

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

IT-05-88/1-PT
D 961 - D 955
23 JANUARY 2009

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PK

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

IN THE REFERRAL BENCH

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

Acting Registrar: Mr. John Hocking

Date Filed: 23 January 2009

THE PROSECUTOR

v.

MILORAD TRBIĆ

PUBLIC

PROSECUTOR'S SEVENTH PROGRESS REPORT

The Office of the Prosecutor
Mr. Serge Brammertz

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

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PROSECUTOR'S SEVENTH 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 seventh 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 sixth progress report in the *Trbić* case was filed on 23 October 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 sixth report on 19 January 2009.³ The Report outlines the main findings of trial monitoring activities to date in the *Trbić* case, from the perspective of international human rights standards.

¹ Referral Decision, p. 26.

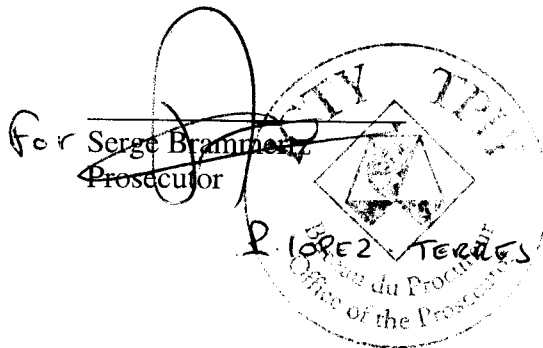
² *Prosecutor v. Milorad Trbić* ("Trbić case"), Case No. IT-05-88/1, Prosecutor's Sixth Progress Report, 23 October 2008.

³ OSCE's Sixth Report in the *Milorad Trbić* Case Transferred to the State Court pursuant to Rule 11 *bis*, January 2009 ("Report").

5. The OSCE has not noted any issues of concern from a fair trial and human rights perspective during the reporting period.⁴⁵
6. The OSCE summarises the proceedings in the *Trbić* case to date as follows:⁶
- The Court held six sessions and heard the testimony of three witnesses — one expert for the Defence and two additional witnesses for the Prosecution who all testified in public sessions.
 - The Defendant remains in custody on the basis of the risk of flight and threat to public security pursuant to a decision on 6 January 2009.⁷
7. Moreover, OSCE mentions the proactive conduct of the Court in seeking to clarify and rectify an erroneous statement made by POBiH to the media, which it deemed could have resulted in prejudicing the *Trbić* case. The Deputy Chief Prosecutor in an interview stated that based on the presented evidence in *Trbić* trial, the POBiH discovered three new mass graves. After the publication the Trial Panel invited the Deputy Chief Prosecutor to appear before the Court concerned by the fact that the erroneous statement could prejudice the *Trbić*'s case. In response, the Deputy Chief Prosecutor drafted a letter in which he apologised for his error. On 27 October 2008, the Court confirmed with the Prosecution that acknowledgement of the mistake was made public and, by doing so, satisfied itself that the error had been duly addressed.⁸
8. The Prosecutor takes note of OSCE's Report and has no other information to bring to the attention of the Referral Bench.
9. Attached to this report is a copy of the OSCE's Report.

Word count: 517

Dated this twenty-third day of January 2009
At The Hague
The Netherlands



⁴ Report, Summary of Developments, p. 1.
⁵ *Ibid.*
⁶ *Ibid.*
⁷ *Ibid.*
⁸ *Ibid.*

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ANNEX

TO

PROSECUTOR'S SEVENTH PROGRESS REPORT



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

**Sixth Report in the
*Milorad Trbić Case***

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

January 2009

IF 05-88/1-PT

957

SUMMARY OF DEVELOPMENTS

The case of Milorad Trbić (hereinafter also Defendant) is the sixth case transferred from the ICTY to the BiH State Court pursuant to Rule 11bis of the ICTY Rules of Procedure and Evidence (RoPE). This constitutes the sixth report in this case that the OSCE Mission to Bosnia and Herzegovina submits to the ICTY Prosecutor, covering the period of 10 October 2008 to 10 January 2009.

During this reporting period, no concerning issues from the perspective of human rights were noted. Thus, this Report summarises recent developments and provides a list of the relevant hearings, submissions, and decisions. It also includes reference to an instance where the Court proactively sought to resolve, and indeed did so, an erroneous statement made to the media, which it deemed could have resulted in prejudicing the *Trbić* case.

The proceedings of this reporting period can be summarised as follows:

- The Court held six sessions, during which it heard testimonies of three witnesses – one expert for the Defence and two additional witnesses for the Prosecution.¹ Hearings and status conferences were held mainly in public. None of these witnesses testified with protective measures.
- The Defendant remains in custody based on the risk of flight and threat to public security pursuant to a decision dated 6 January 2009.
- The next court session is scheduled for 12 January 2009.
- It may be interesting to make reference to the proactive conduct of the Court in seeking to clarify and rectify an erroneous statement made to the media. On 7 October 2008, the Trial Panel requested the Deputy Chief Prosecutor to appear before it to discuss a statement he made to the Balkan Investigative Reporting Network (BIRN) in an interview with BIRN published on 19 September 2008. This article reported that the Prosecutor's Office had yielded success when, "on the basis of presented evidence in Milorad Trbić's trial, it discovered three new mass graves, which were excavated last summer."²

Following the article's publication, the Court noted that the statement of the Deputy Chief Prosecutor was mistaken. The Prosecutor's Office did not discover three mass graves based on evidence from the *Trbić* case but from a different State Court case. Concerned by the fact that the erroneous statement could prejudice the *Trbić* case, the Trial Panel invited the Deputy Chief Prosecutor to appear before the Court.

