

THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA

Case No. IT-97-25/1-PT

IN THE REFERRAL BENCH

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

Acting Registrar: John Hocking

Date Filed: 19 January 2009

THE PROSECUTOR

v.

MITAR RAŠEVIĆ  
SAVO TODOVIĆ

*PUBLIC*

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PROSECUTOR'S TENTH 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-97-25/1-PT

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1. In accordance with the "Decision on Referral of Case Under Rule 11 *bis* with Confidential Annexes I and II" of 8 July 2005,<sup>1</sup> the Prosecutor hereby files his tenth 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 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 the reports of the international organisation monitoring or reporting on the proceedings pursuant to this Decision provided to the Prosecutor.<sup>2</sup>

3. The Ninth Progress Report in the *Rašević and Todović* case was filed on 17 October 2008.<sup>3</sup>

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

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<sup>1</sup> *Prosecutor v. Mitar Rašević and Savo Todović*, Case No. IT-97-25/1-PT, ("*Rašević and Todović* case"), Decision on Referral of Case Under Rule 11 *bis* with Confidential Annexes I and II, 8 July 2005 ("Decision on Referral").

<sup>2</sup> Decision on Referral, p. 46.

<sup>3</sup> See *Rašević and Todović* case, Prosecutor's Ninth Progress Report, 17 October 2008.

Herzegovina (the “OSCE”) and the Office of the Prosecutor, the Prosecutor received OSCE’s ninth report on 12 January 2009.<sup>4</sup>

5. The OSCE summarises the proceedings in the Rašević and Todović case as follows:

- On 6 November 2008, a session before the Appellate Panel was held to examine the appeals of the Parties. Thus far, no decision on these appeals has been rendered.
- On 28 November 2008, the Appellate Panel issued a decision releasing the Defendants from detention due to the lapse of time-limits prescribed by law for the detention of convicted persons pending a second-instance decision on their appeals. This decision included the application of restrictive measures. Under such, the Defendants are prohibited from leaving or changing their places of residence, and had to hand over their identification documents. In addition, they must report to their local police station twice a week at designated times and strictly comply with any other orders and summons of the Court. The Court will review these measures every two months.
- From an examination of the case-file, it seems that the Defendants have complied with these measures. The Public Security Station in Foča has submitted regular reports on the Defendant’s reporting and the Court has both established the existence and taken possession of identification documents.<sup>5</sup>

6. The OSCE identified one main issue of note in this reporting period which concerns the release of the Defendants from detention due to the lapse of time-limits prescribed by law for the detention of convicted persons pending a second-instance decision on their appeals.

7. Article 138 of the BiH Criminal Procedure Code (CPC) stipulates that the custody of a defendant after the pronouncement of the first-instance verdict may last only nine months prior to the pronouncement of any second-instance decision on appeals. On 28 February 2008, the Court pronounced the first instance-verdict in the case sentencing Mitar Rašević, as the commander of the guards at KP Dom, to eight and a half years of imprisonment and Savo Todović, as deputy warden of KP Dom, to

<sup>4</sup> Ninth Report in the *Mitar Rašević and Savo Todović* Case Transferred to the State Court Pursuant to Rule 11*bis*, January 2009 (hereinafter “Report”).

<sup>5</sup> The Office of the Prosecutor is in possession of the reports from the Public Security Station in Foča, in BCS, and can make them available to the Referral Bench if deemed necessary. They contain only limited information but reflect the day and time when Rašević and Todović reported to the police station in Foča and that this has been noted in the book of events of the Foča police station under a certain number.

12 and a half years.<sup>6</sup> As mentioned above, on 28 November 2008 the Appellate Panel issued a decision releasing the Defendants from detention.

8. Article 138 CPC was amended by legislators in July 2008, inserting the aforementioned nine-month deadline, seemingly to ensure the rights of defendants to appeal and to a trial within a reasonable time, in accordance with Article 6 (1) of the European Convention on Human Rights.<sup>7</sup>

9. According to OSCE, it is not clear whether the aforementioned nine-month deadline is a due estimate of the time that trial panels of war crimes and similar proceedings would need to address cases of exceptional complexity, and that it appears that the legal framework as it presently stands is at odds with judicial practice, in which additional time for issuing written verdicts in war crimes cases and processing appeals may be required.<sup>8</sup>

10. In relation to the issue's wider implications, the OSCE reports there is a real risk that the nine-month deadline will expire in other cases as well. The defendants in the *Mejakić et al.* case will be released from custody, if no second-instance decision is pronounced by the end of February 2009, as the Prosecutor reported in his 11<sup>th</sup> Progress Report in the *Mejakić et al.* case.<sup>9</sup>

11. To overcome this unsatisfactory situation, OSCE recommends first, that the Court conduct its work with due diligence in an organized and effective manner to render decisions as promptly as possible, second, the prompt re-examination by the judicial and domestic legislative authorities of the time-limits set for detention between pronouncing the first-instance verdict and finalization of proceedings at the appellate level, and third, an assessment by the State of BiH whether additional

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<sup>6</sup> Report, p. 1.

