

IT-00-41-PT  
D4198-D4189  
19 SEPTEMBER 2007

4198<sub>AT</sub>

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 September 2007

THE PROSECUTOR

v.

PAŠKO LJUBIČIĆ

*PUBLIC FILING*

---

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-00-41-PT

THE PROSECUTOR

v.

PAŠKO LJUBIČIĆ

**PROSECUTOR'S FIFTH PROGRESS REPORT**

1. In accordance with the "Decision to Refer the Case to Bosnia and Herzegovina Pursuant to Rule 11 *bis*"<sup>1</sup> of 12 April 2006 ("Decision on Referral") the Prosecutor hereby files her fifth 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.<sup>2</sup>
3. The Office of the Prosecutor filed its fourth progress report on 19 June 2007.<sup>3</sup>
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 fourth report on 11 September 2007.<sup>4</sup> The Report outlines the main findings of trial monitoring activities to date in the *Ljubičić* case, from the perspective of international human rights standards.<sup>5</sup>
5. OSCE has not identified any issues of concern that could be assessed, at this stage, as infringing upon the Defendant's right to a fair trial.<sup>6</sup>

---

<sup>1</sup> *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.

<sup>2</sup> Decision on Referral, p. 21.

<sup>3</sup> See *Prosecutor v. Paško Ljubičić*, Case No. IT-00-41-PT, Prosecutor's Fourth Progress Report, 19 June 2007.

<sup>4</sup> OSCE Fourth Report in the *Paško Ljubičić* Case Transferred to the State Court Pursuant to Rule 11*bis*, September 2007 (hereinafter "Report").

<sup>5</sup> Report, Executive Summary, p. 2.

<sup>6</sup> *Ibid*

6. The OSCE summarizes the proceedings in the Ljubičić case as follows:
- On 11 June 2007 and 7 August 2007, the Court conducted a regular review of custody and held that custody was still justified on the bases of the risk of flight and threat to public security. Defence Counsel appealed the decisions on 13 June and 11 August 2007 respectively. The Appellate Panel, by its decisions dated 22 June and 29 August 2007 respectively, rejected the Appeals as unfounded.
  - On 12 June 2007, the Prosecutor filed a Request for protective measures for a witness. At the hearing held on 25 June 2007, this Motion was granted by the Trial Panel. The witness testified protected from the public through the assignment of a pseudonym as well as by precluding his visual identification by the public, which was able to hear but not to see the witness.
  - During the reporting period, the Court held seven sessions in total during which eight witnesses proposed by the Prosecution were directly examined and cross examined. The hearings were mainly held in public with exclusions occurring only when the use of protective measures was discussed and for part of one protected witness' testimony (to avoid revealing the identity). At the hearing held on 30 August, a Prosecution witness was only directly examined. Due to the late delivery of written transcripts of witness testimonies, the Defense requested additional time to prepare for cross-examination of all witnesses. The Panel granted the request.
  - On 5 July 2007, the Defense submitted its response to the Prosecution Motion for acceptance of established facts, moving the Court to refuse it. The Court has not yet issued a decision on this motion.
  - On 16 July 2007, the Constitutional Court of BiH rendered the decision rejecting the Appeal of Paško Ljubičić against the decision of the State Court to extend his custody as inadmissible.<sup>7</sup>

7. The Report reiterates OSCE's continued concerns regarding the fact that the Appellate Panel continues to narrowly interpret the application of provisions on alternatives to custody, an issue previously mentioned in the reports in the *Janković, Rašević and Todović* and *Mejakić* cases as well as in the previous reports in the *Ljubičić* case. The Prosecutor notes that the OSCE urges all judicial authorities to consider application of prohibiting measures in relation to all grounds for custody, not just in relation to the risk of flight.<sup>8</sup>

8. The OSCE also reiterates its recommendation that the courts decide upon motions for taking judicial notice at an early stage of the proceedings in order to achieve higher effectiveness in the justice system, safeguard judicial economy and

<sup>7</sup> Report, pp. 2, 3 and 4.

<sup>8</sup> Report, p. 3.

