

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 January 2008

THE PROSECUTOR

v.

ŽELJKO MEJAKIĆ
MOMČILO GRUBAN
DUŠAN FUŠTAR
DUŠKO KNEŽEVIĆ

PUBLIC FILING

PROSECUTOR'S SEVENTH PROGRESS REPORT

The Office of the Prosecutor:
Mr. David Tolbert

THE INTERNATIONAL CRIMINAL TRIBUNAL
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PUBLIC

PROSECUTOR'S SEVENTH PROGRESS REPORT

1. Pursuant to the Decision on Prosecutor's Motion for Referral of Case Pursuant to Rule 11*bis* of 20 July 2005¹ ("Referral Decision") the Office of the Prosecutor ("OTP") hereby files its seventh progress report in this case.
2. The Decision on Referral requires that following the initial report, six weeks after transfer of material, the OTP must file a report every three months on the course of the proceedings before the State Court of Bosnia and Herzegovina.²
3. The OTP filed its sixth progress report on 3 October 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 OTP received OSCE's sixth report on 26 December 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 Sixth Progress Report, 3 October 2007.

⁴ OSCE's Sixth Report in the *Željko Mejakić et al*. Case Transferred to the State Court pursuant to Rule 11 *bis*, December 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

- The prosecution completed presentation of its case on 30 November 2007. A total of 55 hearings was held, 45 witnesses were heard and 201 pieces of evidence were tendered into evidence;
- The Defence began presenting its case on 11 December 2007, by giving its opening statements;
- During the reporting period, 16 main trial hearings were held during which 5 prosecution witnesses were heard. The hearings were mainly heard in public. The public was only excluded when applications for protective measures were discussed and for parts of testimonies when it was necessary to reinforce previously ordered measures of protection and to prevent that the identity of protected witnesses is revealed;
- Regular review of custody has been conducted and it was held that custody against the Defendants is still justified on the bases of the risk of flight and threat to public security.; and
- The main trial will resume on 10 January 2008, when the first defence witness will be heard.

7. 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 Rašević and Todović* cases as well as in the previous reports in the *Mejakić* case.⁸ While the OTP understands and gives due regard to this issue it considers that at present it does not appear to affect the right to a fair trial of these four Accused.

8. The OSCE also reports that on 6 December 2007, Vinko Kondić, an additional defence counsel for Momčilo Gruban, was arrested under suspicion that he committed crimes against humanity in the Ključ Municipality in 1992. At this stage the OSCE

⁶ *Ibid*

⁷ *Ibid.*

⁸ *Ibid.*

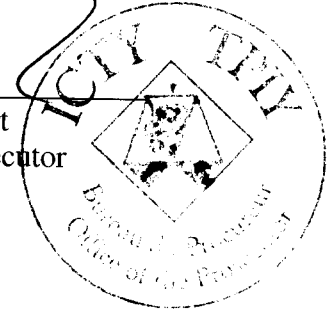
reports that there are no reasons to believe that this event has had an adverse effect on the rights of the Accused in this case.

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

Word count: 606



David Tolbert
Deputy Prosecutor



Dated this third day of January 2008
At The Hague
The Netherlands

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v.

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ANNEX A
TO
PROSECUTOR'S SEVENTH PROGRESS REPORT



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

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

Transferred to the State Court pursuant to Rule 11bis

December 2007

SUMMARY OF DEVELOPMENTS

The case against Željko Mejačić, Momčilo Gruban, Dušan Fuštar and Duško Knežević (*Mejačić et al.* case, the “Accused” or “Defendants”) is the third case 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 sixth 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 20 September 2007 and 24 December 2007.

From its monitoring activities during the reporting period, the Mission has not identified any issues of concern at this stage. However, the Mission reiterates its observations related to the application and justification of the potential threat to public and property security as grounds for pre-trial custody as well as those related to the limited application of alternatives to custody; both have been already extensively addressed in previous OSCE-BiH reports.¹ Therefore, this Report mainly consists of a short summary of the developments in the present trial proceedings.

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

- The Prosecution completed presentation of its case on 30 November 2007, after 55 hearings, a total of 45 prosecution witnesses heard and 201 pieces of material documentation tendered into evidence. The Defence began presenting its case, giving its opening statements on 11 December 2007.
- During this reporting period, 16 main trial hearings² were held. Five prosecution witnesses were heard.³ The hearings were mainly held in public. The public was only excluded to discuss the application of protective measures and for parts of the witness’ testimonies when it was necessary to reinforce previously ordered measures of protection and to prevent the identity of protected witnesses from being revealed.
- The judges conducting regular reviews of custody held that custody against the Defendants is still justified on the bases of the risk of flight and of threat to public security, as initially ordered by the Preliminary Hearing Judge.
- The main trial will resume on 10 January 2008, when the first defence witnesses will be heard.

