

THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA

Case No. IT-00-41-PT

IN THE REFERRAL BENCH

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

Registrar: Mr Hans Holthuis

Date Filed: 19 March 2007

THE PROSECUTOR

v.

PAŠKO LJUBIČIĆ

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PROSECUTOR'S THIRD PROGRESS REPORT

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The Office of the Prosecutor

Ms. Carla Del Ponte

THE INTERNATIONAL CRIMINAL TRIBUNAL  
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PROSECUTOR'S THIRD 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 third 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 second progress report on 18 December 2006.<sup>3</sup>
4. Following the agreement between the Chairman in Office of the Organisation for Security and Co-operation in Europe Mission's to Bosnia and Herzegovina (the "OSCE") and the Prosecutor, the Prosecutor received OSCE's second report on 15 March 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>

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<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 Second Progress Report, 18 December 2006.

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

<sup>5</sup> Report, Executive Summary. p. 1-2.

5. The OSCE summarises the proceedings in the *Ljubičić* case to date as follows:
- On 12 December 2006, the Preliminary Hearing Judge (“PHJ”), accepted the motion of the Prosecutor and ordered protective measures for 20 witnesses on the basis of Article 12 and 13 of the Law on Protection of Witnesses.
  - On 15 December 2006, the Prosecution filed the adapted indictment with a motion for extension of custody. At the hearing on custody held on 21 December 2006, Defence Counsel orally challenged the motion. On the same date, the PHJ accepted the adapted indictment and extended custody against the Defendant until completion of the main trial. The defendant submitted a preliminary motion on 4 January 2007, challenging the jurisdiction of the State Court and pointing to formal defects in the adapted indictment. The PHJ refused this preliminary motion in his Decision of 24 January 2007.
  - On 22 December 2006, Defence Counsel appealed the aforementioned Decision extending custody. In this Appeal, Counsel proposed to the Court to terminate custody and replace it with the alternative measures of prohibiting the Accused to leave his place of residence, obliging him to report daily to the police and to post bail. The “out-of-hearing” Panel refused the Appeal as unfounded. On 15 February 2007, the Court 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.
  - At the plea hearing held on 9 January 2007, the Defendant refused to enter a plea, therefore the PHJ recorded that the Accused entered a plea of not guilty.
  - A status conference was held on 6 March 2007. At this hearing Defence Counsel complained that certain prosecution evidence was delivered to her only in English and she requested copies in local language. The Court ordered the Prosecution to provide the Defence with the evidence in local language by the beginning of the main trial.
  - The main trial is scheduled to start on 10 April 2007.<sup>6</sup>
6. The OSCE focuses in its Report predominantly on the limited application of alternatives to pre-trial custody.<sup>7</sup> The OSCE is concerned that the judges reviewing the Defendant’s detention have refused to examine the application of alternatives to custody, following a strict reading of the law as if alternatives cannot be applied when the grounds for detention are other than the risk of flight alone. The OSCE considers that such a limited application of bail or other prohibiting measures runs contrary to the general presumption of release that is foreseen by international fair trial

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<sup>6</sup> *Idem.*

<sup>7</sup> Report, Part 1, p. 3-6.

standards, notably by Article 5(3) of the European Convention of Human Rights (“ECHR”).<sup>8</sup> Nonetheless, the OSCE notes that other panels at the State Court have increasingly opted for alternative solutions in protecting the right to liberty of the accused, granting the application of alternatives to custody when grounds for custody other than the risk of flight, such as the threat to public and property security, were concerned, although some decisions appear to be flawed in the methodology of their reasoning.<sup>9</sup>

7. The Prosecutor fully supports OSCE’s view that the State Court should consider the application of measures alternative to custody in relation to all grounds for custody, and not only when the risk of flight is at issue. In view of the decisions by other panels of the State Court, the OTP notes that the 15 February 2007 decision of the Court to extend the custody in this case is not final. The Defence’s appeal against this decision is still pending before the State Court.<sup>10</sup>

