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19 JUNE 2007

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

Case No. IT-00-41-PT

IN THE REFERRAL BENCH

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

Registrar: Mr Hans Holthuis

Date Filed: 19 June 2007

THE PROSECUTOR

v.

PAŠKO LJUBIČIĆ

PUBLIC FILING

PROSECUTOR'S FOURTH PROGRESS REPORT

The Office of the Prosecutor

Ms. Carla Del Ponte

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

Case No. IT-00-41-PT

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PROSECUTOR'S FOURTH PROGRESS REPORT

1. In accordance with the "Decision to Refer the Case to Bosnia and Herzegovina Pursuant to Rule 11 *bis*"¹ of 12 April 2006 ("Decision on Referral") the Prosecutor hereby files her fourth progress report in this case.
2. The Decision on Referral requires that following the initial report, six weeks after transfer of material, the Prosecutor must file a report every three months on the course of the proceedings before the State Court of Bosnia and Herzegovina.²
3. The Office of the Prosecutor filed its third progress report on 19 March 2007.³
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 Prosecutor, the Prosecutor received OSCE's third report on 13 June 2007.⁴ The Report outlines the main findings of trial monitoring activities to date in the *Ljubičić* case, from the perspective of international human rights standards.⁵
5. OSCE has not identified any issues of concern that could be assessed, at this stage, as infringing upon Defendant's right to a fair trial.⁶
6. The OSCE summarizes the proceedings in the *Ljubičić* case as follows:

¹ *Prosecutor v. Paško Ljubičić*, Case No. IT-00-41-PT, Decision to Refer the Case to Bosnia and Herzegovina Pursuant to Rule 11 *bis*, 12 April 2006.

² Decision on Referral, p. 21.

³ See *Prosecutor v. Paško Ljubičić*, Case No. IT-00-41-PT, Prosecutor's Third Progress Report, 19 March 2007.

⁴ OSCE Third Report in the *Paško Ljubičić* Case Transferred to the State Court Pursuant to Rule 11*bis*, June 2007 (hereinafter "Report").

⁵ Report, Executive Summary, pp. 1-2.

⁶ Report, p. 2.

- On 14 March 2007, the Appellate Panel refused as unfounded the Defence Appeal filed previously against the decision on review of custody. OSCE reiterates its concerns that the Appellate Panel adopted a narrow interpretation as regards the application of provisions on alternatives to pre-trial custody.
- The second status conference was held on the 10 April 2007 where the existing problem of translation of evidence was discussed.⁷ On 26 April 2007, the court appointed an *ex-officio* English speaking co-counsel.
- On 12 April 2007 regular review of custody was conducted. The “out-of-hearing” Panel held that custody was still justified on risk of flight and threat to public security. The Accused and defense counsel appealed this decision on 14 and 16 April 2007 respectively. The appeal was refused as unfounded.
- Trial started on 11 May 2007.⁸
- On 11 May 2007, the court invited the Prosecutor to submit a motion for taking judicial notice of established facts and the Defence to file a response. The accused had not disputed the general allegations concerning the events as described in the factual part of the indictment. On 30 May 2007, the Prosecution submitted a motion requesting the panel to take judicial notice of 141 established facts which arose from ICTY final judgments in the cases of *Alekovski, Blaškić, Kordić, Čerkez* and *Kupreškić*.
- Trial hearings scheduled for 21 and 28 May 2007 were postponed as two Prosecution witnesses failed to appear before the Court.
- On 24 May 2007, the Prosecutor filed a request for protective measures for one witness to which the Defence objected in its response dated 27 May 2007. The Court has not yet reached any decision on this motion.
- The next main trial hearing is scheduled for 13 June 2007.⁹
- The Constitutional Court of BIH has not yet issued a decision on the appeal by Ljubičić on 16 November 2006 regarding his continuing detention.

7. With regard to the issue of translation of evidence, OSCE notes the different approach taken in the cases of *Ljubičić* and *Mejakić et al.* Future cases with translation issues are likely to arise considering that evidence gathered or presented before the ICTY in English may be used. OSCE encourages the courts to consider

⁷ Report, p. 1.

⁸ Report, p. 2.

⁹ Report, p. 2.

appropriate criteria and responses to the problems and endeavour to harmonise practices. The Mission suggests that in order to avoid undue delays in the course of the trials it is paramount to clearly specify which evidentiary documents need translation at what stage of the proceedings.¹⁰

8. The Prosecutor considers at present that the issues reported by OSCE do not appear to affect Ljubičić's right to a fair trial.

