



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

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

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

**December 2008**

## SUMMARY OF DEVELOPMENTS

### OSCE note:

**For the purpose of achieving greater efficiency, OSCE has decided to alternate between the local languages when translating its reports. Thus, the present Report is translated into Croatian only, while subsequent reports will be translated into Bosnian, then Serbian, and so forth.**

The Case of *Željko Mejakić, Momčilo Gruban, Dušan Fuštar* and *Duško Knežević* is the third case referred from the ICTY to the State Court of BiH, pursuant to Rule 11*bis* of the ICTY Rules of Procedure and Evidence. On 17 April 2008, the Court separated the Case of *Dušan Fuštar*<sup>1</sup> from the original Case, following this Defendant's plea agreement. This constitutes the tenth report submitted by the OSCE Mission to Bosnia and Herzegovina to the ICTY Prosecutor's Office on these cases, covering the period between 15 September and 15 December 2008.

It may be reiterated that on 22 April 2008, the Court sentenced Dušan Fuštar to nine years' imprisonment based on the Agreement to Enter a Plea of Guilty to the Proposed Amended Indictment of 27 March 2008. On 18 June 2008, the first instance verdict became final. Fuštar (the "Convicted Person") began serving his sentence at the Penal-Correctional Facility in Foča on 25 July 2008. Furthermore, the Court rendered its first-instance verdict in the Case of *Željko Mejakić, Momčilo Gruban*, and *Duško Knežević* on 30 May 2008 finding the defendants guilty on all counts of the indictment. It sentenced them respectively to 21 years long-term, 11 years, and 31 years long-term imprisonment.

During this reporting period:

- While the written first-instance verdict was rendered at the end of September, its English translation became available only on 3 December 2008. A summary of this verdict, outlining the responsibility of each Defendant and a note of interest regarding joint criminal enterprise, are included after this chronological reference of events.
- Each of the Defendants in the current *Mejakić et al.* case appealed the Court's written first-instance verdict. Duško Knežević's defence counsel appealed on basis of violations of the BiH Criminal Code, Criminal Procedure Code, and establishment of facts. Defence counsels for both Momčilo Gruban and Željko Mejakić filed appeals alleging violations of the BiH Criminal Code, Criminal Procedure Code, the establishment of facts, and issues related to sanction.
- These Defendants remain in custody by the Decision of the Trial Panel on 30 May 2008 on the basis of the risk of flight and threat to public security.

### Summary of the Written Verdict

According to the written verdict, Željko Mejakić was found guilty of Crimes against Humanity (murder, imprisonment, torture, sexual violence, persecution, and other inhumane acts)<sup>2</sup> as a direct perpetrator of one instance of mistreatment and under the theory of command responsibility as the *de facto* commander of Omarska camp. He was also found guilty under the theory of joint criminal enterprise for furthering the camp's system of mistreatment and persecution of detainees. As aggravating factors to his sentence, the Court considered: the long duration of the difficult position of helplessness and fear of the detainees, the large number of victims, the circumstances in which the direct perpetrators committed their criminal acts and their cruel treatment of victims, the extremely serious consequences of such abuse suffered by the detainees and their families, the duration of Mejakić's tenure in the camp during which he demonstrated determination and persistence in the commission of crimes, and his previous experience as a professional police officer as a result of which

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<sup>1</sup> Case against Dušan Fuštar (X-KR-06/200-1).

<sup>2</sup> Article 172 (a), (e), (f), (g), (h), and (k) BiH CC.

he had a special public duty to enforce the law and failed to do so. Additionally, the Trial Panel also considered certain mitigating circumstances such as the defendant being a family man and father of two children and having no prior convictions. It was also taken into account that he helped certain detainees in several situations and that he conducted himself properly before the Court.

Momčilo Gruban was found guilty of Crimes against Humanity (murder, imprisonment, torture, sexual violence, persecution, and other inhumane acts)<sup>3</sup> under the theory of command responsibility for crimes committed in the Omarska camp, and under the theory of joint criminal enterprise. As above, the Court similarly considered as aggravating circumstances in Gruban's situation the duration of his presence in the Omarska camp, his determination to commit the criminal offences, and his consent to the mass criminal acts against helpless and fearful victims who were subjected to torture and maltreatment on a daily basis. As a mitigating circumstance, the Court noted that a number of witnesses mentioned that the defendant had helped detainees and was not violent towards them. In addition, the Court considered that Gruban is a family man with two children, has no prior criminal record, and conducted himself properly during the trial.

With regard to Duško Knežević, the Court found him guilty of Crimes against Humanity (murder, torture, sexual violence, persecution, and other inhumane acts)<sup>4</sup> as a direct perpetrator of crimes committed in the Omarska and Keraterm camps. He was also found guilty under the theory of joint criminal enterprise for furthering the Omarska and Keraterm camps' systems of mistreatment and persecution of detainees. As an aggravating circumstance, the Court considered the defendant's long term persistence and cruelty, often motivated by revenge and obvious hatred, in committing brutal crimes in the two separate camps. Given that he has a family and child, no prior convictions, and exhibited proper conduct in Court, the Panel also took mitigating circumstances into consideration.

As a final point of interest, it should be noted that the first-instance verdict in the *Mejakić et al.* case has taken a novel approach to the application of the theory of joint criminal enterprise. This approach is seemingly rather different from the one taken in another Rule 11bis Case involving *Mitar Rašević* and *Savo Todović*. In the latter Case, the Trial Panel sentenced the defendants under the theory of joint criminal enterprise and considered command responsibility, which was also pled in the indictment, as a relevant factor for sentencing.<sup>5</sup> In juxtaposition, the *Mejakić* Panel has considered joint criminal enterprise to be "third in the order [of liabilities], only applicable in case neither the direct criminal responsibility nor command responsibility is established."<sup>6</sup> It remains to be seen how these two apparently different approaches to the application of joint criminal enterprise will be considered by the Appellate Panel.

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<sup>3</sup> *Id.*

<sup>4</sup> Article 172 (a), (f), (g), (h), and (k) BiH CC.

<sup>5</sup> Written first-instance verdict in the Case of *Mitar Rašević* and *Savo Todović*, 20 June 2008, English translation of 15 July 2008, p. 102 ("Although the elements of both forms of culpability have been charged and proven, the form which best characterizes the manner in which the crimes were committed is co-perpetration within systemic joint criminal enterprise. Because command responsibility is relevant to sentencing, both principles will be discussed and reasoned below" [footnote omitted]).

<sup>6</sup> Written first-instance verdict in the Case against *Mejakić et al.*, 29 September 2008, English translation of 3 December 2008, p. 213.