8. The OSCE notes that concerns expressed in the previous report on this case and in the *Rašević* and *Todović* case<sup>11</sup> regarding the right of defendants to communicate confidentially with their counsel appear to have been resolved. The Detention Unit’s Management of the BiH State Court informed and subsequently demonstrated to OSCE a special phone system patented by “BH Telecom”, which was installed in the detention unit, and which should allow detainees to communicate confidentially over the phone with their attorney. According to the Unit’s Management, the system became fully operational and the detainees were informed about it on 5 March 2007.<sup>12</sup>

9. OSCE further indicates that, on 16 November 2006, the Accused filed an Appeal to the Constitutional Court of BiH claiming a violation of Article 5(3) ECHR, as the State Court, in its evaluation of whether custody has exceeded a reasonable time pending trial, failed to take into consideration the time that the Accused spent in custody ordered by the ICTY. The Constitutional Court has not yet issued a decision on this Appeal.<sup>13</sup>

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

<sup>9</sup> Report, p. 5-6.

<sup>10</sup> Report, p. 8.

<sup>11</sup> See *Prosecutor v. Mitar Rašević and Savo Todović*, Case No. IT-97-25/1-PT, Prosecutor’s Second Progress Report, 17 January 2007.

<sup>12</sup> Report, p. 1.

<sup>13</sup> Report, p. 2.

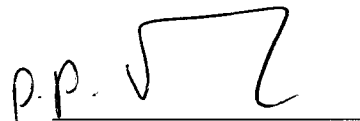
10. OSCE records that, on 11 January 2007, the Accused together with other detainees transferred from the ICTY sent a letter to the President of the ICTY complaining about a number of issues that they considered a violation of their rights and asking the President to initiate the procedure for revoking the orders for referral of the cases to BiH and thereby order the deferral of the cases to the ICTY for trial.<sup>14</sup>

11. Finally, the OSCE reiterates its recommendation as regards the vague justification of pre-trial custody on the basis of public security.<sup>15</sup> As stated before,<sup>16</sup> this issue was previously raised by the OSCE in the *Janković* case and the Prosecutor considers that it does not appear to affect *Ljubičić's* right to a fair trial.

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

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

Word Count: 1,217

  
Carla Del Ponte  
Prosecutor

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

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<sup>14</sup> *Idem.*

<sup>15</sup> Report, p. 6.

<sup>16</sup> See *Prosecutor v. Paško Ljubičić*, Case No. IT-00-41-PT, Prosecutor's Second Progress Report, 18 December 2006, para. 8.

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ANNEX  
TO  
PROSECUTOR'S THIRD PROGRESS REPORT



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

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

**March 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 second 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 December 2006 and the status conference held on 6 March 2007.

Certain issues of interest have arisen during this reporting period, although they are still awaiting a decision and, therefore, it may still be to some degree premature to comment on them. This Report addresses the fact that the judges reviewing the Defendant's detention have refused to examine the application of alternatives to custody, following a strict reading of the law as if alternatives cannot be applied when the grounds for detention are other than the risk of flight alone. Nonetheless, other panels at the State Court have increasingly opted for alternative solutions in protecting the right to liberty of the accused, ordering the application of alternatives to custody to take into account circumstances when other risks, such as the threat to public and property security, are in question. The Mission shares the view that a court should consider the application of measures alternative to custody in relation to all grounds for custody, and not only when the risk of flight is at issue. Examining the applicability of alternatives to custody is all the more important when the defendant has been in pre-trial detention for a considerable period of time, as is the case with Paško Ljubičić, who has been awaiting trial in custody for over six years (since November 2001).