In response to the Court's request, the Deputy Chief Prosecutor drafted a letter on 13 October 2008 in which he apologised for his error and informed the Court that he had notified BIRN of his mistake. On 20 October 2008, BIRN published an article on the *Trbić* case in which it indicated receipt of the Deputy Chief Prosecutor's letter and included a link to this letter.³ On 27 October 2008, the Court confirmed with the Prosecution that acknowledgement of the mistake was made public and, by doing so, satisfied itself that the error had been duly addressed. BIRN subsequently published an article on the 27 October 2008 noting these developments.⁴

¹ Sessions were held on 20 & 27 October, 3, 10, & 24 November, and 15 December 2008. The expert for the Defence testified on 20 October 2008. The two additional witnesses of the Prosecution testified on 15 December 2008.

² *Interview: Schwendiman: International Prosecutors Must Stay On*, Balkan Investigative Reporting Network [hereinafter BIRN], 19 September 2008, available at <<http://www.bim.ba/en/133/10/13272/>>, last accessed on 5 January 2009.

³ *Trbić: Lack of authority*, BIRN, 20 October 2008, available at <<http://www.bim.ba/en/138/10/14129/>>, last accessed on 5 January 2009.

⁴ *Trbić: Defence completes its evidence presentation*, BIRN, 27 October 2008, available at <<http://www.bim.ba/en/139/10/14295/>>, last accessed on 5 January 2009.

IF-05-8811-PT

956

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

1. Request of the ICTY OTP to the State Court for delivering of transcript of the testimony of Momir Nikolić given in the Trbić case, dated 24 September 2008.
2. Court Invitation to the Deputy Chief Prosecutor of the BiH Prosecutor's Office David Schwendiman to appear before the Court at the 20 October 2008 status conference regarding his interview given to BIRN BiH, dated 7 October 2008.
3. Court Information to the Defence Counsel on scheduling status conference for 20 October 2008 regarding Mr. Schwendiman's interview given to the BIRN BiH, dated 7 October 2008.
4. Report of Colonel Petar Vuga on drafting expert witness report and calculation of expenses, dated 8 October 2008.
5. Court cover letter with CD attached of audio-recording of Momir Nikolić's testimony given in the Trbić case on 1 September 2008 to the ICTY OTP, dated 9 October 2008.
6. Mr. Schwendiman's Letter to the Court concerning the interview he gave to BIRN BiH and requesting to be given a chance to solve the matter informally, dated 13 October 2008.
7. Main trial hearing, held on 20 October 2008.
8. Status conference, held on 27 October 2008.
9. Prosecution Trial Motion 11 – Amending Prosecution Trial Motion 4, dated 28 October 2008.
10. Prosecution Trial Motion 12 – Admission of trial testimony and investigation statements in documentary form and documentary exhibits – witness 90/P-13, dated 29 October 2008.
11. Prosecution Trial Brief 23 – Correction of Trial Motion 9, dated 31 October 2008.
12. Status conference, held on 3 November 2008.
13. Court Decision on review of custody, dated 7 November 2008.
14. Prosecution Trial Brief 6 – Documentary exhibits and records of questioning of witnesses, dated 10 November 2008.
15. Prosecution Trial Motion 13 – Consolidating all previous filings by prosecution regarding witnesses and evidence proposed in Prosecution Trial Motions 4 and 9, dated 10 November 2008.
16. Prosecution Trial Brief 24 – Compliance with ICTY Rule 43, dated 10 November 2008.
17. Status conference, held on 10 November 2008.
18. Request of the Republic Secretariat for Relations with International Criminal Tribunal in The Hague and War Crimes Research of Republika Srpska to the State Court for delivering of transcript of the testimony of Momir Nikolić given in the Trbić case for the Defence Team of ICTY indictee Vujadin Popović, dated 11 November 2008.
19. Defence Counsel Proposal to acquire the Report in relation to the events in Srebrenica in summer 1995 made by the Institute for War Documentation of Netherlands of 2002, dated 21 November 2008.
20. Status conference, held on 24 November 2008.
21. Court Letter to the defence expert witness asking for further clarification regarding the expenses for drafting expert witness report, dated 2 December 2008.
22. Prosecution Trial Brief 25 - Regarding admitted documentary evidence lacking exhibit numbers, dated 2 December 2008.

IT-05-88/1-PT

955

- 23. Main trial hearing, held on 15 December 2008.
- 24. Court Decision on review of custody, dated 6 January 2009.