

THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA

Case No. IT-02-65-PT

IN THE REFERRAL BENCH

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

Registrar: Mr. Hans Holthuis

Date Filed: 3 April 2007

THE PROSECUTOR

v.

ŽELJKO MEJAKIĆ  
MOMČILO GRUBAN  
DUŠAN FUŠTAR  
DUŠKO KNEŽEVIĆ

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PROSECUTOR'S FOURTH 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 FOURTH PROGRESS REPORT

1. Pursuant to the Decision on Prosecutor's Motion for Referral of Case Pursuant to Rule 11*bis* of 20 July 2005 ("Referral Decision") the Prosecution hereby files its fourth progress report in this case.

2. The Organisation for Security and Co-operation in Europe's Third Report in this case<sup>1</sup> reiterates OSCE's concerns regarding the vague justification of pre-trial custody previously mentioned in the *Janković* and *Ljubičić* cases as well as in the previous report in the *Mejakić et al* case. The same concerns based on the same facts have been raised before in the above mentioned cases.

3. The Prosecution understands and gives due regard to the issue of adequate justification for pre-trial detention ordered by the BiH State Court. However, the Prosecution considers that at present it does not appear to affect the right to a fair trial of these four Accused.

4. The OSCE summarises the proceedings in the *Mejakić et al.* case to date as follows:

- The Court has held seven main trial hearings, during this reporting period.

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<sup>1</sup> OSCE's Third Report in the *Željko Mejakić et al.* Case Transferred to the State Court pursuant to Rule 11 *bis*, March 2007 ("Report").

- Six Prosecution witnesses have been directly examined and cross-examined, and one witness has only been directly examined. Four witnesses testified under a pseudonym, with one additionally protected from being visually identified by the public. Witness K040 testified in closed session.
  - Trial sessions have been held mostly in public, except for the testimony of witness K040 mentioned above. The public was also excluded from some parts of hearings where requests for protective measures were discussed.
  - All defendants remain in custody on the basis of the same grounds as those ordered by the Preliminary Hearing Judge on 14 July 2006. The Trial Panel has been conducting regular reviews of custody every two months, and has concluded that custody is still justified on the bases of the risk of flight and threat to public security.
  - The next main trial hearing is scheduled for 12 April 2007.
5. Attached to this report and marked as Annex A is a copy of the Report.

Word count: 356

  
Carla Del Ponte  
Prosecutor



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

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ANNEX A  
TO  
PROSECUTOR'S FOURTH PROGRESS REPORT



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

**Third OSCE Report in the  
*Željko Mejačić et al. Case***

**Transferred to the State Court pursuant to Rule 11bis**

**March 2007**

### Third OSCE Report in the *Željko Mejačić et al.* Case

The case against Željko Mejačić, Momčilo Gruban, Dušan Fuštar and Duško Knežević (*Mejačić et al.* case, “Accused” or “Defendants”) is the third referred from the ICTY to the BiH State Court, pursuant to Rule 11bis of the ICTY Rules of Procedure and Evidence. This constitutes the third Report submitted by the OSCE Mission to Bosnia and Herzegovina (“OSCE-BIH” or “Mission”) to the ICTY Office of the Prosecutor in the *Mejačić et al.* case, covering the period between 21 December 2006 and 21 March 2007. This Report consists of (A) a summary of the proceedings until present; (B) a brief reference to the Mission’s concern regarding the justification of pre-trial custody, and of (C) an Annex listing the dates of the main hearings and submissions in the case.

#### (A) Summary of proceedings:

The proceedings within this time may be summarised as follows:

- The Court has held seven main trial hearings, during this reporting period.<sup>1</sup>
- In total, six witnesses proposed by the Prosecution have been directly examined and cross examined, and one prosecution witness has only been directly examined.

Four of these witnesses testified protected from the public through the assignment of pseudonyms, with one additionally protected from being visually identified by the public by moving the public to a different room so that they may hear but not see the witness. Another witness, KO40, was granted the additional measure of testifying in closed session.

- The main trial sessions have been held mostly in public. As mentioned previously, the public was excluded for the duration of the testimony of witness KO40. Furthermore, it has been excluded from part 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.
- All Defendants in this case remain in pre-trial custody on the basis of the same grounds as those ordered by the Preliminary Hearing Judge in the Decision dated 14 July 2006. The Trial Panel has been conducting regular reviews of custody every two months, and has been concluding that custody is still justified on the bases of the risk of flight and threat to public security.
- The next main trial hearing is scheduled for 12 April 2007.

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<sup>1</sup> On 28 February, and on 7, 8, 9, 14, 15 and 21 March 2007.

**(B) Concern regarding the justification of pre-trial custody:**

Until present, the Mission has analysed in an extensive manner the problems that may arise from a fair trial perspective with the application of the threat to public security as a ground for pre-trial custody [based on Article 132(1)(d) BiH code of Criminal Procedure - CPC].<sup>2</sup> Additionally, in the recently submitted Second OSCE Report in the case of Defendant Paško Ljubičić, OSCE BiH noted with concern that, at times, certain judges adopt a strict interpretation of the applicability of alternatives to custody.<sup>3</sup> These concerns also apply to the manner in which pre-trial custody is reviewed in the case of the Defendants in the *Mejakić et al.* case. The circumstances in this case may demonstrate that the review of pre-trial custody is frequently no more than a formality.