<sup>7</sup> Report, p. 2.

<sup>8</sup> *Ibid.*

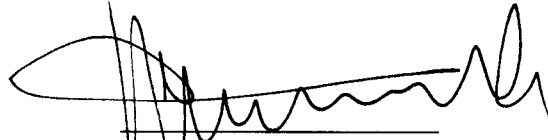
<sup>9</sup> See *Prosecutor v. Željko Mejakić et al.*, Case No. IT-02-65-PT, Prosecutor's Eleventh Progress Report, 5 January 2009, para. 8.

The same problem could also happen in the genocide case regarding crimes committed in the Kravice warehouse (Srebrenica), where the defendants were also sentenced to periods of long-term of imprisonment of approximately 40 years each, the verdict was orally pronounced on 29 July 2008, which indicates that the nine-month time-limit for their custody pending a second-instance decision expires on 29 April 2009.

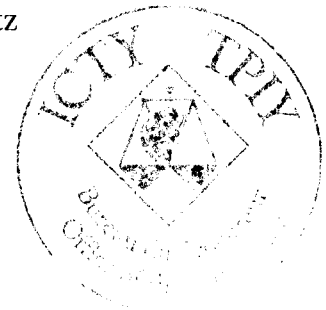
resources should be devoted to assisting the courts with translation and other requirements in order to hasten case processing.

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

Word count: 1,062

  
Serge Brammertz  
Prosecutor

Dated this nineteenth day of January 2009  
At The Hague  
The Netherlands



INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA

Case No. IT-97-25/1-PT

THE PROSECUTOR

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*PUBLIC*

ANNEX A  
TO  
PROSECUTOR'S TENTH PROGRESS REPORT



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

**Ninth OSCE Report in the**

*Mitar Rašević and Savo Todović Case*

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

**January 2009**

### SUMMARY OF DEVELOPMENTS

The case of *Mitar Rašević* and *Savo Todović* (hereinafter also Defendants) is the fifth case transferred from the ICTY to the Court of BiH pursuant to Rule 11*bis* of the ICTY Rules of Procedure and Evidence (RoPE). This constitutes the ninth report of the OSCE Mission to Bosnia and Herzegovina, covering the period from 1 October 2008 to 1 January 2009. It summarises developments during this reporting period and takes note of time-limits for maintaining custody over defendants pending appellate proceedings.

On 28 February 2008, the Court pronounced the first-instance verdict in this case finding the Defendants guilty of Crimes against Humanity for persecution in connection with acts of murder, enslavement, deportation or forcible transfer, imprisonment, torture, enforced disappearance, and other inhumane acts.<sup>1</sup> The Court sentenced Savo Todović to twelve years and six months, and Mitar Rašević to eight years and six months of imprisonment. On 28 February 2008, the Panel also rendered a decision ordering continued detention of the Defendants on the grounds of risk of flight and threat to public security. Thereafter, the Parties appealed the Court's written first-instance verdict, rendered on 20 June 2008.<sup>2</sup>

During this reporting period, the following events are worth noting:

- On 6 November 2008, a session before the Appellate Panel was held to examine the appeals of the Parties. Thus far, no decision on these appeals has been rendered.
- On 28 November 2008, the Appellate Panel issued a decision releasing the Defendants from detention due to the lapse of time-limits prescribed by law for the detention of convicted persons pending a second-instance decision on their appeals. This decision included the application of restrictive measures. Under such, the Defendants received a prohibition from leaving or changing their places of residence, and had to hand over their identification documents. In addition, they must report to their local police station twice a week at designated times and strictly comply with any other orders and summons of the Court. The Court will review these measures every two months.

From an examination of the case-file, it seems that the Defendants have complied with these measures. The Public Security Station in Foča has submitted regular reports on the Defendant's reporting and the Court has both established the existence and taken possession of identification documents.

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<sup>1</sup> Article 172(1)(h) of the Criminal Code of Bosnia and Herzegovina (BiH CC) in conjunction with items (a), (c), (d), (e) (f), (i), and (k) of the same Article.

