

**UNITED
NATIONS**

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

Case No. IT-05-88/1-PT
Date: 26 January 2011

IN THE REFERRAL BENCH

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

Registrar: Mr. John Hocking

THE PROSECUTOR

v.

MILORAD TRBIĆ

PUBLIC

PROSECUTION'S FIFTEENTH PROGRESS REPORT

The Office of the Prosecutor:

Mr. Serge Brammertz

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

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

THE PROSECUTOR

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PROSECUTION'S FIFTEENTH 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 Prosecution files its fifteenth 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 organizations also monitoring the proceedings.¹

¹ *Prosecutor v. Milorad Trbić* ("Trbić case"), Case No. IT-05-88/1-PT, Referral Decision, p. 26.

3. The Prosecution's fourteenth progress report in the *Trbić* case was filed on 26 October 2010.² Since then, the final decision in the case has been issued. On 14 January 2011, the Appeals Chamber rejected appeals brought by the parties and confirmed the first instance judgement of 16 October 2009 in its entirety. The Trial Chamber had convicted Milorad Trbić for genocide committed in the Srebrenica area in July 1995 and sentenced him to imprisonment for 30 years.
4. This is the first case where the Appeals Chamber of the BiH State Court has confirmed a verdict for Genocide. The Appeal Judgement has not yet been made available in English. The Prosecution will provide an English language copy of the Judgement to the Referral Bench as soon as it becomes available.
5. Also since the Prosecution's fourteenth progress report was filed, the Prosecution has received the fourteenth report of the Organization for Security and Co-operation in Europe's Mission to Bosnia and Herzegovina (the "OSCE"). This report was forwarded to the Prosecution on 5 January 2011 pursuant to an agreement between the Chairman in Office of the OSCE and the Office of the Prosecutor.³
6. The Report provides a summary of the appellate proceedings in the *Trbić* case held on 21 October 2010. The OSCE reports that, for the first time, one of the OSCE's reports was discussed during the appellate proceedings. The Prosecution before the BiH State Court referred to the OSCE's Twelfth Report⁴ on the case. In the Twelfth Report, the OSCE had commented that the first instance verdict was well structured and it praised the Trial Chamber's reliance on international law and ICTY judgements. On the other hand, the Defence argued that the Prosecution's reliance on the OSCE report was improper and submitted that it should not be regarded as evidence.⁵

² Trbić case, Prosecution's Fourteenth Progress Report, 26 July 2010 ("Prosecution's Fourteenth Progress Report").

³ OSCE's Fourteenth Report in the *Milorad Trbić* Case Transferred to the State Court pursuant to Rule 11 *bis*, January 2011 ("Report").


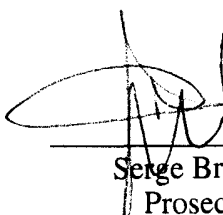
⁴ OSCE's Twelfth Report in the *Milorad Trbić* Case Transferred to the State Court pursuant to Rule 11 *bis*, July 2010.

⁵ Report p. 2.

7. At the time that the OSCE prepared its fourteenth report commenting on the appellate proceedings in this case, the Appeals Chamber's verdict had not been issued. The OSCE reports that it will provide a detailed analysis of the appellate verdict, once it becomes available, in their final report on the case.

8. Attached to this report is a copy of the OSCE Report.

Word Count: 512



Serge Brammertz
Prosecutor

Dated this twenty-sixth day of January 2011
At The Hague
The Netherlands

**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

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

THE PROSECUTOR

v.

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ANNEX A

TO

PROSECUTION'S FIFTEENTH PROGRESS REPORT

**Fourteenth Report in the
Milorad Trbić Case
Transferred to the Court of BiH pursuant to Rule 11bis**

January 2011

SUMMARY OF DEVELOPMENTS

The case of Milorad Trbić (hereinafter also *Defendant* or *Accused*) is the sixth case transferred from the International Criminal Tribunal for the former Yugoslavia (ICTY) to the Court of BiH pursuant to Rule 11*bis* of the ICTY Rules of Procedure and Evidence (RoPE). This constitutes the fourteenth Report of the OSCE Mission to Bosnia and Herzegovina ("OSCE BiH" or "Mission") on this case, covering the period between 19 October 2010 and 4 January 2011.

On 16 October 2009, the Trial Panel rendered its oral verdict, finding Milorad Trbić guilty of genocide, and sentencing him to 30 years' long-term imprisonment. All compensation claims filed in this case were referred to civil proceedings and the Defendant was relieved of the obligation to pay the costs of proceedings. The written verdict was published on 29 April 2010. Both the Prosecution and the Defence, as well as a number of injured parties, appealed the first instance verdict.

The appeal hearing was held on 21 October 2010. During the hearing, the Prosecution argued that the Appellate Panel should confirm the conviction part of the verdict in its entirety and reverse the decision to acquit the Defendant of the acts committed by the Bratunac Brigade. The Prosecution argued that the evidence presented at trial indicates that the Defendant was part of a larger joint criminal enterprise which included the Bratunac Brigade. Accordingly, the Prosecution asked the Appellate Panel to increase the sentence to 45 years. The Defence, on the other hand, asked for the Defendant to be acquitted, arguing that the first instance verdict is based on his statements which were illegally obtained and were thus inadmissible as evidence. The Defence argued that, at the time he gave the statements in question to ICTY investigators, the Defendant had not been informed that he was a suspect, but was promised to be sent to Australia if he agreed to testify. Even though a number of injured parties appealed the first instance verdict, neither they nor their representatives addressed the Court during the appeal hearing.

It should be pointed out that the Prosecutor referred to the OSCE Mission's Twelfth Report to the ICTY in this case, stating that the report found the first instance verdict to be well structured and praised its reliance on international law and ICTY judgments. The Defence, on the other hand, stated that the report supports the Prosecution's position and constitutes pressure on the Court, and that it should not be regarded as evidence. This is a novel issue before the Appellate Panel, as it is the first time one of the parties has relied on an OSCE report in its appellate arguments.

At the time of the writing of this report, the Appellate Panel has not yet issued the second instance verdict. The Defendant remains in custody due to the risk of flight and the threat to public security. As was noted in the Mission's previous report, pursuant to an amendment to the provision on the length of time in custody between the announcement of the oral verdict and the finalization of the appellate verdict, the Defendant may remain in custody for a maximum of fifteen months.¹ Accordingly, the Defendant in the present case will have to be

¹ Article 138(3) of the Criminal Procedure Code of Bosnia and Herzegovina provides: "*After pronouncing the first instance verdict, the custody may last no longer than additional nine months. Exceptionally, in complex cases and for important reasons the Appellate Panel may extend custody for additional six months. If during that period no second instance verdict to alter or sustain the first instance verdict is pronounced, the custody shall be*

released on 16 January 2011 if the second instance verdict has not been reached by then. The Mission is confident that the Appellate Panel will endeavour to finalize the appellate proceedings before this date and will thus avoid the possibility that Milorad Trbić will be released from custody prior to the pronouncement of a legally binding verdict. More information and a detailed analysis of the appellate judgment will be provided in the Mission's next and final report to the ICTY.

terminated and the accused shall be released. If within the prescribed deadlines the second instance verdict is pronounced reversing the first instance verdict, the custody shall last for no longer than another year after pronouncement of the second instance verdict."