At this point, OSCE BiH would like to note with satisfaction the prompt resolution of a concern that was expressed in the first OSCE Reports relating to the cases of Paško Ljubičić and of Defendants Rašević and Todović. In those Reports, the Mission addressed the right of defendants to communicate confidentially with their counsel, in view of the fact that the location of the telephones at the Detention Unit of the BiH State Court meant that any telephone conversations were within the hearing range of the Unit's personnel. The Unit's Management informed and subsequently demonstrated to OSCE BiH the special phone system patented by "BH Telecom", which was installed therein, and which should allow detainees to communicate confidentially over the phone with their attorneys. According to the Unit's Management, the system became fully operational and the detainees were informed about it on 5 March 2007.

Until present, the proceedings in the *Ljubičić* case may be summarised as follows:

- On 12 December 2006, the Preliminary Hearing Judge (hereinafter PHJ), accepted the motion of the Prosecutor and ordered protection measures for 20 witnesses on the basis of Article 12 and 13 of the Law on Protection of Witnesses.
- On 15 December 2006, the Prosecution filed the adapted indictment with a motion for extension of custody. At the hearing on custody held on 21 December 2006, Defence Counsel orally challenged the motion. On the same date, the PHJ accepted the adapted indictment and extended custody against the Defendant until completion of the main trial (this may entail further detention up to three years). The Defendant submitted preliminary motion on 4 January 2007, challenging the jurisdiction of the State Court and pointing to formal defects in the adapted indictment. The PHJ refused this preliminary motion in his Decision of 24 January 2007.
- On 22 December 2006, Defence Counsel appealed the aforementioned Decision extending custody. In this Appeal, Counsel proposed to the Court to terminate custody



and replace it with the alternative measures of prohibiting the Accused to leave his place of residence, obliging him to report daily to the police and to post bail. The "out-of-hearing" Panel refused the Appeal as unfounded. On 15 February 2007, the Court 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.

- At the plea hearing held on 9 January 2007, the Defendant refused to enter a plea, therefore the PHJ recorded that the Accused entered a plea of not guilty.
- A status conference was held on 6 March 2007. At this hearing Defence Counsel complained that certain prosecution evidence was delivered to her only in English and she requested copies in local language. The Court ordered the Prosecutor to provide the Defence with the evidence in local language by the beginning of the main trial.
- The main trial is scheduled to start on 10 April 2007.<sup>1</sup>

It should be mentioned that, on 16 November 2006, the Accused filed an Appeal to the Constitutional Court of BiH claiming a violation of Article 5(3) of the European Convention of Human Rights (ECHR), as the State Court, in its evaluation of whether custody has exceeded a reasonable time pending trial, failed to take into consideration the time that the Accused spent in custody ordered by the ICTY (since 21 November 2001, approximately five years). The Constitutional Court has not yet issued a decision on this Appeal.<sup>2</sup>

Furthermore, on 11 January 2007, the Accused together with other detainees transferred from the ICTY sent a letter to the President of the ICTY complaining about a number of issues that they considered a violation of their rights and asking the President to initiate the procedure for revoking the orders for referral of the cases to BiH and thereby order the deferral of the cases to the ICTY for trial. OSCE BiH is unaware of any response to this letter.

<sup>1</sup> It may be noted that the 6 November 2006 Appellate Panel decision clarified that the maximum term of 90 days for commencing the main trial [Article 229 (4) BiH CPC], started running from the day the Defendant came under the jurisdiction of the State Court, namely 22 September 2006. Based on this argument, the main trial should have started before 22 December 2006. The fact that this deadline was not respected, although there is no sanction in the law, reinforces previous OSCE conclusions that the Law on Transfer has gaps in relation to the application of domestic criminal procedure to the transferred cases.

