

4-05-88/1-7r  
D 953 - D 945  
23 October 2008

953 YB.

THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA

Case No. IT-05-88/1

IN THE REFERRAL BENCH

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

Registrar: Mr. Hans Holthuis

Date Filed: 23 October 2008

THE PROSECUTOR

v.

MILORAD TRBIĆ

PUBLIC

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PROSECUTOR'S SIXTH PROGRESS REPORT

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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 SIXTH 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 sixth 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.<sup>1</sup>

3. The fifth progress report in the *Trbić* case was filed on 23 July 2008.<sup>2</sup>

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.<sup>3</sup> The Report outlines the main findings of trial

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<sup>1</sup> Referral Decision, p. 26.

<sup>2</sup> *Prosecutor v. Milorad Trbić* ("Trbić case"), Case No. IT-05-88/1, Prosecutor's Fifth Progress Report, 23 July 2008.

<sup>3</sup> OSCE's Fifth Report in the *Milorad Trbić* Case Transferred to the State Court pursuant to Rule 11 *bis*, October 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.<sup>4</sup>

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

- The Court held five sessions, during which it heard the testimony of three witnesses — one Defence and two Prosecution witnesses. Hearings and status conferences were held mainly in public.
- None of the three witnesses testified with protective measures. One of the Prosecution witnesses, Momir Nikolić, testified through video-link from Finland where he is currently serving his prison sentence based on an ICTY conviction.
- The OSCE notes that the Defence hired a military expert to provide an opinion on matters related to this case and, subsequently, asked the Court to pay for his expenses. At the status conference on 29 September 2008, the Court discussed this request and stated that it could advance a payment to the Defence expert, but the Defendant would need to submit proof that he is financially unable to pay for this and other costs of the criminal proceedings, if found guilty. The Court submitted a request to the authorities of BiH Federation requesting information on the Defendant's assets. The OSCE notes that in past the Trial Chambers have not been conducting inquiries into defendants assets diligently. The OSCE welcomes the approach of the Court urges for a more proactive approach of the Court in the examination of the defendant's claims of indigence to cover expenses of the proceedings.
- The Defendant remains in custody on the basis of the risk of flight and threat to public security pursuant to a decision on 8 September 2008. The latter ground for custody was recently amended and now explicitly provides that threat to public security may be used as a ground for custody only in exceptional circumstances and if the release of an accused would result in an actual threat to disturbance of public order.
- The next court session is scheduled for 20 October 2008.

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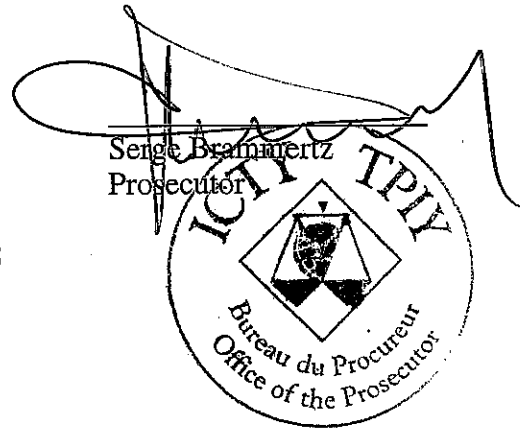
<sup>4</sup> Report, Executive Summary, p. 1.

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

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

Word count: 574

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



INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA

Case No. IT-05-88/1-PT

THE PROSECUTOR

v.

MILORAD TRBIĆ

PUBLIC

ANNEX

TO

PROSECUTOR'S SIXTH PROGRESS REPORT



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

**Fifth Report in the  
*Milorad Trbić* Case**

**Transferred to the State Court pursuant to Rule 11bis**

**October 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. This constitutes the fifth report in this case that the OSCE Mission to Bosnia and Herzegovina submits to the ICTY Prosecutor, covering the period from 10 July to 10 October 2008.

During this reporting period, the Mission has not noted any new issues of concern bearing on the Defendant's right to a fair trial. Therefore, this Report only summarises the developments in this trial and provides a list of the relevant hearings, submissions, and decisions.

