

IT-96-23/2-PT
J6611 - J6604
01 FEBRUARY 2007

6611 AT

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

Case No. IT-96-23/2-PT

IN THE REFERRAL BENCH

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

Registrar: Mr. Hans Holthuis

Date Filed: 1 February 2007

THE PROSECUTOR

v.

GOJKO JANKOVIĆ

PROSECUTOR'S FIFTH PROGRESS REPORT

The Office of the Prosecutor:
Ms. Carla Del Ponte

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

Case No. IT-96-23/2-PT

THE PROSECUTOR

v.

GOJKO JANKOVIĆ

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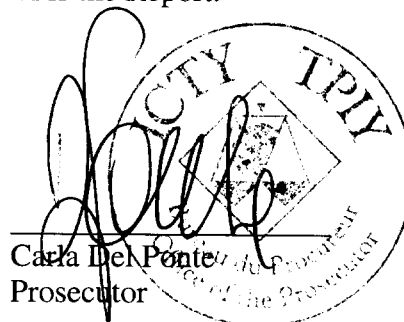
1. Pursuant to the Decision on Prosecutor's Motion for Referral of Case Under Rule 11*bis* of 22 July 2005 ("Referral Decision") the Prosecution hereby files its fifth progress report in this case.
2. The Organisation for Security and Co-operation in Europe's ("OSCE") Fourth Report in this case has not identified any issue of concern.¹
3. The OSCE summarises the proceedings in the *Janković* case as follows:
 - Between 8 November 2006 and 18 January 2007 seven trial sessions were held during which 23 defense witnesses have testified in public and without protective measures. On 18 January the defense completed presentation of its case. On 19 January the Trial Panel accepted prosecution's motion to hear eight additional witnesses as rebuttal evidence.
 - On 15 December 2006, the Trial Panel reviewed grounds for Janković's detention and held that the continuation of detention is justified.
 - On 22 December 2006, the prosecution amended the indictment in the light of evidence presented during the trial. Amendments do not envisage more severe allegations against Janković.
 - On 10 January 2007, Janković and 15 other detainees from the Detention Unit of the BiH State Court joined the hunger strike started by detainees in the Kula prison.²

¹ OSCE's Fourth Report in the *Gojko Janković* Case Transferred to the State Court pursuant to Rule 11 *bis*, January 2007 ("Report"), page 1.

- Closing arguments are scheduled for 12 and 14 February 2007.
- The pronouncement of the verdict is scheduled for 16 February 2007.

4. Attached to this report and marked as Annex A is the Report.

Word count: 286



Carla Del Ponte
Prosecutor

Dated this first day of February 2007
At The Hague
The Netherlands

² On 26 January 2007, the BiH State Court was informed that 15 detainees ended their hunger strike. *See* BiH State Court press release dated 26 January 2007.

INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

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ANNEX
TO
PROSECUTOR'S FIFTH PROGRESS REPORT



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

**Fourth Report in the
Gojko Janković Case
Transferred to the State Court pursuant to Rule 11bis**

January 2007

FOURTH REPORT IN THE GOJKO JANKOVIĆ CASE

The case of Gojko Janković (hereinafter also “Defendant” or “Accused”) is the second 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 fourth OSCE Report delivered to the ICTY Prosecutor, covering the period between 19 October 2006 and the hearing held on 19 January 2007.

From its monitoring activities during the reporting period, the OSCE Mission to Bosnia and Herzegovina (“OSCE-BiH” or “Mission”) has not identified any issue of concern that could be assessed, at this stage, as infringing upon the Defendant’s right to a fair trial. Therefore, this report includes only a short summary of the developments in these trial proceedings and an annex with the list of relevant hearings, decisions and submissions in this case.