9. Attached to this report and marked as Annex A is a copy of the OSCE report.

Word Count: 734



PP

Carla Del Ponte
Prosecutor

Dated this nineteenth day of June 2007
At The Hague
The Netherlands

¹⁰ Report, pp. 2-3.

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THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

Case No. IT-00-41-PT

THE PROSECUTOR

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ANNEX
TO
PROSECUTOR'S FOURTH PROGRESS REPORT



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

**Third Report in the
Paško Ljubičić Case**

Transferred to the State Court pursuant to Rule 11bis

June 2007

EXECUTIVE SUMMARY

The case of Paško Ljubičić (hereinafter also “Defendant”) is the fourth 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 third report in this case that the OSCE Mission to Bosnia and Herzegovina (“OSCE BIH” or “Mission”) delivers to the ICTY Prosecutor, covering the period between the status conference held on 6 March and the end of May 2007.

From its monitoring activities during the reporting period, the 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 the trial proceedings and an annex with the list of relevant hearings, decisions and submissions in this case. However, the Mission also notes the problem arising from the fact that evidence in English may not be understood by local actors, and in this case the Defence. A solution appears to have been adopted in the *Ljubičić* case, but the Mission encourages courts to consider this problem more seriously in an effort to examine appropriate criteria and solutions to the problem.

The proceedings during the reporting period in the *Ljubičić* case may be summarised as follows:

- On 14 March 2007, the Appellate Panel refused as unfounded the Defence Appeal filed against the Decision on review of custody dated 15 February 2007. OSCE BIH repeats its concerns from previous reports on the fact that the Appellate Panel has adopted a narrow interpretation as regards the application of provisions on alternatives to pretrial custody; namely it has refused to consider proposals to replace custody with alternative measures, finding that release on prohibiting measures is allowed only when the risk of flight alone is invoked as a ground for detention.¹
- The second status conference was held on 10 April 2007. At this hearing, the Defence complained that it had not yet received the Prosecution evidence in local language. In order to resolve the problem with the translation of evidence, namely the statements of the witnesses, Defence Counsel proposed that the Court appoints an additional defence attorney, chosen by the Accused, who speaks English and could be prepared for the trial in the shortest time. Eventually, by its Decision of 26 April 2007, the Court appointed an additional *ex officio* defence attorney to represent the Accused.
- On 12 April 2007, regular review of custody was conducted, and the “out-of-hearing” Panel held that custody was still justified on the bases of the risk of flight and threat to public security. The Accused and the Defence Counsel appealed this decision on 14 and

¹ In this regard, the Mission wishes to reiterate its concerns and recommendations related to pre-trial custody, which have been addressed already in previous OSCE-BIH reports. See, for instance, OSCE-BIH, First Report - Case of Defendant Gojko Janković - Transferred to the State Court pursuant to Rule 11bis, April 2006; OSCE-BIH, First Report in the *Paško Ljubičić* Case - Transferred to the State Court pursuant to Rule 11bis, December 2006; OSCE-BIH, First Report in the *Mitar Rašević and Savo Todović* Case - Transferred to the State Court pursuant to Rule 11bis, January 2007; Second OSCE Report in case of Defendant Paško Ljubičić, Transferred to the State Court pursuant to Rule 11bis, March 2007; Second OSCE Report in the *Željko Mejakić et al.* case, Transferred to the State Court pursuant to Rule 11bis, March 2007.

