

IT-02-65-PT
D 4994-D 4987
01 OCTOBER 2007

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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: 1 October 2007

THE PROSECUTOR

v.

ŽELJKO MEJAKIĆ
MOMČILO GRUBAN
DUŠAN FUŠTAR
DUŠKO KNEŽEVIĆ

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PROSECUTOR'S SIXTH PROGRESS REPORT

The Office of the Prosecutor:
Ms. Carla Del Ponte

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

Case No. IT-02-65-PT

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PROSECUTOR'S SIXTH PROGRESS REPORT

1. Pursuant to the Decision on Prosecutor's Motion for Referral of Case Pursuant to Rule 11bis of 20 July 2005¹ ("Referral Decision") the Prosecutor hereby files her sixth progress report in this case.
2. The Decision on Referral requires that following the initial report, six weeks after the 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.²
3. The Office of the Prosecutor filed its fifth progress report on 3 July 2007.³
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 fifth report on 26 September 2007.⁴ The Report outlines the main findings of trial monitoring activities to date in the *Mejakić et al.* case, from the perspective of international human rights standards.⁵

¹ *Prosecutor v. Željko Mejakić et al.*, Case No. IT-02-65-PT, Decision on Prosecutor's Motion for Referral of Case Pursuant to Rule 11 bis, 20 July 2005.

² Referral Decision, p. 44.

³ *Prosecutor v. Željko Mejakić et al.*, Case No. IT-02-65-PT, Prosecutor's Fifth Progress Report, 3 July 2007.

⁴ OSCE's Fifth Report in the *Željko Mejakić et al.* Case Transferred to the State Court pursuant to Rule 11 bis, September 2007 ("Report").

⁵ Report, Summary of Developments, p. 1.

5. OSCE has not identified any issues of concern that could be assessed, at this stage, as infringing upon the Defendants' right to a fair trial.⁶

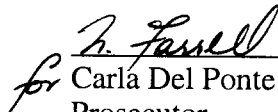
6. The OSCE summarises the proceedings in the *Mejakić et al.* case to date as follows:⁷

- During the reporting period, 16 main trial hearings have been held, mainly in public. In total, 16 prosecution witnesses have been heard. Only one witness testified without any protection.
- On 22 August 2007, the Trial Panel partially granted the Prosecutor's motions of 11 October 2006 and 21 February 2007, and took judicial notice of certain facts adjudicated by ICTY judgements.
- The Defendants remain in custody on the same grounds - risk of flight and threat to public security, as initially ordered by the Preliminary Hearing Judge and later upheld by the trial panel in their regular reviews.
- The next main trial hearing is scheduled for 3 October 2007.

7. Following up on a concern that was expressed in its previous report, OSCE noted that the Trial Panel has begun asking injured parties about their desire to have their compensation claims settled in the criminal proceedings, as provided in the law. OSCE further noted that in two instances there was some concern that parties did not sufficiently understand the instruction regarding their rights and, as a result, is encouraging the courts to exercise continued vigilance in explaining to injured parties the scope of their rights.

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

Word count: 489


for Carla Del Ponte
Prosecutor

Dated this first day of October 2007
At The Hague
The Netherlands

⁶ *Ibid*

⁷ *Ibid.*

INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

Case No. IT-02-65-PT

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ANNEX A
TO
PROSECUTOR'S SIXTH PROGRESS REPORT

IT-02-65-PT

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

**Fifth Report in the
*Željko Mejačić et al. Case***

Transferred to the State Court pursuant to Rule 11bis

September 2007

IT-02-65-PT

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SUMMARY OF DEVELOPMENTS

The case against Željko Mejačić, Momčilo Gruban, Dušan Fuštar and Duško Knežević (*Mejačić et al.* case, "Accused" or "Defendants") is the third one referred from the ICTY to the State Court of BiH, pursuant to Rule 11bis of the ICTY Rules of Procedure and Evidence. This constitutes the fifth report submitted by the OSCE Mission to Bosnia and Herzegovina ("OSCE BiH" or "Mission") to the ICTY Prosecutor's Office in the *Mejačić et al.* case, covering the period between 26 June 2007 and 19 September 2007.

At this stage, the Mission does not have any concerns that may be assessed as problematic from a fair trial perspective. Consequently, this Report is limited to providing a summary of the proceedings to date and an update on the obligation of the Court to inform injured parties about their right to compensation.

The proceedings within the reporting period may be summarised as follows:

- During this reporting period, 16 main trial hearings¹ have been held, mainly in public. In total, 16 prosecution witnesses have been heard. Only one witness testified without any protection.²
- On 22 August 2007, the Trial Panel partially granted the Prosecutor's motions of 11 October 2006 and 21 February 2007, and took judicial notice of certain facts adjudicated by ICTY judgements.

The Mission notes that the various trial panels of the State Court and the Appellate Panel have adopted differing standards on which facts are appropriate for acceptance as proven. As well, the panels have interpreted the effect of this acceptance on the parties' cases differently. Because of the potential of this legal mechanism for the improvement of judicial economy in BiH, the OSCE is currently conducting an analysis into the use of judicial notice of established facts by the courts of BiH, and a report is forthcoming.