The proceedings within the reporting period may be summarized as follows:

- Seven main trial sessions were held,¹ during which 23 witnesses for the Defence have testified, all of them in public hearings and without protective measures. On 18 January the Defence completed the presentation of its case. On 19 January the Trial Panel decided to accept the Prosecution’s Motion to hear eight additional witnesses as evidence in rebuttal.
- On 15 December the Trial Panel reviewed the grounds for the Defendant’s custody and held that custody is still justified on the basis of risk of flight and threat to public security.²
- On 22 December the Prosecutor amended the indictment of 14 February 2006 by making certain changes in relation to the description of the alleged facts. This was done in the light of the evidence presented during the trial. It should be noted that the amendments do not envisage more severe allegations for the Accused.
- On 10 January 2007 the Defendant and 15 other detainees from the Detention Unit of the BiH State Court signed a letter informing the Court that they will join the hunger strike started by detainees in Kula prison.³

¹ On 8 and 9 November 2006; 5, 15, 18 and 20 December 2006; 18 January 2007. A hearing scheduled on 19 January was postponed to 23 January due to the absence of the Defendant for justified health reasons.

² With regard to OSCE-BiH’s concerns related to the custody of the Defendant on public security grounds, please refer to the *First Report Case of Defendant Gojko Janković - Transferred to the State Court pursuant to Rule 11bis*, April 2006.

³ On 8 January, 22 persons sentenced or currently under trial for war crimes before the Court of BiH who are detained at Kula prison in East Sarajevo announced that they started a hunger strike. The announcement was given through the lawyer of one of the detainees, who outlined the following as their main requests: that the Court of BiH applies the criminal code of the SFRY which was in force when the crimes under trial were committed and not the BiH Criminal Code introduced in 2003; that sentences already ordered by the Court of BiH on the basis of the new code are quashed, and the cases retried by applying the SFRY criminal code. They also stated that they will not attend the hearings in their proceedings until their requests are met. On 10 January, 16 detainees of the Court of BiH Detention Unit who are currently on trial for war crimes announced by written submission that they will join the hunger strike, as they support all the requests of the detainees in Kula prison, and added that they will stop attending the hearings in their trials. In their submission, they also asked the Constitutional Court to decide on the application filed by Abduladhim Maktouf. Maktouf (who was convicted by the Court of BiH to five years of imprisonment for war crimes) applied to the Constitutional Court claiming that the retroactive application of the BiH Criminal Code amounts to a violation of his human rights.

- The closing arguments of the Prosecution and the Defence are scheduled for 12 and 14 February 2007, respectively.
- The pronouncement of the verdict is scheduled for 16 February 2007.

In a press release dated 10 January, the Court of BiH announced that, notwithstanding the refusal of the hunger strikers to attend the proceedings, "trials will not be terminated." It was also stated that "[T]he Court of BiH will take into account that the fundamental principles of the European Convention on Human Rights are not infringed."

According to the article entitled "Requesting the BiH Constitutional Court to postpone decision on Maktouf Appeal" published in "Dnevni Avaz" on 17 January 2007, the 22 detainees from Kula prison changed their initial request regarding the BiH Constitutional Court decision on the appeal submitted by Abduladhim Maktouf. Instead of the previous request for solving this case as soon as possible, they signed a letter asking that the reaching of a decision be postponed "until the appointment of another judge representing the Serb people." The article continues that the attitude of the detainees seems to have changed to this effect after a visit by the RS National Assembly delegation, led by Krstan Simić who is being mentioned as the most serious candidate for a vacant position in the BiH Constitutional Court.

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

- (i) Main trial hearing held on 8 November 2006
- (ii) Main trial hearing held on 9 November 2006
- (iii) Main trial hearing held on 5 December 2006
- (iv) Decision to extend the custody, dated 15 December 2006
- (v) Main trial hearing held on 15 December 2006
- (vi) Main trial hearing held on 18 December 2006
- (vii) Main trial hearing held on 20 December 2006
- (viii) Amended indictment, dated 22 December 2006
- (ix) Prosecution Motion requesting the Court to issue an order to hear the expert on relations between detained victims of rape, torture and other maltreatment and the persons who held them captive, dated 22 December 2006
- (x) Letter submitted by the Accused together with other 15 detainees from the Detention Unit of the BiH State Court informing the Court that they will join the hunger strike started by detainees in Kula prison, dated 10 January 2007
- (xi) Main trial hearing held on 18 January 2007
- (xii) Main trial hearing of 19 January was postponed due to the absence of the Accused for justified health reasons