It should be mentioned that Mr. Vinko Kondić, the additional Defence Counsel of Momčilo Gruban, was arrested on 6 December 2007 under suspicion of having committed crimes against humanity in the area of Ključ Municipality in the period from April 1992 until December 1992. On 7 December 2007, the preliminary hearing judge issued a decision ordering one month custody against Mr. Kondić on the grounds of risk of flight, risk of interference with the criminal proceedings by influencing the witnesses or possible accomplices, and threat to public security. At this stage, there is no reason to

¹ In this regard, the Mission reiterates its concerns and recommendations related to pre-trial custody expressed in its previous reports on Rule 11bis cases. See for instance, 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 Mejačić et al.* case, Transferred to the State Court pursuant to Rule 11bis, March 2007; Fourth OSCE Report in case of Defendant *Paško Ljubičić*, Transferred to the State Court pursuant to Rule 11bis, September 2007.

² On 3, 4, 5, 10, 11, 16 and 31 October; 5, 15, 19, 20, 27 and 30 November; 6, 11 and 18 December 2007.

³ Four of those witnesses testified through video link from abroad. A total of three witnesses testified with some form of protection: two of those witnesses testified under assignment of pseudonym, while the third also testified under pseudonym and was additionally granted the measure of preclusion of visual identification by the public by moving the public into the another room where it was able to hear but not to see the witness.

believe that these events have had an adverse effect on the rights of the Defendants. The OSCE-BiH will continue to follow closely the developments in this matter. In the meantime, the Mission remains available for any further information on this issue.

LIST OF RELEVANT HEARINGS - SUBMISSIONS - DECISIONS

- (i) Appellate Panel's Decision refusing the Defence Counsel Appeals against the Trial Panel Decision extending custody of 4 September 2007 as unfounded, dated 26 September 2007.
- (ii) Prosecution Submission regarding the future schedule of presenting remaining prosecution evidence, dated 27 September 2007.
- (iii) Main trial hearing, held on 3 October 2007.
- (iv) Main trial hearing, held on 4 October 2007.
- (v) Main trial hearing, held on 5 October 2007.
- (vi) Main trial hearing, held on 10 October 2007.
- (vii) Main trial hearing, held on 11 October 2007.
- (viii) Main trial hearing, held on 16 October 2007.
- (ix) Main trial hearing, held on 31 October 2007.
- (x) Prosecution Submission on the future course of the prosecution case, dated 24 October 2007.
- (xi) Decision of the Trial Panel extending custody, dated 2 November 2007.
- (xii) Main trial hearing, held on 5 November 2007.
- (xiii) Appeal of Defence Counsel of Duško Knežević against the Decision extending custody of 2 November 2007, dated 7 November 2007.
- (xiv) Response of the Prosecutor's Office to the Appeal of the Defence Counsel of Duško Knežević against the Decision extending custody of 2 November 2007, dated 9 November 2007.
- (xv) Prosecution Motion for the acceptance of evidence obtained from the ICTY under the Law on Transfer of Cases from the ICTY to the Prosecutor's Office of BiH and the Use of Evidence Collected by the ICTY in Proceedings Before the Courts in BiH (LoT), dated 9 November 2007.
- (xvi) Appeal of Defence Counsel of Momčilo Gruban against the Decision extending custody of 2 November 2007, dated 9 November 2007.
- (xvii) Submission/response of the Defence Counsel of Željko Mejakić to the Prosecution Motion for the acceptance of evidence obtained from the ICTY under the LoT of 9 November, dated 13 November 2007.
- (xviii) Main trial hearing, held on 15 November 2007.
- (xix) Prosecution Motion for the acceptance of evidence obtained from the ICTY under the LoT, dated 15 November 2007.
- (xx) Main trial hearing, held on 19 November 2007.
- (xxi) Main trial hearing, held on 20 November 2007.
- (xxii) Joint Submission of the Defence Counsel of Željko Mejakić and Dušan Fuštar regarding Prosecution Motions for the acceptance of certain transcripts of witness statements and accompanying documents into evidence and related planning of the defence case, dated 21 November 2007.
- (xxiii) Submission/proposal of evidence to be presented by the Defence of Momčilo Gruban, dated 22 November 2007.
- (xxiv) Appellate Panel's Decision refusing the Appeals of the Defence Counsel of Duško Knežević and Momčilo Gruban against the Trial Panel Decision extending custody of 2 November 2007 as unfounded, dated 22 November 2007.
- (xxv) Main trial hearing, held on 27 November 2007.
- (xxvi) Main trial hearing, held on 30 November 2007.
- (xxvii) Submission/proposal of evidence to be presented by the Defence of Duško Knežević, dated 3 December 2007.
- (xxviii) Submissions/proposals of evidence to be presented by the Defence of Željko Mejakić, dated 3 December and 7 December 2007.
- (xxix) Submissions/proposals of evidence to be presented by the Defence of Dušan Fuštar, dated 3 December and 7 December 2007.
- (xxx) Main trial hearing, held on 6 December 2007.
- (xxxi) Main trial hearing, held on 11 December 2007.
- (xxxii) Prosecutor's Office Response to the proposal of evidence of the Defence for the accused Željko Mejakić, dated 13 December 2007.
- (xxxiii) Prosecutor's Office Response to the proposal of evidence of the Defence for the accused Dušan Fuštar, dated 13 December 2007.

(xxxiv) Main trial hearing, held on 18 December 2007.