<sup>2</sup> It may be mentioned that in the transferred case of *Mejakić and others*, the Constitutional Court dismissed as inadmissible the appeal of the defence, because the appellants did not have a "justified request" to refer to a violation of rights. [See the Constitutional Court Decision of 20 October 2006 - case number AP 2499/06- hearing the appeal of Željko Mejakić and Dušan Fuštar]. The defence appeal argued that the assessment of the reasonableness of the length of detention according to Article 5(3) ECHR should comprise the entire period that the accused have spent in custody, including that ordered by the ICTY. The Constitutional Court, like the State Court, relied on the Law on Transfer and found that the assessment of the reasonableness of time the defendants spent in custody at The Hague to be irrelevant. OSCE has previously called attention to the position that certain scholars have adopted in extradition cases, by which they find that detention undergone in the sender state may well constitute one of the circumstances that the receiving state has to take into consideration in assessing the reasonableness of the total length of the detention; see, for instance, P. van Dijk and G.J.H. van Hood, *Theory and Practice of European Convention on Human Rights* (The Hague, Kluwer Law International, 3<sup>rd</sup> edition, 1998), p. 380.

## PART I

### CONCERNS RELATING TO THE LIMITED APPLICATION OF ALTERNATIVES TO PRE-TRIAL CUSTODY

OSCE BiH is concerned that the judges reviewing Defendant Ljubičić's detention have adopted a narrow interpretation of the provisions on pretrial custody. According to their interpretation, they have refused to consider proposals to replace custody with alternative measures. Their refusal is based on a strict reading of the BiH CPC, finding that release on bail (or other prohibiting measures) is allowed only when the risk of flight alone is invoked as a ground for detention.

Such a limited application of bail or other prohibiting measures runs contrary to the general presumption of release that is foreseen by international fair trial standards, notably by Article 5(3) ECHR. It should be noted that there are several examples in which other State Court judges have examined and granted the application of alternative measures when grounds for custody other than the risk of flight were concerned. These decisions should be properly disseminated and discussed so as to encourage a common understanding among judges that complies with international standards which favour release, on conditions as necessary, over detention pending trial.

#### *The Law*

Article 127 BiH CPC foresees the release of a person upon posting bail (furnishing a surety) only when the risk of flight is concerned, and, similarly, house arrest is linked directly to the risk of flight. Nevertheless, in other provisions the BiH Criminal Procedure Code (BiH CPC) clearly foresees that other measures should replace custody, when they can achieve the same purpose.<sup>3</sup>

International standards foresee release pending trial as the rule, and pre-trial detention as the exception. It may be interesting to note the grounds which are characterised in the BiH CPC as "grounds for pre-trial custody" are referred to by international standards as relevant and sufficient "grounds to refuse bail." It is therefore evident that international standards also view bail, or other alternative measures, as applicable in relation to all the dangers that custody may seek to avert.<sup>4</sup>

#### *The Facts in the Ljubičić case*

At the 21 December 2006 custody hearing held before the PHJ, the Defence orally proposed that the Court terminate custody and substitute it with bail and other alternative measures (house arrest and daily reporting to the police).<sup>5</sup> Since the risk of flight together with the threat to public and property security were accepted as grounds for detention, the PHJ refused the proposal as unfounded, because it was in contradiction with Article 127 BiH CPC that foresees bail for countering only the risk of flight.

<sup>3</sup> See, for instance, Article 131(1) BiH CPC, which states that "[c]ustody may be ordered only under the conditions prescribed by this Code and only if the same purpose cannot be achieved by another measure." Similarly, when Article 126(2) BiH CPC prescribes for the prohibition of visiting a certain place or approaching a certain person, it is clear that the measures do not aim at averting the risk of flight, but rather other dangers, such as the risk of collusion and interfering with witnesses, or re-offending.

<sup>4</sup> This is also supported in DJ. Harris, M. O'Boyle, and C. Warbrick, *Law of the European Convention on Human Rights* (London, Butterworths, 1995), p. 142, where it is stated that bail should not be linked only to the risk of flight, but be used to counter other dangers as well.

<sup>5</sup> Already upon the Accused's transfer to BiH in September 2006, the Defence proposed the application of alternatives to custody.

In its appeal of 22 December 2006 against this Decision, the Defence reiterated its motion to terminate custody and proposed again the application of house arrest, daily reporting to the police, and bail as alternative measures. On 28 December 2006, the "out-of-hearing" Panel refused the Appeal as unfounded and confirmed the PHJ's decision, with the conclusion that "there exist the circumstances justifying the ordering of the most severe measure" against the Defendant.