<sup>2</sup> Appeal of the Defence Counsel of Savo Todović against the first-instance verdict of 28 February 2008, dated 11 July 2008; Appeal of the Prosecution against the first-instance verdict of 28 February 2008, dated 18 July 2008; Appeal of the Defendant Savo Todović against the first-instance verdict of 28 February 2008, dated 19 July 2008; Appeal of the Defence Counsel of Mitar Rašević against the first-instance verdict of 28 February 2008, dated 28 July 2008.



**CONCERN REGARDING THE EXPIRY OF THE TIME LIMIT FOR THE DETENTION OF DEFENDANTS  
PENDING FINALISATION OF THE APPELLATE PROCEDURE**

As mentioned above, on 28 November 2008, the Appellate Panel released the Defendants from custody, ordering the application of restrictive measures, based on Article 138 of the BiH Criminal Procedure Code (BiH CPC). This provision stipulates that custody of a defendant after the pronouncement of the first-instance verdict may last only nine months prior to the pronouncement of any second-instance decision on appeals. If no second-instance decision is rendered in nine months, the defendants must be released from custody. Should a second-instance decision revoking the first-instance verdict be issued, defendants may be kept in custody for up to one year from that decision.

Article 6(1) of the European Convention on Human Rights ensures the right of a convicted detainee to proceedings without unreasonable delays pending the issuance of the first-instance judgement and during appellate proceedings.<sup>3</sup> While the European Court has not established any absolute time-limits, reasonableness has generally been interpreted as in light of the particular circumstances of each criminal case. As such, primary considerations for determining reasonableness have been the case's complexity, the parties' behaviour, the conduct of the relevant authorities, and the stakes for the applicant involved<sup>4</sup>. On a domestic level, reasonable time periods can also be interpreted by examining the legislatively-mandated deadlines within criminal procedures. In terms of meeting such deadlines, it should also be noted that States are responsible not only for delays in the handling of particular cases, but also for the failure to increase resources to respond effectively to case backlogs and structural deficiencies in its system of justice that cause delays.<sup>5</sup>

In this case, no second-instance decision was rendered within the initial nine-month time-limit. A written version of the first-instance verdict only became available nearly four months after its oral pronouncement. Subsequently, the Parties filed their appeals. The session of the Appellate Panel examining these appeals took place approximately three months after the filing of the appeals, and only three weeks prior to the expiry of the nine-month time-limit for the detention of the Defendants pending a second-instance decision. No appellate decision was issued during that time or until present.

Recently, legislators acted upon amendments proposed by domestic legal experts and practitioners to amend Article of 138 BiH CPC inserting the aforementioned nine-month deadline in July 2008. Prior to these amendments, no specific time-limit applied, i.e. custody ordered pursuant to Article 138 BiH CPC could have lasted until the final verdict was issued.<sup>6</sup> The time-limit in question would seem to have been imposed to ensure that courts act with expediency in drafting verdicts and deciding upon appeals, in the spirit of respecting the rights of defendants to appeal and to a trial within a reasonable time. This latter right is ensured under Article 13 BiH CPC.

It is not clear whether the drafters of the deadline in the amended provision of Article 138(3) BiH CPC duly estimated the time that trial panels of war crimes and similar proceedings would need to address cases of exceptional complexity. In general, actors at the State Court have attributed such delays to the complexity of the legal issues and the multiplicity of charges and victims that judgments need to address, the length of appeals, and the limitation of the resources devoted to translating relevant documents. In addition, judgments in war crimes cases may need to elaborate upon novel legal issues because they might have jurisprudential value.

<sup>3</sup> The European Court of Human Rights has opined that Article 6(1) of the European Convention aims to protect people generally from excessive procedural delays, and in criminal matters particularly, to avoid that a person charged remains too long in a state of uncertainty about his/her fate; see *Stogmuller v. Austria*, No. 1602/62, Judgment, 10 November 1969, para. 5 of section "As to Law."

<sup>4</sup> *Serghides & Christoforou v. Cyprus*, No. 44730/98, 5 November 2002, para. 63.

<sup>5</sup> D.J. Harris, M. O'Boyle, & C. Warbrick, *Law of the European Convention on Human Rights* (Butterworth: London, 1995), p. 227.

<sup>6</sup> Article 138(3) BiH CPC previously stated: "Custody ordered or extended pursuant to provisions of Paragraph 1 of this Article may last until a legally binding verdict but no later than the expiration of the period of sentence pronounced in the first instance." This was affected by the Corrections and Amendments of the CPC of BiH, as published in the "Official Gazette of BiH", number 58/08.

