

HC

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

Registrar: Mr. Hans Holthuis

Date Filed: 17 July 2007

THE PROSECUTOR

v.
MITAR RAŠEVIĆ
SAVO TODOVIĆ

PROSECUTOR'S FOURTH PROGRESS REPORT

The Office of the Prosecutor:
Ms. Carla Del Ponte

THE INTERNATIONAL CRIMINAL TRIBUNAL
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PROSECUTOR'S FOURTH PROGRESS REPORT

1. In accordance with the "Decision on Referral of Case Under Rule 11 *bis* with Confidential Annexes I and II"¹ of 8 July 2005, the Prosecutor hereby files her fourth 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.²

3. The Prosecutor filed the Third Progress Report on 17 April 2007.³

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 Herzegovina (the "OSCE") and the Prosecutor, the Prosecutor received OSCE's third report on 11 July 2007.⁴ The Report outlines the main findings of trial monitoring

¹ *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").

² Decision on Referral, p. 46.

³ See *Rašević and Todović case*, Prosecutor's Third Progress Report, 17 April 2007.

⁴ Third Report in the *Mitar Rašević and Savo Todović Case Transferred to the State Court Pursuant to Rule 11bis*, July 2007 (hereinafter "Report").

activities to date in the *Rašević and Todović* case, from the perspective of international human rights standards.

5. The Prosecutor notes that from its monitoring activities during the reporting period 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.⁵

6. The Report reiterates OSCE's continued concern regarding the lack of justification by the BiH Court when relying on the potential threat to public and property security as a ground for pre-trial detention, an issue previously mentioned in the *Janković, Ljubičić and Mejakić* cases as well as in the previous reports in the *Rašević and Todović* case.⁶ While the Prosecutor understands and gives due regard to this issue she considers that at present it does not appear to affect the right to a fair trial of these two Accused. The Prosecutor notes that OSCE welcomes the fact that the Criminal Code Implementation Assessment Team in BiH has proposed the removal of this ground for detention from the BiH Criminal Procedure Code.⁷

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

- On 26 April 2007, regular review of custody was conducted, and the trial Panel held that custody was still justified on the grounds of the risk of flight and threat to public security. Defence Counsel of Mitar Rašević appealed this decision on 7 May 2007. On 23 May 2007, the Appellate Panel refused the appeal as unfounded.
- On 11 May 2007, the main trial started with the reading of the indictment and the opening statements of the parties.
- During the reporting period, the Court has held eight sessions in total, during which 20 witnesses proposed by the Prosecution have been directly examined and cross examined. The hearings were mostly held in public sessions; the public was excluded from parts of certain hearings, during which the Trial Panel discussed with the Parties the Prosecutor's request for granting protective measures for some witnesses prior to their testimony.

⁵ Report, Executive Summary, page 1.

⁶ *Ibid.*

⁷ Report, Executive Summary, page 2.

- On 25 June 2007, the Trial Panel conducted the regular review of custody finding that custody is still justified on the grounds of the risk of flight and threat to public security.
 - The next main trial hearing is scheduled for 20 July 2007, when the Prosecution will continue with the presentation of its case by examining two protected witnesses.
8. Attached to this report and marked as Annex A is the Report.

Word count: 687


Carla Del Ponte
Prosecutor



Dated this seventeenth day of July 2007
At The Hague
The Netherlands

INTERNATIONAL CRIMINAL TRIBUNAL
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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
Mitar Rašević and Savo Todović Case
Transferred to the State Court pursuant to Rule 11bis**

July 2007

EXECUTIVE SUMMARY

The case of Mitar Rašević and Savo Todović (hereinafter also “Defendants”) is the fifth 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 end of March and the main trial hearing held on 28 June 2007.

From its monitoring activities during the reporting period, the OSCE-BIH 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. Therefore, this report consists mainly of a short summary of the developments in these trial proceedings and an annex with the list of relevant hearings, decisions and submissions.

The proceedings until present in the *Rašević and Todović* case may be summarised as follows:

- On 26 April 2007, regular review of custody was conducted, and the trial Panel held that custody was still justified on the grounds of the risk of flight and threat to public security. In this regard, OSCE-BIH reiterates its remarks on the concerns related to pre-trial custody (please see the note below), which have already been addressed in its previous reports.¹ Defence Counsel of Rašević appealed this decision on 7 May 2007. On 23 May 2007, the Appellate Panel refused the appeal as unfounded.
- On 11 May 2007, the main trial started with the reading of the indictment and the opening statements of the parties.
- During the reporting period, the Court has held eight sessions in total,² during which 20 witnesses proposed by the Prosecution have been directly examined and cross examined. The hearings were mostly held in public sessions; the public was excluded from parts of certain hearings, during which the Trial Panel discussed with the Parties the Prosecutor’s request for granting protective measures for some witnesses prior to their testimony.
- On 25 June 2007, the Trial Panel conducted the regular review of custody finding that custody is still justified on the grounds of the risk of flight and threat to public security.
- The next main trial hearing is scheduled for 20 July 2007, when the Prosecution will continue with the presentation of its case by examining two protected witnesses.