*Analysis – Reference to Other Decisions of the State Court that properly consider alternatives*

By refusing to consider alternatives to custody because detention was not based only on the risk of flight, the Court in the *Ljubičić* case may have adversely affected the Defendant's right to release pending trial.

It is particularly important to note certain examples of decisions in cases before the State Court, in which alternatives to custody have been applied in instances when grounds for detention other than the risk of flight were involved. Such decisions provide commendable analysis as regards the application of alternatives to custody. For instance:

In the case of *Tasim Kučević*, charged with the offence of organised crime, the State Court applied, as replacement for the measure of custody, the measures of house arrest and bail accompanied by surrendering of personal documents and limitation in professional activities, in order to counter the risks of flight, threatening or influencing witnesses, and repeating crimes. The Court mentioned each risk it found to exist and explained which of the alternative measures covered sufficiently each danger. This Decision made reference to international standards and jurisprudence of the European Court of Human Rights regarding the right to liberty, which urged for a broad application of the alternatives to custody. This Decision also made reference to the similar interpretation that the State Court adopted in the *Zoran Janković* case.

In the war crimes case of *Zoran Janković*, custody was replaced with the surrendering of personal documents, compulsory residence order, bail, and prohibition of approaching certain persons. The State Court concluded that "[a]ccepting another measure only when there is a risk of flight and not for the others circumstances of Article 132 (1) b) through d) would be a violation of Article 5 of the ECHR."<sup>6</sup> This decision further provides an extensive analysis and interpretation of domestic procedural provisions through the prism of international standards, and particularly the right to liberty and the principle of the presumption of innocence.<sup>7</sup> It also refers to the principles of necessity and proportionality of the measures in view of the corresponding risks, as well as the necessity to establish the degree of each risk in order to decide on the appropriate measure.

<sup>6</sup> See the State Court Decision dated 29 November 2006 regarding the termination of custody in the case of *Zoran Janković*, p. 6.

<sup>7</sup> In fact, the 29 November 2006 decision in the *Zoran Janković* case, *ibid*, pp. 6-7, ascertains that: "We must find an internal consistence within the CPC and an external consistence with the ECHR. [...] In the end, the Court concludes, that the literal, teleological and systematic interpretation of the CPC of BiH permits to expand the scope of the provision related to another measure, namely Article 126 of the CPC of BiH, in accordance with the demands expressed by the ECHR and jurisprudence of the European Court of Human Rights and another measure may be applied even when there is no risk of flight."

Other instances in which a human rights interpretation was adopted while considering alternatives to custody are the cases of Krešo Lučić<sup>8</sup> and of Goran Damjanović.<sup>9</sup>

OSCE BiH welcomes these decisions in which it is deemed an obligation of the court to consider whether alternatives to custody are sufficient to counter all the risks, and not just the risk of flight. Nevertheless, the Mission would like to note that, although most of these decisions have a commendable analysis on the applicability of alternatives to custody, some appear to be flawed in the methodology of their reasoning.<sup>10</sup> Namely, they impose prohibiting measures without concluding concretely that any risk exists, rather than first finding that there is a risk (i.e. of fleeing or re-offending), identifying the degree of this risk, and then examining the possibility of using appropriate alternative measures to avert the risk from materialising.<sup>11</sup>

#### *Conclusions - Recommendations*

In view of the above, OSCE BiH recommends that judges, prosecutors, and defence counsel give proper consideration to the application of prohibiting measures as alternatives to custody, not only in relation to the risk of flight.