While the justice system would require mechanisms to ensure that courts act with due diligence in drafting their verdicts and conducting appeal proceedings, it appears that the legal framework as it presently stands is at odds with judicial practice, in which additional time for issuing written verdicts in war crimes cases and processing appeals may be required.

There is a real risk that the nine-month deadline will expire in other cases as well, especially where defendants have received considerable sentences.<sup>7</sup> The ICTY OTP noted in its Eleventh Progress Report in the Case against *Mejakić et al.* that those defendants will be released from custody, if no second-instance decision is pronounced by the end of February 2009.<sup>8</sup>

In view of the above, the following recommendations are made:

- Courts should ensure that they conduct their work with due diligence in an organised and effective manner to render decisions as promptly as possible, particularly when defendants are in custody.
- At the same time, judicial and domestic legislative authorities may need to re-examine promptly the time-limits set for detention between pronouncing the first-instance verdict and finalisation of proceedings at the appellate level in order to cover the exceptional circumstances arising in war crimes cases or other similar complex cases.
- Finally, to the extent that it is deemed necessary, the State of BiH may need to assess whether additional resources should be devoted to assisting the courts with translation and other requirements in order to hasten case processing.

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<sup>7</sup> Apart from the Defendants in this case, it may be mentioned that the Defendants Mejakić, Gruban, and Knežević, who were found guilty by an oral verdict on 30 May 2008 to 21, 11, and 31 years' imprisonment respectively, are currently awaiting examination of their appeals. On the basis of Article 138 BiH CPC, they will be released on 28 February 2009, if no appellate decision is issued by that time. In the genocide case of Kravica, where the defendants were also sentenced to periods of long-term of imprisonment of approximately 40 years each, the verdict was orally pronounced on 29 July 2008, which indicates that the nine-month time-limit for their custody pending a second-instance decision expires on 29 April 2009.

<sup>8</sup> *Prosecutor v. Mejakić et al.*, Case No. IT-02-65-PT, Prosecutor's Eleventh Progress Report, 5 January 2009, para. 8.

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

1. Session of the Appellate Panel, held on 6 November 2008.
2. Court Decision terminating custody of Mitar Rašević and Savo Todović and ordering prohibiting measures, dated 28 November 2008.
3. Court Order to the Detention Unit to deliver all deposited personal documents in the name of Mitar Rašević and Savo Todović to the State Court, dated 28 November 2008.
4. Court Order to the Detention Unit to immediately release Mitar Rašević pursuant to the Court Decision of 28 November 2008, dated 28 November 2008.
5. Hearing before the Appellate Panel with regard to the ordering of prohibitive measures against Savo Todović, held on 28 November 2008.
6. Official note of the Detention Unit regarding reception of a person deprived of liberty without identification documents related to Mitar Rašević of 4 October 2008, dated 28 November 2008.
7. Official note of the Detention Unit regarding reception of a person deprived of liberty without identification documents related to Savo Todović of 4 October 2008, dated 28 November 2008.
8. Letter of the Court requesting Defence Counsels of Mitar Rašević to gather information on possible issuance of identification documents in the name of Mitar Rašević from the Ministry of Interior of Republic of Serbia and Ministry of Interior of Republika Srpska, and to deliver received information and such documents if exist to the Court, dated 28 November 2008.
9. Letter of the Court requesting Savo Todović Defence Counsel to gather information on possible issuance of identification documents on the name of Savo Todović from the Ministry of Interior of Republic of Serbia and Ministry of Interior of Republika Srpska and to deliver received information and such documents if they exist to the Court, dated 28 November 2008.
10. Information of Public Security Station Foča on reporting of Mitar Rašević and Savo Todović, dated 1 December 2008.
11. Letter/response of Defence Counsels of Savo Todović informing the Court that they have no information on whether Savo Todović possesses certain identification documents, but that they would inquire with the Ministry of Interior of Republic of Serbia and Ministry of Interior of Republika Srpska regarding any such information, dated 2 December 2008.
12. Letter of the Agency for identification documents, register, and exchange of data of BiH informing the Court that they have no competency for issuing identification documents with forwarded letter to the Public Security Station Foča, dated 4 December 2008.
13. Information of Public Security Station Foča on reporting of Mitar Rašević and Savo Todović, dated 8 December 2008.
14. Court Approval for Mitar Rašević to allow three-day visit to his sister in Višegrad, dated 9 December 2008.
15. Information of Public Security Station Foča on reporting of Mitar Rašević and Savo Todović, dated 12 December 2008.
16. Information of Public Security Station Foča on reporting of Mitar Rašević and Savo Todović, dated 15 December 2008.