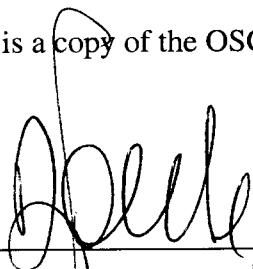
ensure that the parties are not placed at a disadvantage regarding the presentation of evidence.<sup>9</sup>

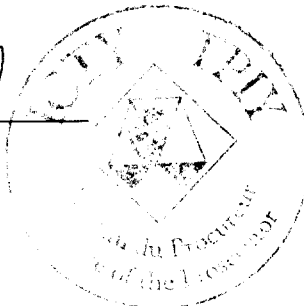
9. The Prosecutor understands and gives due regard to the issues identified in the OSCE report which are of value for the local actors, however, the Prosecutor considers that these issues, at present, do not appear to have affected Ljubičić's right to a fair trial.

10. The Prosecutor notes that the OSCE intends to share this Report with actors in the domestic justice system.

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

Word Count: 798

  
\_\_\_\_\_  
Carla Del Ponte  
Prosecutor



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

---

<sup>9</sup> Report, p. 4.

IT-00-41-PT  
D4194-D4189

4194

THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA

Case No. IT-00-41-PT

THE PROSECUTOR

v.

PAŠKO LJUBIČIĆ

ANNEX  
TO  
PROSECUTOR'S FIFTH PROGRESS REPORT



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

**Fourth Report in the  
*Paško Ljubičić* Case  
Transferred to the State Court pursuant to Rule 11bis**

**September 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 fourth 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 beginning of June and the main trial hearing held on 30 August 2007.

From its monitoring activities during the reporting period, the Mission has not identified any issue of concern that could be assessed as such at this stage. However, it reiterates its remarks on the concerns related to the limited application of alternatives to custody when the risk of flight is invoked alone, as well as its recommendations concerning the acceptance of established facts, both of which have been addressed already in previous OSCE BIH reports. Therefore, this Report mainly consists of a short summary of the developments in these trial proceedings, certain relevant updates in relation to concerns repeated from previous reports, and an annex with the list of relevant hearings, decisions and submissions in this case.

The proceedings until present in the *Ljubičić* case may be summarised as follows:

- On 11 June 2007 and 7 August 2007, the Court conducted regular review of custody and held that custody was still justified on the bases of the risk of flight and threat to public security. Defence Counsel appealed the decisions on 13 June and 11 August 2007 respectively. The Appellate Panel, by its decisions dated 22 June and 29 August 2007 respectively, rejected the Appeals as unfounded.

In this regard, OSCE BIH repeats its concerns from previous reports on the fact that the Appellate Panel continues to adopt a narrow interpretation as regards the application of provisions on alternatives to custody. Namely, it refuses 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.<sup>1</sup>

The Mission reiterates its analysis that domestic law in its entirety and human rights standards would advocate that non-custodial measures be applied when possible in relation to all grounds that would otherwise justify detention. It is worth noting that on 9 July 2007, the High Representative in BiH imposed certain amendments to the BiH Criminal Procedure Code (BiH CPC).<sup>2</sup> These amendments foresee explicitly that certain alternatives to custody<sup>3</sup> should be considered in relation to all grounds for detention, not just the risk of flight.

---

<sup>1</sup> See, for instance, concerns and recommendations expressed in 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.

<sup>2</sup> The amendments were published on 16 July 2007 in the Official Gazette of BiH, Number 53/07 and have entered into force a day after, namely on 17 July.

<sup>3</sup> Such prohibiting measures are foreseen in the new provision of 126a BiH CPC, and they include prohibition from visiting certain places and persons, reporting to a specified body, etc.

The Appellate Panel's Decision of 29 August 2007 does not appear to take into consideration the newly introduced amendments to criminal procedure.<sup>4</sup>

In connection to these new amendments of BiH CPC provisions, OSCE BiH regrets that their wording appears to suggest that the application of house arrest and bail continue to be limited to the risk of flight. The Mission does not find any policy or human rights reason for this limitation. Consequently, it urges that this matter be promptly clarified.

