

IT-97-25/1-PT
D1948-D1940
17 APRIL 2007

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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 April 2007

THE PROSECUTOR

v.
MITAR RAŠEVIĆ
SAVO TODOVIĆ

PROSECUTOR'S THIRD PROGRESS REPORT

The Office of the Prosecutor

Ms. Carla Del Ponte

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

Case No. IT-97-25/1-PT

THE PROSECUTOR

v.

MITAR RAŠEVIĆ
SAVO TODOVIĆ

PROSECUTOR'S THIRD 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 third 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 Second Progress Report on 17 January 2007.³

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 11 April 2007.⁴ The Report outlines the main findings of trial monitoring activities to

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 Second Progress Report, 17 January 2007.

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

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

5. The Report reiterates OSCE's concerns regarding the pre-trial custody previously mentioned in the *Janković, Ljubičić and Mejakić* cases as well as in the previous report in the *Rašević and Todović* case. The Prosecutor understands and gives due regard to the issue of adequate justification for pre-trial detention ordered by the BiH State Court. However, the Prosecutor considers that at present it does not appear to affect the right to a fair trial of these two Accused. The OSCE has not identified any additional issue of concern that could be assessed as such at this stage.⁵

6. The OSCE summarises the proceedings in the *Rašević and Todović* case to date as follows:

- On 3 and 16 January 2007 respectively, Rašević and Todović appealed the decision extending the custody. The "out-of-hearing" panel refused the Appeals as unfounded. On 28 February 2007, regular review of custody was conducted and the court held that the custody was justified on the bases of the risk of flight and threat to public security.
- The plea hearing was held on 15 January 2007. Todović and Rašević refused to appear at the hearing and the Preliminary Hearing Judge ("PHJ") recorded that they have entered a plea of not guilty.
- On 19 February the PHJ refused as unfounded the preliminary motions which challenged the indictment as having formal defects, challenged the jurisdiction of the court and the application of the substantive law. It was also claimed that the indictment went beyond the scope of adapting the ICTY indictment to domestic legislation and that it introduced new evidence. The PHJ held that the arguments raised were either premature or not falling within the procedural scope of preliminary motions.
- On 23 March 2007, a status conference was held with the main purpose of organization of the main trial. The Prosecution outlined its plan for the presentation of evidence and the application of protective measures for witnesses.
- The main trial started on 6 April 2007.⁶

⁵ Report, Executive Summary, page 1.

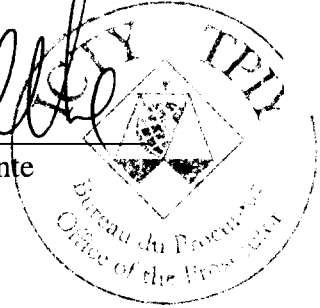
⁶ *Ibid*

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

Word count: 633



Carla Del Ponte
Prosecutor



Dated this seventeen day of April 2007
At The Hague
The Netherlands

INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

Case No. IT-97-25/1-PT

THE PROSECUTOR

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ANNEX A
TO
PROSECUTOR'S THIRD PROGRESS REPORT



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

**Second OSCE Report in the
*Mitar Rašević and Savo Todović Case***

Transferred to the State Court pursuant to Rule 11bis

April 2007

EXECUTIVE SUMMARY

The case of Defendants *Mitar Rašević and Savo Todović* is the fifth case transferred from the ICTY to the Court of BiH pursuant to Rule 11bis of the ICTY Rules of Procedure and Evidence (RoPE). This constitutes the second report that the OSCE Mission to Bosnia and Herzegovina ("OSCE-BIH" or "Mission") delivers to the ICTY Prosecutor, covering the period from the end of December 2006 until 28 March 2007.

During this reporting period, the Mission has not identified any additional issue of concern that could be assessed as such at this stage. However, it reiterates its remarks on the concerns related to pre-trial custody, which have been addressed already in previous OSCE-BIH reports.¹ 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 in the *Rašević et al.* case may be summarised as follows:

- On 3 and 16 January 2007 respectively, Defence Counsel of Mr. Rašević and Mr. Todović appealed the Decision of the Preliminary Hearing Judge (PHJ) extending custody against the Accused dated 29 December 2007, proposing to the Court to terminate their custody. The "out-of-hearing" Panel refused the Appeals as unfounded. After two months, on 28 February 2007, regular review of custody was conducted, and the court held that custody was still justified on the bases of the risk of flight and threat to public security.
- The plea hearing was held on 15 January 2007. The Defendants refused to appear at the hearing. Therefore, the PHJ recorded that they have entered a plea of not guilty.
- By her Decisions dated 19 February 2007, the PHJ refused as unfounded the preliminary motions filed by Defence Counsel and the Accused Savo Todović which challenged the indictment as having formal defects, challenged the jurisdiction of the court and the application of the substantive law, and claimed that it went beyond the scope of adapting the ICTY indictment to domestic legislation and that it introduced new evidence. The Judge held that the arguments raised were either premature or not falling within the procedural scope of preliminary motions.
- On 23 March 2007 a status conference was held, with the main purpose of organization of the main trial. The Prosecution outlined its plan for the presentation of evidence and the application of witness protective measures.
- The main trial is scheduled to start on 6 April 2007.

¹ See 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.

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

- (i) Appeals of the Defence Counsels against the Decision on extension of custody, dated respectively 3 and 16 January 2007
- (ii) Submission of Todović's Defence Counsel regarding appointment of another defence attorney, dated 6 January 2007
- (iii) Responses of the Prosecutor to Defence Appeals against the Decision extending the custody, dated respectively 10 and 18 January 2007
- (iv) Response of the PHJ to Defence Counsel' submission regarding appointment of another attorney, dated 10 January 2007
- (v) Defendants transferred from the ICTY to the BiH State Court submitted letter to the President of the ICTY, dated 11 January 2007
- (vi) Preliminary Motion against the accepted indictment, dated respectively 11 and 29 January 2007
- (vii) PHJ submission to Physician at Detention Unit requesting information about health condition of the Defendants, dated 15 January 2007
- (viii) Physician's response to PHJ's submission, dated 15 January 2007
- (ix) Letter of the Detention Unit of the Court of BiH informing the Court about the detainees who entered the hunger strike, amongst whom are the Defendants for this case, 15 January 2007
- (x) Letter of the Defendant Savo Todovic informing the Court that he would not attend the plea hearing, dated 15 January 2007
- (xi) Official Note of the Detention Unit informing the Court that the Defendants refused to attend the plea hearing, 15 January 2007
- (xii) Plea Hearing, held on 15 January 2007
- (xiii) Prosecutor's Responses to Preliminary Motions, dated respectively 22 January and 5 February 2007
- (xiv) Decision of the "out-of-hearing" Panel refusing the Appeals of the Defence Counsels as unfounded, dated 22 January 2007
- (xv) Letter of the Detention Unit of the Court of BiH informing the Court that the Defendants ended the hunger strike, dated 26 January 2007
- (xvi) PHJ's Decisions refusing Preliminary Motions as unfounded, dated 19 February 2007
- (xvii) Letter sent by the detained Defendants to OSCE-BIH inviting them to meet with the detainees under trial, dated 26 February 2007
- (xviii) Decision of the "out-of-hearing" Panel on extension of custody, dated 28 February 2007
- (xix) Submission of Todović's Defence Counsel regarding appointment of another defence attorney, dated 12 March 2007

- (xx) Status Conference, held on 23 March 2007
- (xxi) Over the course of 3 days (27-29 March), OSCE-BIH met with all transferred defendants upon their invitation.