When making this assessment, OSCE BiH recommends that the relevant actors consider the following:<sup>12</sup>

- (a) Whether there is a reasonable suspicion that the person has committed an offence.
- (b) Whether there are substantial reasons to believe that, if released, the person would flee, commit an offence, interfere with witnesses or disturb public order, and what is the degree of each risk.
- (c) The possibility of using alternative measures to address these risks.
- (d) Even if there are grounds for custody, whether the authorities have shown due diligence in processing the case in a reasonable time. If the conduct of the authorities is appropriate and if

<sup>8</sup> See Court of BiH, Decision on Bail in the case of Krešo Lučić, dated 11 January 2007, p. 5; the State Court considered that the risk of flight, as well as the risk of interfering with evidence were sufficiently countered by the posting of bail rather than continued detention. The Court specifically stated that “[i]n any case (and not only when there is a possibility of flight) the benefit of measures other than measure of deprivation of liberty must be taken into consideration in order to secure the presence of the accused and effective conduct of proceedings.” The Court also recognized that an alternative measure must have priority over the imposition of custody, which is in accordance with Articles 131 (1) and 123 (2) BiH CPC. N.B: Articles 131 (1) and 123 of the CPC BiH prescribe an obligation to apply a less severe measure.

<sup>9</sup> See State Court Decision dated 18 January 2007, terminating custody in the case of Goran Damjanović.

<sup>10</sup> For example, in the aforementioned Zoran Janković Decision of 29 November 2006, it is not clear what risk the Court seeks to avert by the alternatives to custody. One can assume that these prohibiting measures aim at countering a certain risk of fleeing, influencing witnesses, and collusion. Nevertheless, the prosecution only invoked as a risk the threat of public and property security. It is interesting that the Court, after explaining the application of alternatives to custody, examined whether the requirements of the public security ground are fulfilled and concluded that: “Nevertheless, since the Court concluded that another measure to replace custody is possible and available, it is not necessary to consider whether the requirements of the ground for custody referred to in Article 132(1)(d) of the CPC of BiH are fulfilled.”

<sup>11</sup> The decision in the Tasim Kučević appears to have followed the latter methodology.

<sup>12</sup> This is also based on the Council of Europe Recommendation Rec(2006)13 of the Committee of Ministers to member states on the use of remand in custody, the conditions in which its place and the provision of safeguards against abuse, Adopted on 27 September 2006, available at <<https://wcd.coe.int/ViewDoc.jsp?id=1041281&BackColorInternet=9999CC&BackColorIntranet=FF9955&BackColorLogged=FFAC75>>.

relevant and sufficient grounds for detention exist, imposing custody pending trial may be appropriate.

**NOTE RELATING TO THE USE OF PUBLIC AND PROPERTY SECURITY AS GROUND FOR CUSTODY**

OSCE BiH would like to reiterate its findings and recommendation formulated in its First Report in the *Ljubičić* case, as regards the vague justification of pre-trial custody on the basis of public security. The 21 December 2006 Decision, extending the Defendant's detention until the completion of the main trial, is based on the risk of flight and the threat to public or property security. As regards the latter, the decision merely makes a generalised statement that the Accused's release "would cause the feeling of public insecurity", which is far from sufficient in meeting the international standards on the substantiation of pre-trial detention.

Nevertheless, the Mission has observed with satisfaction that a number of judges at the State Court have begun scrutinising carefully motions that invoke the threat to public and property security as basis for detention. In their analysis they acknowledge the exceptional nature of this ground, consider whether there are facts that point to an actual danger, rather than a merely hypothetical one, and acknowledge the recommendation of the Human Rights Committee with regard to the use of this ground for custody in BiH.<sup>13</sup> Generally, these decisions did not find this ground to apply in the respective cases.

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<sup>13</sup> I.e. see the State Court Decision on terminating custody of Defendant Radmilo Vuković, dated 14 February 2007, page 3.

## PART II

## LIST OF RELEVANT HEARINGS-SUBMISSIONS- DECISIONS

- (i) Defendant Appeal before the Constitutional Court dated 16 November 2006.