In view of the above, the Mission again urges the authorities – judges-prosecutors-defence - to consider the application of prohibiting measures in relation to all custody grounds, not just the risk of flight. Furthermore, in respect of the new amendments, OSCE BiH remains at the disposal of the relevant national authorities and of OHR to share again the relevant reports and findings, which were disseminated prior to the passing of these new amendments.<sup>5</sup>

- On 12 June 2007, the Prosecutor filed a Request for protective measures for a witness. At the hearing held on 25 June 2007, this Motion was granted by the Trial Panel. The witness testified protected from the public through the assignment of pseudonym as well as by precluding his visual identification by the public, which was able to hear but not to see the witness.
- During the reporting period, the Court held seven sessions in total<sup>6</sup> during which eight witnesses proposed by the Prosecution were directly examined and cross examined. The hearings were mainly held in public with exclusions occurring only when the use of protective measures was discussed and for part of one protected witnesses' testimony (to avoid revealing the identity). At the hearing held on 30 August, a Prosecution witness was only directly examined. Due to the late delivery of written transcripts of witness testimonies, the Defense requested additional time to prepare for cross-examination of all witnesses. The Panel granted the request.
- On 5 July 2007, the Defense submitted its response to the Prosecution Motion for acceptance of established facts, moving the Court to refuse it. The Court has not yet issued a decision on this motion.

In this regard, the Mission would like to reiterate its recommendations formulated in the Second OSCE-BIH Report in the case of Gojko Janković.<sup>7</sup> There appears to be no standard practice regarding the time-limit within which a court should issue a decision on a motion to accept as proven certain facts established in ICTY legally binding decisions. It may be noted that the State Court in at least two different cases ruled on similar motions of the prosecution only in the verdicts.<sup>8</sup> Therefore, in order to achieve higher effectiveness in the justice system, safeguard

---

<sup>4</sup> See, Court of BiH, Decisions on Appeal against the review of custody in the Ljubičić case, dated 22 June and 29 August 2007. The same approach was adopted by the Appellate Panel in the Mejakić et al. In this regard; see Court of BiH, Decision on Appeal against the review of custody in the case of Mejakić et al., dated 26 July 2007.

<sup>5</sup> See footnote 1.

<sup>6</sup> Main trial sessions have been held on 13, 25 and 29 June; 5 and 12 July; and 24 and 30 August 2007.

<sup>7</sup> See OSCE-BIH, Second Report - Case of Defendant Gojko Janković - Transferred to the State Court pursuant to Rule 11bis, July 2006

<sup>8</sup> See First Instance Verdict in the case of Dragoje Paunović, dated 26 May 2006, page 13; and First Instance Verdict in the case of Nedo Samardžić, dated 7 April 2006, page 10.



judicial economy, and ensure that parties are not placed at a disadvantage in the presentation of necessary evidence, OSCE BIH reiterates its recommendation that the courts decide upon a motion for taking judicial notice at the early stages of the proceedings. Furthermore, the Mission urges the Prosecutors and Defense to start submitting such motions as early as possible, even before the beginning of the main trial.

- On 16 July 2007, the Constitutional Court of BiH rendered the decision rejecting the Appeal of Paško Ljubičić as inadmissible.

At the time of writing of this Report, the Constitutional Court's decision on the *Ljubičić* Appeal is not available in writing, therefore the Mission has not been able to review its reasoning.

- The next main trial hearing is scheduled for 10 September 2007, when the Prosecution should continue with the presentation of its case.

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

- (i) Decision of the Trial Panel on review of custody, dated 11 June 2007
- (ii) Prosecution request for protective measures for witness, dated 12 June 2007
- (iii) Main trial hearing, held on 13 June 2007
- (iv) Defence Counsel's Appeal against the Decision on review of custody, dated 13 June 2007
- (v) Official notice to replace a member of the Trial Panel by previously appointed reserved judge, dated 15 June 2007
- (vi) Prosecution response to Defence Appeals against the Decision on extension of custody, dated 18 June 2007
- (vii) Decision of the Appellate Panel refusing the Defence Appeal as unfounded, dated 22 June 2007
- (viii) Main trial hearing, held on 25 June 2007
- (ix) Main trial hearing, held on 29 June 2007
- (x) Defence Submission regarding the Motion for acceptance of established facts, dated 5 July 2007
- (xi) Main trial hearing, held on 5 July 2007
- (xii) Main trial hearing, held on 12 July 2007
- (xiii) Decision of the "Out-of-Hearing" on review of custody, dated 7 August 2007
- (xiv) Defence Counsel's Appeal against the Decision on review of custody, dated 11 August 2007
- (xv) Prosecution Response to Defence Appeal against review of custody, dated 17 August 2007
- (xvi) Main trial hearing, held on 24 August 2007
- (xvii) Prosecution submission related to delivery of evidence, dated 29 August 2007
- (xviii) Decision of the Appellate Panel refusing the Defence Appeal as unfounded, dated 29 August 2007
- (xix) Main trial hearing, held on 30 August 2007