

**UNITED
NATIONS**



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

Case No. IT-02-65-PT
Date: 21 November 2002
Original: ENGLISH

IN THE TRIAL CHAMBER

Before: Judge Richard May, Presiding
Judge Patrick Robinson
Judge O-Gon Kwon

Registrar: Mr. Hans Holthuis

Decision of: 21 November 2002

PROSECUTOR
v.
ŽELJKO MEAKIĆ
MOMČILO GRUBAN
DUŠAN FUŠTAR
PREDRAG BANOVIĆ
DUŠKO KNEŽEVIĆ

DECISION ON THE CONSOLIDATED INDICTMENT

The Office of the Prosecutor:

Ms. Joanna Korner
Ms. Jocelyn Bodson

Counsel for the Accused:

Ms. Sanja Turlakov, for Momčilo Gruban
Ms. Slobodanka Nedić, for Duško Knežević
Mr. Theodore Scudder and Mr. Dragan Ivetić, for Dušan Fuštar
Mr. Jovan Babić, for Predrag Banović

THIS TRIAL CHAMBER of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (“International Tribunal”),

NOTING the “Decision on Prosecution Motion for Joinder of Accused” issued on 17 September 2002 in which the Trial Chamber granted a Prosecution’s Motion for Joinder of Accused and ordered that:¹

- (1) The indictments against the accused Željko Meakić, Momčilo Gruban and Duško Knežević in Case No. IT-95-4-PT and against Dušan Fuštar, Predrag Banović and Duško Knežević in Case No. IT-95-8/1-PT be joined and given a common case number;²
- (2) The Defence shall, within 14 days, file notice of any objections to the new charges as specified in paragraph 2(B) of the Further Submission.

NOTING the “Defence Response to Prosecution’s Application for Leave to Include New Charges to The Consolidated Indictment” filed by counsel for Momčilo Gruban on 3 October 2002, together with the “Prosecution’s Request for Clarification” with respect to the Gruban response, filed on 8 October 2002, followed by the “Order on Prosecution Motion for Clarification” issued by the pre-trial Judge on 11 November 2002,

NOTING that, in respect of the new charges, counsel for Gruban submits that (a) the Consolidated Indictment presents “a considerable extension of criminal responsibility of the accused”³; (b) it is unclear which of the supporting materials provided related to the accused Gruban; (c) the forms of alleged joint criminal enterprise are not adequately specified;⁴ (d) the Prosecution should not be allowed to amend the indictments; and (e) the defence requests an oral hearing on these matters;

NOTING FURTHER that the Gruban defence also raises a number of other issues including matters related to the form of the indictment, a right to an extension of time within which to file preliminary motions and adjudicated facts from other proceedings;

¹ *Prosecution v. Meakić et al, Prosecutor v. Fuštar et al*, Decision on Prosecution’s Motion for Joinder of Accused, Case No. IT-95-4-PT, IT-95-8/1-PT, 17 Sept. 2002.

² By Certificate issued by the Registrar on 19 September 2002, the joined cases were assigned the new case number IT-02-65.

³ *Ibid*, paras 22, 38.

⁴ *Ibid*, paras 37, 39.

NOTING the “Knežević notice pursuant to the Decision on Prosecution’s motion for joinder of accused” filed by counsel for Duško Knežević on 11 November 2002 (“Knežević response”), in accordance with the “Order granting an extension of time to respond” issued by the pre-trial Judge,⁵

NOTING that the Knežević defence submits that (a) by including an allegation of joint criminal enterprise, the accused has now “been indicted for acts or omissions of other participants within the joint criminal enterprise”;⁶ (b) the Consolidated Indictment is not specific enough in identifying “other participants” and timing of the crimes; (c) the defence should have access to material against co-perpetrators in other proceedings before the International Tribunal; (d) Schedules E and F attached to the Consolidated Indictment should not be filed confidentially,

NOTING that the indictment relating to events at the Omarska camp (“the Omarska Indictment”, formerly Case No. IT-95-4-PT), filed on 18 July 2001, charges (1) Željko Meakić with 22 counts including charges of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949 and violations of the laws or customs of war; (2) Momčilo Gruban with 12 counts including charges of crimes against humanity, grave breaches of the Geneva Conventions of 1949 and violations of the laws or customs of war; and (3) Duško Knežević with 29 counts including charges of crimes against humanity, grave breaches of the Geneva Conventions of 1949 and violations of the laws or customs of war; that each of the accused is charged as being individually responsible under Article 7, paragraph 1, of the Statute of the International Tribunal (“Statute”); that, in their positions as camp commander and guard shift commander at the camp, Željko Meakić and Momčilo Gruban are each charged as being responsible as superiors under Article 7, paragraph 3, of the Statute,

NOTING that the indictment against the accused Dušan Fuštar, Predrag Banović, Duško Knežević and four others⁷ relating to events at the Keraterm camp (“the Keraterm Indictment”, formerly Case No. IT-95-8/1-PT) filed on 3 January 2001 charges (1) Dušan Fuštar with 14 counts including charges of crimes against humanity and violations of the laws or customs of war; (2) Predrag Banović with 25 counts including charges of crimes against humanity and violations of the laws or customs of war; and (3) Duško Knežević with 18 counts including charges of crimes against humanity and violations of the laws or customs of war; that the accused are alleged to be individually responsible under Article 7, paragraph 1, of the Statute for the crimes alleged in the Indictment and the accused

⁵ *Prosecution v. Meakić et al*, Order Granting an Extension of Time to Respond, Case No. IT-02-65-PT, 18 Oct. 2002.