The Mission continues to note the problematic use, from a human rights perspective, of the potential threat to public and property security as ground for pre-trial custody. In the present case, by its Decisions on custody dated 26 April, 23 May and 25 June 2007, the Court has taken into account the fact that the statute of limitations does not apply to the prosecution and execution of sentence for this type of criminal offences, as additional reason for extending custody on the

¹ See, for instance, First OSCE Report in the *Gojko Janković* case transferred to the State Court pursuant to Rule 11bis, April 2006; First OSCE Report in the *Paško Ljubičić* Case transferred to the State Court pursuant to Rule 11bis, December 2006; First OSCE Report in the *Mitar Rašević and Savo Todović* Case transferred to the State Court pursuant to Rule 11bis, January 2007; Second OSCE Report in the *Paško Ljubičić* Case 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.

² Main trial sessions have been held on 6, 16 and 24 April; 14 and 29 May; and 4, 5 and 28 June 2007.

grounds of the risk of flight and threat to public security. The Mission perceives this argument as a confirmation of the gravity of the alleged offences. In this regard, it should be noted that the gravity of the offence is only indicative when threat to public and property security may exist. It should be coupled with further evidence of an actual threat. Similarly, international standards foresee that a threat to public order should be based on facts capable of demonstrating that there is an actual threat and that it persists after the passage of time.³ At no point have the decisions on custody in this case demonstrated that an actual threat exists in case the Defendants are released.

OSCE BiH welcomes the fact that the Criminal Code Implementation Assessment Team (CCIAT) in BiH has proposed the removal of this ground for detention from the BiH Criminal Procedure Code. The CCIAT has proposed a number of amendments to this Code that were adopted by the Council of Ministers, one of which is the deletion of the relevant provision. These amendments are expected to be presented before the Parliament for approval. The proposed amendment in question is in line with previous OSCE recommendations and with the recommendation that the UN Human Rights Committee made to the BiH authorities in its 2006 Concluding Observations.⁴

³ ECtHR, *Letellier v. France*, Judgment, 26 June 1991, para. 51

⁴ Concluding Observations of the Human Rights Committee to the Bosnia and Herzegovina State Report, CCPR/C/BIH/CO/1, 10 November 2006, Recommendation 18, which reads: "The State party should consider removing from the Code of Criminal Procedure of Bosnia and Herzegovina the vague concept of public security or security of property as a ground for ordering pre-trial detention."

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

- (i) Decision to appoint an additional *ex officio* Defence Counsel to Defendant Mitar Rašević, dated 23 March 2007
- (ii) Submission of Defendant Todović regarding appointment of another defence attorney, dated 28 March 2007
- (iii) Opening of the main trial, held on 6 April 2007
- (iv) Submission of Todović's Defence Counsel regarding appointment of another defence attorney, dated 12 April 2007
- (v) Main trial hearing, held on 16 April 2007
- (vi) Submission of Defendant Todović regarding delivery of written transcripts of witness testimonies given before the ICTY, dated 19 April 2007
- (vii) Submission of Defendant Todović regarding appointment of another defence attorney, dated 19 April 2007
- (viii) Main trial hearing, held on 24 April 2007
- (ix) Decision of the Trial Panel on review of custody, dated 26 April 2007
- (x) Submission of Defendant Todović regarding delivery of written transcripts of witness testimonies given before the ICTY, dated 26 April 2007
- (xi) Decision to appoint an additional *ex officio* Defence Counsel to Defendant Savo Todović, dated 26 April 2007
- (xii) Appeal of Rašević's Defence Counsel against the decision on review of custody, dated 7 May 2007
- (xiii) Prosecution responses to Defence Appeal against the Decision on extension of custody, dated 10 May 2007
- (xiv) Main trial hearing, held on 14 May 2007
- (xv) Presiding's Judge Request for appointment of a reserve judge to the Trial Panel in the case of Rašević et al., dated 16 May 2007
- (xvi) Official notice appointing a reserve judge to the Trial Panel in the case of Rašević et al., dated 22 May 2007
- (xvii) Decision of the Appellate Panel refusing the Defence Appeal as unfounded, dated 23 May 2007
- (xviii) Main trial hearing, held on 29 May 2007
- (xix) Main trial hearing, held on 4 June 2007
- (xx) Main trial hearing, held on 5 June 2007
- (xxi) Decision of the Trial Panel on review of custody, dated 25 June 2007
- (xxii) Main trial hearing, held on 28 June 2007