedure provisions exists "if the ordering part of the judgment is incomprehensible, self-contradictory or contrary to the statement of reasons for judgment, if the judgment fails to contain any reasons or fails to contain reasons relating to the relevant facts or if these reasons are entirely unintelligible or contradictory to a significant degree or if a significant contradiction exists in the relevant facts between what is stated in the statement of reasons for judgment on the contents of certain documents or records on statements given in the proceedings and the documents or records themselves."

⁵ Article 369 of the Criminal Procedure Code, which stipulates that "the judgement may be challenged on the ground of erroneous or incomplete determination of the factual situation."

⁶ The Prosecutor, in particular, uses the term 'guarantee command responsibility' (garančna zapovjedna odgovornost; similar to the doctrine of 'Garantenstellung') when referring to command responsibility as defined under Articles 86 and 87 of the 1st Additional Protocol to the Geneva Conventions.

⁷ Article 370 of the Criminal Procedure Code which stipulates that a court "improperly fixes the punishment in the light of aggravating and mitigating circumstances, or when the court applies or fails to apply provisions relating to the reduction of punishment or remission of punishment, or to a suspended sentence or judicial admonition, although grounds therefore exist."

3. Mirko Norac's appeals

Both defence attorneys for Norac, Mr. Olujić and Mr. Nuić, filed separate appeals. The first of Norac's appeals alleged violations of procedural and substantive laws. In relation to Norac's command responsibility, constructed as omission liability pursuant to Article 28 of the applicable law at the time of the commission of the crimes, the defence submitted that Norac had no actual knowledge, nor had he reasons to know that his subordinates committed crimes. In addition, the appeal challenged the sentence of 7 years, claiming the wrong application of legal provisions concluding that Norac could only have been sentenced to 3 years of imprisonment for this conviction.⁸

The second of Norac's appeals claimed that the Court erroneously established the facts leading to a conviction and alleged errors of facts⁹ in the sentencing part of the Verdict. The appeal noted that the Court rejected all of the defence motions aimed at determining the credibility and authenticity of material evidence, the real status of the victims (whether a civilian, armed civilian or a soldier) and the real extent of destruction caused during the Medak Pocket Operation. The appeal also analyzed in detail each established fact relating to command structure and responsibility, noting that the Court's conclusions were illogical and that the trial was unfair and biased.

B. Other developments

In the weeks before the Supreme Court hearing, media speculated about a potential Presidential pardon for Mirko Norac regarding the remaining sentence in relation to a conviction for crimes in the Gospić area in 1991. Current President Stjepan Mesić responded to informal inquiries by journalists that should Mirko Norac apply for pardon, he would act according to his powers and consider such request.

Norac has served almost 9 years out of his 2003 12-year conviction for war crimes committed in Gospić and is eligible to apply for pardon according to relevant provisions. While one of his attorneys, Mr. Zeljko Olujić, was quoted several times by the media regarding Norac's wish to request such pardon, it was reported that Norac himself was not interested in requesting it. A few days before the Supreme Court started hearing the case, it was reported that Norac withdrew the power of attorney of his counsel Mr. Olujić. Subsequently, he was only represented by one attorney, Mr.

⁸ Based on Arts. 43 and 44 of the 1993 Criminal Code.

Art. 43: "(1) If the perpetrator committed one or several criminal acts for which he is simultaneously tried, the Court shall first issue a sentence for each of those acts and will then issue a unified sentence. (2) The unified sentence will be issued by the Court under the following rules: 1. If for any of the acts committed a prison sentence of 20 years is issued, that shall be the only sentence. 2. If for the act in question a sentence is issued, the unified sentence must be larger than each of the individual sentences, but must not exceed the total sum of the issued sentences, nor may it exceed 15 years of prison".

Art. 44: "If the defendant is tried for a criminal act committed before he began serving a sentence based on a previous conviction, or for a criminal act committed during the time the imprisonment sentence was being served, the Court must issue a unified sanction for all the criminal acts applying the provisions of Art. 43 of the same law, taking the earlier issued sanction as already confirmed. The sentence or part of it which was already served by the condemned person shall be accounted for in the pronounced sentence."

⁹ Based on Article 369 of the Criminal Procedure Code.

Vlatko Nuić, at the Supreme Court hearings. The Office is not in possession of any official documents in relation to the appointment of counsel.