⁶ Knežević response, paras 6-7.

⁷ Duško Sikirica, Damir Došen, and Dragan Kolundžija have already been tried and the indictment against Nenad Banović has been withdrawn.

Dušan Fuštar, a shift commander at the Keraterm camp, is charged as being responsible as a superior under Article 7, paragraph 3, of the Statute for the actions of his subordinates,

NOTING that the charges in the Consolidated Indictment are now reduced to five counts; all five accused are now charged with persecutions (crime against humanity: count 1), murder (crime against humanity: count 2; violations of the laws or customs of war: count 3), inhumane acts and cruel treatment (crime against humanity: count 4; violations of the laws or customs of war: count 5); that each of the accused is charged as being individually responsible under Article 7, paragraph 1, of the Statute for these crimes, and Željko Meakić, Momčilo Gruban and Dušan Fuštar are each charged as being responsible as superiors under Article 7, paragraph 3, of the Statute,

CONSIDERING that implicit in the Prosecution's submission of a Consolidated Indictment is an application for leave to amend the original indictments; that such applications are governed by Rule 50 of the Rules of Procedure and Evidence of the International Tribunal which, at this stage of the proceedings, gives discretion to the Trial Chamber or a Judge of the Trial Chamber to allow the amendments after having heard the parties;⁸ that, however, this Rule must be construed in the light of the Statute as a whole,

CONSIDERING that the fundamental question to be decided in relation to granting leave to amend an indictment is whether the amendments result in any prejudice to the accused,⁹ that in determining whether any prejudice to the accused will follow from an amendment to the indictment, regard must be had to the circumstances of the case as a whole;¹⁰

CONSIDERING that in the Consolidated Indictment all charges under Article 2 and Article 3 of the Statute have been omitted and all counts of genocide against Željko Meakić have been withdrawn; that the Prosecution submits that many of the factual allegations underlying these charges have been retained and are now incorporated in the remaining five counts;

CONSIDERING that the Prosecution further submits that the Consolidated Indictment is consistent, in substance and form, with recent indictments filed by the Prosecution with respect to

⁸ Rule 50(A)(i)(c) of the Rules.

⁹ *Prosecution v Naletilić & Martinović*, Decision on Vinko Martinović's Objection to the Amended Indictment and Mladen Naletilić's Preliminary Motion to the Amended Indictment, Case No. IT-98-34-PT, 14 Feb. 2001, pp. 4-7.

¹⁰ *Ibid.*, p. 4.

the accused's criminal responsibility in relation to the camps in the Prijedor municipality and reflect the evolving jurisprudence of the International Tribunal,¹¹

CONSIDERING that the Chamber invited submissions limited to the proposed substantive amendments to the indictment; that alleged defects in the form of the indictment may be brought by way of preliminary motion, and that the other submissions by the accused do not arise for determination at this stage,

CONSIDERING that many of the facts upon which the new charges are based were included in the original indictments; that, in the view of the Chamber, the amendments do not prejudice the accused in the preparation and conduct of their defence,

CONSIDERING FURTHER that, in respect of the new charges,¹² Rule 50 (C) expressly gives discretion to the Trial Chamber to grant such additional time as necessary to ensure adequate time for the preparation of the defence and, therefore, no injustice will be caused to the accused if they are given adequate opportunity to prepare an effective defence,

PURSUANT TO Rules 50, 54 and 72 of the Rules of Procedure and Evidence of the International Tribunal,

HEREBY GRANTS the Prosecution's request to amend the indictments against the accused Željko Meakić, Momčilo Gruban and Duško Knežević and against Dušan Fuštar, Predrag Banović and Duško Knežević and **ORDERS** as follows:

- (1) The Consolidated Indictment against the accused as attached to the Prosecution Motion for Joinder of Accused filed on 5 July 2002 shall be the operative indictment in this case;
- (2) The accused will each have a further period of thirty days, from the date of this Decision, in which to file preliminary motions; and

¹¹ Prosecution Motion for Joinder of Accused, Case No. IT-95-4-PT, IT-95-8/1-PT, 5 July 2002, paras 26-27.

¹² One new count, persecution (count 1), has been included in the Consolidated Indictment against Željko Meakić Momčilo Gruban and Duško Knežević. Two new counts of inhumane acts (count 4) and cruel treatment (count 5) have been included against the accused Momčilo Gruban.

(3) The accused Momčilo Gruban and Duško Knežević shall enter a plea to the new charges on 10 December 2002.

Done in English and French, the English text being authoritative.



Richard May
Presiding

Dated this twenty-first day of November 2002
At The Hague
The Netherlands