The Defendant claimed that, in his case, the Court of BiH violated Article 5(3) of the European Convention of Human Rights (hereinafter ECHR), since it failed take into consideration a "reasonable time" in the light of the entire period the Accused had spent in custody without trial, including the custody in United Nation Detention Unit in the Haag. The Appeal alleged that, in order to avoid the contradiction between the ECHR and Article 2(4) of the Law on Transfer, the latter should have been interpreted in such a manner as not to influence the obligation of the Court of BiH to be satisfied that, before the issuance of a decision on pre-trial custody, the entire duration of the custody, including the custody ordered by the ICTY, did not exceed "reasonable time" from Article 5(3) of the ECHR.

- (ii) Prosecution Request for protective measures for witnesses, dated 6 December 2006
- (iii) Decision of the Preliminary Hearing Judge granting protective measures for witnesses, dated 12 December 2006
- (iv) Adapted Indictment, dated 15 December 2006
- (v) Hearing on Custody, held on 21 December 2006
- (vi) Decision of the Preliminary Hearing Judge to extend custody until the completion of the main trial, dated 21 December 2006
- (vii) Defence Appeal against the Decision to extend the custody, dated 22 December 2006
- (viii) Prosecution Response to the Defence Appeal, dated 26 December 2006
- (ix) Decision of "out-of-Hearing" Panel on the Defence Appeal, 28 December 2006
- (x) Defendant's letter related to the communication with his Defence Counsel, dated 2 January 2007
- (xi) Preliminary Motions against the Indictment, dated 4 January 2007
- (xii) Plea Hearing, held on 9 January 2007  
At the plea hearing held on 9 January, Defence Counsel argued that the adapted indictment charged the Accused with criminal offences which were not included in the ICTY indictment. It may be mentioned that on 21 December 2006, the State Court only accepted the adapted indictment. According to Article 280(2) BiH CPC, the court is not bound by proposals regarding the legal evaluation of the act.
- (xiii) Defendants transferred from the ICTY to the BiH State Court submitted the letter to the President of the ICTY, dated 11 January 2007.

In this letter, the defendants considered that their rights guaranteed by international and national regulations, as well as fundamental principles of both substantive and procedural criminal law have been violated. They criticized the retroactive application of the CC of BiH; the Law on Transfer as regards the acceptance of adjudicated facts which, according to them, violates the presumption of innocence principle; the Law on Witness Protection in relation to testimony of witnesses from another room by using the means for image and sound distortion which, as they said, violated their right to cross-examination with the actual presence of witness; and the Court's stance on the measure of custody as a rule for securing the presence of the accused in the proceedings. The Accused invited the Tribunal's President to initiate the revoking of orders for referral and to defer the cases to ICTY for trial.

- (xiv) Defence submission related to delivery of the Prosecution evidence, 12 January 2007
- (xv) Letter of the Detention Unit of the Court of BiH informing the Court about the detainees who entered the hunger strike, amongst whom is Paško Ljubičić, dated 15 January 2007
- (xvi) President of the Court of BiH letter regarding the communication of the Defendant with his Defence Counsel, dated 16 January 2007
- (xvii) Defence Counsel submission related to the communication with the Defendant, dated 18 January 2007
- (xviii) Decision of the Preliminary Hearing Judge refusing the preliminary motion as ungrounded, dated 24 January 2007
- (xix) Prosecution Response to Preliminary Motions, dated 25 January 2007
- (xx) Letter of the Detention Unit of the Court of BiH informing the Court that the Defendants ended the hunger strike, dated 26 January 2007
- (xxi) President of the Court of BiH Reply to the Defendant's Appeal to Constitutional Court, dated 2 February 2007
- (xxii) Defence submission related to delivery of the Prosecution evidence, 8 February 2007
- (xxiii) Decision of the "out-of-hearing" Panel to extend the custody, dated 15 February 2007
- (xxiv) Defence Appeal against the Decision to extend the custody, dated 17 February 2007
- (xxv) A letter sent by Defendants to OSCE-BIH, dated 26 February 2007
- (xxvi) Status Conference, held on 6 March 2007