16 April 2007 respectively. The Appellate Panel, by its decision dated 7 May 2007, refused the Appeals as unfounded.

- On 11 May 2007, the main trial started with the reading of the indictment and the opening statements of the parties.
- By a letter dated 11 May 2007, the Court invited the Prosecutor to submit a Motion for taking judicial notice of established facts and the Defence to file a response accordingly, given that the Accused in his opening statement had not disputed the general allegations concerning the events as described in the factual part of the indictment, but only his participation in them. On 30 May 2007, the Prosecution submitted a Motion requesting the Panel to take judicial notice of 141 established facts which arose from the ICTY final judgments in the cases of *Aleksovski, Blaškić, Kordić and Čerkez* and *Kupreškić*.
- The main trial hearings scheduled for 21 and 28 May 2007 were postponed due to failure of two prosecution witnesses to appear before the Court.
- On 24 May 2007, the Prosecutor filed a Request for protective measures for one witness. In its response dated 27 May 2007, the Defence objected to this request stating that the identity of the witness is already known to the Accused, and to the public. Until the end of the reporting period, the Court did not decide on this Motion.
- The next main trial hearing is scheduled for 13 June 2007, when the Prosecution is expected to begin the presentation of its case.
- Finally, it appears that the Constitutional Court of BiH has not yet issued a decision on the Appeal filed by Ljubičić's Defence Counsel on 16 November 2006, although it contained a Request for the adoption of interim measures to terminate custody against the Appellant, which was ordered by the Decision of the BiH State Court of 22 September 2006.

Although not deemed as amounting to breach of fair trial standards, the Mission has noted an issue that may need to be addressed in order to achieve higher effectiveness in the justice system and improve the management of trials.

As regards the facts in brief, the Defence in the *Ljubičić* case expressed on a number of occasions² its concern that certain evidence, particularly witness testimony, was delivered to her only in English, which this Counsel could not understand. On 16 January 2007, the Preliminary Hearing Judge ordered the Prosecutor to deliver all the evidence to the Defence in line with its request, and at the status conference of 6 March 2007, the Trial Panel ordered the Prosecutor to provide to the Defence the evidence in local language by the beginning of the main trial. Since receiving translated evidence remained problematic even at the second status conference of 10 April 2007, Defence Counsel proposed that the Court appoints an additional defence attorney, chosen by the Accused, who speaks English and could be prepare for the trial at a minimum time. An additional defence attorney was appointed on 26 April 2007.

OSCE BIH notes the apparent resolution of this concern in the case of Paško Ljubičić. It may be mentioned that a similar issue was raised in the transferred case of *Mejakić et al.* tried before the

² Namely, in the Defence submissions of 12 January and 8 February 2007, as well as orally at the status conferences of 6 March and 10 April 2007.

State Court, where the Trial Panel concluded that the Prosecutor's Office would need to have witnesses' testimonies translated in one of the local languages, once it decides to submit them as evidence into the case file.³

One can expect the increasing use of evidence gathered or presented before the ICTY in English. Taking into account this fact and considering the different solutions attempted in the *Ljubičić* and *Mejakić* cases, the Mission encourages courts, and particularly the State Court judges, to consider appropriate criteria and responses to the problem, as well as endeavour to harmonise practices to the extent possible. It would appear significant to clarify which evidentiary documents need to be translated in local language and at what stage of the proceedings, in order to avoid unnecessary delays in the trials. Lastly, such translated material should be accessible to all interested actors, including at the entity level, for possible future proceedings.

³ Oral Decision of the Trial Panel rendered at the main trial hearing held on 18 April 2007.

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

- (i) Decision of the Appellate Panel on the Defence Appeal, 14 March 2007
- (ii) Status conference, held on 10 April 2007
- (iii) Decision of the "Out-of-Hearing" Panel on review of custody, dated 14 April 2007
- (iv) Defendant's Appeal against the Decision on review of custody, dated 14 April 2007
- (v) Defence Counsel's Appeal against the Decision on review of custody, dated 16 April 2007
- (vi) Prosecution responses to Defence Appeals against the Decision on extension of custody, dated respectively 18 and 20 April 2007
- (vii) Defence submission related to appointment of additional defence attorney, dated 25 April 2007
- (viii) Decision to appoint an additional *ex officio* Defence Counsel, dated 26 April 2007
- (ix) Prosecution Interim Report to Court on translation issues, dated 4 May 2007
- (x) Official notice appointing a reserve judge to the Trial Panel in the case of Paško Ljubičić, dated 7 May 2007
- (xi) Decision of the Appellate Panel refusing the Defence Appeals as unfounded, dated 7 May 2007
- (xii) Opening of the main trial, held on 11 May 2007
- (xiii) Court's submission related to judicial notice on established facts, dated 11 May 2007
- (xiv) Main trial hearing scheduled for 21 May 2007, postponed
- (xv) Prosecutor's Request for protective measures for witness, dated 24 May 2007
- (xvi) Defence Response on Prosecutor's Request for protective measures, dated 27 May 2007
- (xvii) Main trial hearing scheduled for 28 May 2007, postponed
- (xviii) Prosecution Motion for acceptance of established facts, dated 30 May 2007