



International Tribunal for the Prosecution of
Persons Responsible for Serious Violations of
International Humanitarian Law Committed in
the Territory of Former Yugoslavia since 1991

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

Date: 23 July 2007

Original: English

BEFORE THE REFERRAL BENCH

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

Registrar: Mr. Hans Holthuis

Decision of: 23 July 2007

PROSECUTOR

v.

MILORAD TRBIĆ

PUBLIC

DECISION ON DEFENCE MOTIONS

The Office of the Prosecutor

Mr. Peter McCloskey

Counsel for the Accused

Mr. Stéphane Piletta-Zanin for Milorad Trbić

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 “Requête en vue de levée de confidentialité, en vue de l’obtention d’un ordre visant l’immunité des documents et ordonnant rectifications de traductions erronées”, filed on 9 July 2007, whereby the Defence of Milorad Trbić (“Defence”) seeks an order:

- 1) rescinding the confidentiality for all documents (“Materials”):
 - a. marked as confidential, including those as *ex parte* and/or under seal, in the present proceedings, specifically related to this case:
 - i. the entirety of all transcripts of hearings;
 - ii. the entirety of the medical record;
 - iii. the entirety of CDs and DVDs submitted;
 - iv. the entirety of the material communicated by the Prosecution;
 - b. marked as confidential (including those marked as *ex parte*) in the following proceedings:
 - i. Case No. IT-98-33, Prosecutor v. Radislav Krstić
 - ii. Case No. IT-02-60, Prosecutor v. Vidoje Blagojević and Dragan Jokić
 - iii. Case No. IT-98-33/1, Prosecutor v. Vidoje Blagojević
 - iv. Case No. IT-05-88, Prosecutor v. Vujadin Popović *et al.*;
- 2) stipulating that all packages sent by the Defence for this case file are to be considered in their transfer as covered by normal immunity and thus not susceptible to any form of customs inspection; and
- 3) correcting a translation error in the “Submission of the Defence further to the ‘Decision on motion to suspend time-limits’ of 17 May 2007”;¹

and **BEING ALSO SEISED** of the Defence’s “Requête urgente en détermination”, filed on 17 July 2007, and of the Defence’s “Requête complémentaire à la Requête du 17 juillet 2007 et en autorisation de retrait”, filed on 19 July 2007, (collectively “Motions”);

CONSIDERING the President’s “Order to the Referral Bench to consider motions filed before Trial Chamber II and before me”, filed on 20 July 2007” (“Order”), by which the President ordered the Referral Bench to consider the Motions, “considering that in accordance with Rule 11 *bis* of the

¹ The English version was filed on 11 July 2007.

Rules of Procedure and Evidence of the International Tribunal, the Referral Bench remains seized of post-referral matters after its decision on referral has become final”;²

RECALLING the “Decision on referral of case under Rule 11 *bis*”, filed on 27 April 2007 (“Referral Decision”), which decision became final on 11 May 2007 and by which decision the Referral Bench decided to refer the case against Milorad Trbić to the authorities of Bosnia and Herzegovina for referral to the appropriate court for trial within Bosnia and Herzegovina;

NOTING that the Accused was transferred to Bosnia and Herzegovina on 11 June 2007;

NOTING that the Defence is in the process of transferring the case file to the new counsel of the Accused, Mr. Borislav Jamina in Sarajevo (“New Counsel”), who was assigned by the Court of Bosnia and Herzegovina on 11 June 2007 to represent the Accused in the proceedings before that Court, and that the transfer is required to complete by 10 August 2007;³

NOTING that parts of the Materials are confidential, *ex parte*, under seal and/or subject to protective measures;

NOTING that in the Referral Decision, the Referral Bench ordered that:

referral of this case shall not have the effect of revoking previous orders and decisions of the Tribunal in this case. It will be for the appropriate court or the competent national authorities of Bosnia and Herzegovina to determine whether further or different provisions should be made for the purposes of the trial of this case in Bosnia and Herzegovina;⁴

NOTING that in the Referral Decision, the Referral Bench specifically ordered that “[e]xisting protective measures for victims and witnesses shall remain in force”;⁵

CONSIDERING that it is in the interest of justice that the Materials be available to New Counsel in order that New Counsel be able to prepare the Accused’s defence in the proceedings before the Court of Bosnia and Herzegovina;

² Order, p. 2.

³ Motion, p. 2. *See* also Requête urgente en détermination, filed on 17 July 2007, Annex, which contains a memorandum from the Head of OLAD to the Defence, who stated that:

the Registry has accepted your work plan for the transfer of the case to Mr Trbic’s current counsel in BiH on 9 July 2007. In accordance with paragraph 14 of the Memorandum of Understanding between the Registrars of the Court of Bosnia and Herzegovina and the ICTY, you have 1 month to transfer the case from that date. I remind you that should you not transfer the case file within a month of the acceptance of your work plan, i.e. until 10 August 2007, without any valid reason, this may cause a prejudice to Mr Trbic which would be contrary to your professional obligation under the Code of Conduct, and may lead to the initiation of a disciplinary proceeding against you.

⁴ Referral Decision, para. 49 b.

⁵ Referral Decision, para. 49 c.

CONSIDERING that the protective measures in force shall not be compromised by replacement of counsel and that it is incumbent upon the Defence to ensure that the transfer of the case file to New Counsel is carried out in a manner which respects the confidential nature of the relevant Materials and the protective measures in force;

CONSIDERING that should the Defence wish to correct an error in translation in a filing, it may turn to the relevant section of the Registry;

FOR THESE REASONS

PURSUANT TO Article 22 of the Statute and Rules 54, 69, 75, and 79 of the Rules of Procedure and Evidence;

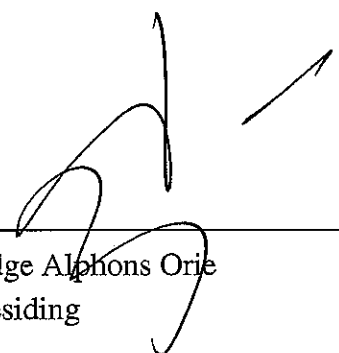
GRANTS the Motions in part;

AUTHORISES Mr. Stéphane Piletta-Zanin to hand over the Materials to Mr. Borislav Jamina only after Mr. Borislav Jamina has filed the acknowledgement mentioned hereinafter;

ORDERS Mr. Borislav Jamina to comply with all protective measures in force to protect the Materials disclosed to him, to respect confidentiality of any parts of the Materials, and to acknowledge in writing to the Registry of the Tribunal, before the Materials are handed over to him, that he is bound by these protective measures and will observe confidentiality; and

DENIES the Motions in all other respects.

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



Judge Alphons Orie
Presiding

Dated this twenty-third day of July 2007

At The Hague

The Netherlands

[Seal of the Tribunal]