The proceedings pertaining to this reporting period are as follows:

- The Court held five sessions, during which it heard the testimony of three witnesses – one Defence and two Prosecution witnesses.<sup>1</sup> Hearings and status conferences were held mainly in public.
- None of the three witnesses testified with protective measures. One of the Prosecution witnesses, Momir Nikolić, testified through video-link from Finland where he is currently serving his prison sentence based on an ICTY conviction.
- It may be noted that the Defence hired a military expert to provide an opinion on matters related to this case and, subsequently, asked the Court to pay for his expenses. At the status conference on 29 September 2008, the Court discussed this request and stated that it could advance a payment to the Defence expert, but the Defendant would need to submit proof that he is financially unable to pay for this and other costs of the criminal proceedings, if found guilty.<sup>2</sup> In addition, the Court submitted a request to the FBiH authorities requesting information on the Defendant's assets.<sup>3</sup>

It appears that trial panels of the State Court have not been conducting inquiries into the defendant's assets in war crime proceedings diligently, and it has been recognised, even by the State Court President, that this has led to certain abuse of the system.<sup>4</sup> The Mission welcomes the fact that the Trial Panel in this case has endeavoured to gather information about the Defendant's financial status prior to deciding on whether the state should cover the expert-witness expenses. Further, the Mission generally encourages the Court to be more proactive in the examination of the defendants' claims of indigence to cover necessary expenses related to the proceedings, including the development of suitable mechanisms for the establishment of such claims.

- The Defendant remains in custody on the basis of the risk of flight and threat to public security pursuant to a decision on 8 September 2008.<sup>5</sup> Of note, this latter ground for custody was recently amended and now explicitly provides that threat to public security may be used as a ground for

<sup>1</sup> On 18 August a Defence witness was heard, while Prosecution witnesses were heard on 1 and 8 September 2008. One more Prosecution witness was summoned to testify via video-link at the hearing of 8 September but he refused to give his statement, after which the Prosecutor has given up this evidence. On 25 August, the Court convened but the witness Momir Nikolić, who was to testify via video-link, was unable to do so because of technical difficulties. This witness later testified on 1 September 2008.

<sup>2</sup> See Article 188 (1) and (4) BiH CPC.

<sup>3</sup> Trial Panel's Letter to the FBiH Administration for geodesy and property legal affairs Zenica requesting information on the Accused's assets, dated 17 September 2008.

<sup>4</sup> See, *International Judges Must Stay in Bosnia*, Interview of President Kreso with the Balkan Investigative Reporting Network, 24 April 2008, available at <<http://www.bim.ba/en/112/10/9651/?tpl=58>>, last accessed 10 October 2008. In this interview, the President of the State Court, Ms. Meddžida Kreso, mentioned that: "By law, the financial status of all indictees should be checked. But trial chambers are not making detailed checks. I have discussed this with judges, as I have noticed we pay very high trial expenses from our budget. I think the trial chamber chairmen are wrong not to check the financial status of all indictees. I have also noticed that persons misuse the right to various specialist medical examinations. I think all these ex-officio costs must be reconsidered."

<sup>5</sup> See also previous reports of the Mission addressing this latter ground of custody.

custody only in exceptional circumstances and if the release of an accused would result in an actual threat to disturbance of public order.<sup>6</sup>

- The next court session is scheduled for 20 October 2008.

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<sup>6</sup> BiH Official Gazette 3/03 with Corrections and Amendments of the CPC of BiH, as published in the "Official Gazette of BiH", numbers 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05/ 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 58/08.



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

1. Main trial hearing, held on 18 August 2008.
2. Prosecution Trial Motion – Proposal for hearing the witness Momir Nikolić, dated 20 August 2008.
3. Clarification to the Prosecution Trial Motion No. 9 – Motion to tender additional evidence – additional witnesses for the Prosecutor’s Office of BiH, dated 22 August 2008.
4. Main trial hearing, held on 25 August 2008.
5. Main trial hearing, held on 1 September 2008.
6. Prosecution Trial Brief No. 20 – Update on translations and witness Kingori, dated 2 September 2008.
7. Main trial hearing, held on 8 September 2008.
8. Decision of the Trial Panel on review of custody, dated 8 September 2008.
9. Expert report by Defence expert witness Colonel Petar Vuga, dated 15 September 2008.
10. Trial Panel’s Letter to the FBiH Administration for geodesy and property legal affairs Zenica requesting information on the Accused’s assets, dated 17 September 2008.
11. Prosecution Trial Brief No. 22 – Update on translation of the Report by Defence expert witness Colonel Petar Vuga, dated 24 September 2008.
12. Status conference, held on 29 September 2008.