In brief, the Mission reiterates its concern regarding the vague justification of pre-trial custody, particularly on the ground of threat to public security as features the Preliminary Hearing Judge's Decision of 14 July 2006, which the Trial Panel continues to accept as the basis for continued detention.

Additionally, OSCE BiH observes that the panels reviewing custody in the *Mejakić et al.* case, whether for its extension or upon appeal, do not appear to be giving adequate weight to the Defendants' motions for release.<sup>4</sup> The case of Defendant Gruban may be the best to indicate this: this Accused has been repeatedly motioning for his release, and in fact was provisionally released by the ICTY for the period between 17 July 2002 and 21 July 2005. One would expect the Court to provide adequate justification for rejecting the argument that release on condition of other prohibitive measures is not sufficient to counter the risk of flight and threat to public security.

Against this background, OSCE BiH reiterates the relevant recommendations included in the *Second Report in the case of Paško Ljubičić*; namely that actors in justice system demonstrate that they give proper consideration to the applicability of prohibiting measures as alternatives to custody, particularly since circumstances may change as the case progresses.<sup>5</sup>

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<sup>2</sup> 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 Cas, 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.

<sup>3</sup> Second OSCE Report in the case of Defendant Paško Ljubičić, *Transferred to the State Court pursuant to Rule 11bis*, March 2007.

<sup>4</sup> Appeal of Defence Counsel of Mr. Gruban of 14 March 2007, Appeal of Defence Counsel of Mr. Gruban of 13 January 2007; Appeal of Defence Counsels of Mr. Mejakić and Mr. Fuštar, of 15 January 2007.

<sup>5</sup> The Mission repeats that the relevant actors should consider the following when reviewing the continued necessity of pre-trial detention:

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

ANNEX

**(C) List of Relevant Hearings – Submissions - Decisions**

- (i) Court's Permission to Momčilo Gruban for the use of DVD player, dated 14 December 2006
- (ii) Appellate Panel Decision refusing the Appeals of the Defence Counsels as unfounded, dated 14 December 2006
- (iii) Letter of the Detainees in the Detention Unit of the Court of BiH informing the Court that they entered the hunger strike, amongst whom is are the Defendants from this case, dated 10 January 2007
- (iv) Defendants transferred from the ICTY to the BiH State Court submitted the letter to the President of the ICTY requesting the deferral of their cases, dated 11 January 2007
- (v) Decision of the "out-of-hearing" Panel to extend the custody, dated 12 January 2007
- (vi) Appeals of Defence Counsels against the Decision on Extension of Custody, dated respectively 12, 13 and 15 January 2007
- (vii) 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, dated 15 January 2007
- (viii) Responses of the Prosecutor to Defense Appeals against the Decision to Extend Custody, dated respectively 17, 18 and 19 January 2007
- (ix) Letter of the Defence Counsel of Momčilo Gruban related to delivery of Prosecution evidence, dated respectively 24 January and 10 February 2007
- (x) Response of the President of the ICTY to Mr. Mejacic regarding the Defendants' letter, dated 24 January 2007, indicating that they would need to address any requests for the deferral to the Prosecutor's Office
- (xi) Court of BiH Order for expert evaluation of the Defendants on the circumstances of their health condition and capability to attend and follow the main trial, dated 26 January 2007
- (xii) Letter of the Detention Unit of the Court of BiH informing the Court that the Defendants ended the hunger strike, dated 26 January 2007
- (xiii) Findings and opinion of the Team of Experts on health condition of the Defendants, dated 29 January 2007
- (xiv) Prosecution Letter related to protection of witnesses, dated 6 February 2007
- (xv) Appellate Panel Decision refusing the Appeals of the Defence Counsels as unfounded, dated 6 February 2007
- (xvi) Letters of the Defendant Momčilo Gruban regarding the use of the computers installed in the Detention Unit, dated 19 February 2007
- (xvii) Official note of the Detention Unit concerning the installation of two computers for the use of the Defendants, dated 20 February 2007
- (xviii) Supplementary Prosecution Motion for Judicial Notice of established facts, dated 21 February 2007



- (xix) Letters of the Defendant Dušan Fuštar regarding the use of the computers installed in the Detention Unit, dated respectively 17 and 22 February 2007
- (xx) Decision appointing additional *ex officio* Defence Counsel for the Accused Zeljko Mejakic, dated 22 February 2007
- (xxi) Court of BiH Letter to Detention Unit regarding the use of the computer by the Defendant Momčilo Gruban, dated 22 February 2007
- (xxii) Letter of the Prosecutor on disclosure of witness addresses in public testimony, dated 23 February 2007
- (xxiii) A letter sent by Defendants to OSCE BIH, dated 26 February 2007
- (xxiv) Main trial hearing, held on 28 February 2007
- (xxv) Submission of the additional Defence Counsel of Dušan Fuštar requesting dismissal from the case, dated 2 March 2007
- (xxvi) Main trial hearing, held on 7 March 2007
- (xxvii) Main trial hearing, held on 8 March 2007
- (xxviii) Main trial hearing, held on 9 March 2007
- (xxix) Decision of the Trial Panel to extend the custody, dated 9 March 2007
- (xxx) Decision appointing additional *ex officio* Defense Counsel for the Accused Dušan Fuštar, dated 13 March 2007
- (xxxi) Appeal of Defense Counsel against the Decision to extend custody, dated 14 March 2007
- (xxxii) Main trial hearing, held on 14 March 2007
- (xxxiii) Main trial hearing, held on 15 March 2007
- (xxxiv) Main trial hearing, held on 21 March 2007