- The Defendants remain in custody on the same grounds - risk of flight and threat to public security, as initially ordered by the Preliminary Hearing Judge and later upheld by the trial panel in their regular reviews.³
- The next main trial hearing is scheduled for 3 October.

Following up on the concern that was expressed in the previous Report in this case, OSCE BiH notes that the Trial Panel has begun asking injured parties about their desire to have their compensation claims settled in the criminal proceedings. However, in at least two instances it was

¹ On 27 and 28 June; 3, 4, 10, 11, 17 July; 21, 22, 27 and 28 August; 4, 12, 13, 14 and 19 September 2007.

² Of those witnesses who testified with protection, one was assigned only a pseudonym and the others testified with a pseudonym and another form of protection. That is, thirteen witnesses testified with the public moved to another room, from which they could hear, but not see the witnesses (two of these witnesses testified through video link from abroad) and one witness testified in closed session.

³ OSCE BiH continues to express concern regarding the justification and application of the potential threat to public and property security as ground for pre-trial custody and related narrow interpretation as regards the application of provisions on alternatives to custody. In this regard, the Mission reiterates its recommendations related to pre-trial custody, addressed already in numerous previous reports on Rule 11bis cases.

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rather evident that injured parties did not understand sufficiently the instruction on their right. Considering the lack of free legal aid to injured parties, apart from urging the authorities to consider creating mechanisms to ensure the respect for injured parties interests, the Mission encourages the courts to exercise continued vigilance in explaining and ensuring that each injured party comprehends the scope of their right to compensation.

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LIST OF RELEVANT HEARINGS - SUBMISSIONS - DECISIONS

- (i) Main trial hearing, held on 27 June 2007.
- (ii) Main trial hearing, held on 28 June 2007.
- (iii) Main trial hearing, held on 3 July 2007.
- (iv) Main trial hearing, held on 4 July 2007.
- (v) Decision of the Trial Panel extending custody, dated 4 July 2007.
- (vi) Appeal of Defence Counsel of Duško Knežević against the Decision extending custody of 4 July 2007, dated 9 July 2007.
- (vii) Main trial hearing, held on 10 July 2007.
- (viii) Appeal of Defence Counsel of Željko Mejakić and Dušan Fuštar against the Decision extending custody of 4 July 2007, dated 10 July 2007.
- (ix) Main trial hearing, held on 11 July 2007.
- (x) Appeal of Defence Counsel of Momčilo Gruban against the Decision extending custody of 4 July 2007, dated 13 July 2007.
- (xi) Main trial hearing, held on 17 July 2007.
- (xii) Response of the Prosecutor's Office to the Appeals of the Defence Counsel of Duško Knežević against the Decision extending custody of 4 July 2007, dated 17 July 2007.
- (xiii) Response of the Prosecutor's Office to the Appeals of the Defence Counsel of Željko Mejakić, Dušan Fuštar and Momčilo Gruban against the Decision extending custody of 4 July 2007, dated 18 July 2007.
- (xiv) Appellate Panel's Decision refusing the Defence Counsel Appeals against the Trial Panel Decision extending custody of 4 July 2007 as unfounded, dated 26 July 2007.
- (xv) Submission of the Defence Counsel of Željko Mejakić and Dušan Fuštar related to the Prosecution Motion for Judicial Notice of Established Facts of 11 October 2006 and Supplementary Motion of 21 February 2007, dated 16 August 2007.
- (xvi) Response of the Defence Counsel of Momčilo Gruban to of the Prosecution Motion for Judicial Notice of Established Facts of 11 October 2006 and Supplementary Motion of 21 February 2007, dated 17 August 2007.
- (xvii) Main trial hearing, held on 21 August 2007.
- (xviii) Main trial hearing, held on 22 August 2007.
- (xix) Decision on Established Facts, dated 22 August 2007.
- (xx) Main trial hearing, held on 27 August 2007.
- (xxi) Main trial hearing, held on 28 August 2007.
- (xxii) Main trial hearing, held on 4 September 2007.
- (xxiii) Decision of the Trial Panel extending custody, dated 4 September 2007.
- (xxiv) Appeal of Defence Counsel of Momčilo Gruban against the Decision extending custody of 4 September 2007, dated 7 September 2007.
- (xxv) Appeal of Defence Counsel of Željko Mejakić and Dušan Fuštar against the Decision extending custody of 4 September 2007, dated 10 September 2007.
- (xxvi) Appeal of Defence Counsel of Duško Knežević against the Decision extending custody of 4 September 2007, dated 10 September 2007.
- (xxvii) Main trial hearing, held on 12 September 2007.
- (xxviii) Main trial hearing, held on 13 September 2007.
- (xxix) Main trial hearing, held on 14 September 2007.
- (xxx) Response of the Prosecutor's Office to the Appeals of the Defence Counsel of Željko Mejakić, Dušan Fuštar and Duško Knežević against the Decision extending custody of 4 September 2007, dated 14 September 2007.
- (xxxi) Main trial hearing, held on 19 September 2007.