

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 July 2008

THE PROSECUTOR

v.

ŽELJKO MEJAKIĆ
MOMČILO GRUBAN
DUŠAN FUŠTAR
DUŠKO KNEŽEVIĆ

PUBLIC FILING

PROSECUTOR'S NINTH PROGRESS REPORT

The Office of the Prosecutor:
Mr. Serge Brammertz

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

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PUBLIC

PROSECUTOR'S NINTH 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 ninth 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 ("BiH State Court").²
3. The OTP filed its eighth progress report on 3 April 2008.³
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 eighth report on 1 July 2008.⁴ 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 Eighth Progress Report, 3 April 2008.

⁴ OSCE's Eighth Report in the *Željko Mejakić et al.* Case Transferred to the State Court pursuant to Rule 11 *bis*, June 2008 ("Report").

⁵ Report, p. 1.

5. During the reporting period, the OSCE has not identified any new issues of concern that could be assessed as infringing upon the Accused's right to a fair trial.⁶ The first instance proceedings against the accused Dušan Fuštar, Željko Mejakić, Momčilo Gruban and Duško Knežević were completed and the BiH State Court announced its verdicts.

6. On 21 April 2008, the BiH State Court accepted a Plea Agreement between the Prosecutor's Office of BiH and the Accused Dušan Fuštar.⁷ The Plea Agreement was based on an amended indictment which the Court accepted.⁸ Dušan Fustar acknowledged that as a member of a Joint Criminal Enterprise he had failed to assert his authority as a shift leader to protect the detainees and had failed to improve their daily living conditions, thereby contributing to and furthering the system of ill-treatment.⁹ Based on the Plea Agreement and following a sentencing hearing held on the same day, the Court sentenced Dušan Fuštar to nine years imprisonment.

7. On 26 May 2008, Dušan Fuštar was released after the Appellate Panel upheld the Defence's appeal against the Court's decision to extent custody against him on 22 April 2008. The Appellate Panel imposed different prohibitive measures on the Accused pending the finalisation of the verdict.¹⁰ The Accused is prohibited from leaving his place of residence, had to surrender his documents of identification and

⁶ Report, p. 1.

⁷ On 17 April 2008 Dušan Fustar's Case was separated from the existing Case against *Mejakić et al.*

⁸ The Amended Indictment, dated 21 March 2008, charged the Defendant with one count of Crimes Against Humanity for persecution under Article 172(1)(h) BiH CC. By the initial indictment of 7 July 2006, Dušan Fustar was indicted by the State Court, together with Željko Mejakić, Momčilo Gruban and Duško Knežević, for Crimes Against Humanity which he was alleged to have committed under Article 172 (a), (e), (f), (h) and (k) BiH CPC (murder, imprisonment, torture, persecution, other inhumane acts respectively) because of his direct perpetration, command responsibility, and participation in a joint criminal enterprise. (Report, p. 1, footnote 4).

⁹ *Ibid.*

¹⁰ At the sentencing hearing on 22 April 2008, the BiH State Court extended custody against the Accused on the ground of risk of flight and rejected the Prosecutor's motion to extend custody based on the threat to public and property security. The Trial Panel's decision was appealed by the Defence, to which the Prosecutor filed no response. In its decision on custody of 26 May 2008, the Appellate Panel upheld the Defence's appeal against the extension of custody, finding that it is unlikely the Accused will decide to flee because he has already served two-thirds of his sentence. The Appellate Panel terminated custody of the Accused and imposed prohibitive measures, having in mind the principles of proportionality and appropriateness, and considering those measures to be sufficient to ensure the presence of the Accused. (Report, p. 2, footnote 5).

has been ordered to report weekly to the Public Security Center in Prijedor.¹¹ These measures apply until the verdict becomes final.

8. On 30 May 2008, the BiH State Court pronounced its oral verdict in relation to the remaining Accused Željko Mejakić, Momčilo Gruban and Duško Knežević. The BiH State Court found these Accused guilty on all counts of the indictment, sentencing them respectively to 21 years imprisonment, 11 years imprisonment and 31 years imprisonment.¹² As a result, Željko Mejakić, Momčilo Gruban and Duško Knežević remain in custody on the grounds that they are both a flight risk and threat to public security.¹³

9. Overall, the Prosecutor is satisfied with the conclusion of the proceedings in this case. The Plea Agreement reached in relation to the Accused Dušan Fuštar after most of the evidence in the case had been heard is the result of very professional and responsible assessment by the Prosecutor's Office of BiH. The Prosecutor also notes that the OTP was consulted before the final decision to enter into the Plea Agreement was made. As soon as the English translations of the verdicts become available the Prosecutor will file another report detailing the BiH State Court findings.

10. Attached to this report are the following annexes:

- a) Annex A: a copy of the OSCE report; and
- b) Annex B: a copy of the Agreement to Enter Plea of Guilty and Admission of Facts, date d 14 April 2008.

Word count: 1,056

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



¹¹ Report, p. 2.
¹² *Ibid.*
¹³ Report, p. 2.

INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

Case No. IT-02-65-PT

THE PROSECUTOR

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ANNEX A
TO
PROSECUTOR'S NINTH PROGRESS REPORT



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

**Eighth Report in the
Željko Mežakić et al. Case**

Transferred to the State Court pursuant to Rule 11bis

June 2008

SUMMARY OF DEVELOPMENTS

The case against Željko Mejačić, Momčilo Gruban, Dušan Fuštar and Duško Knežević (*Mejačić et al.* case, the “Defendants”) 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. This constitutes the eighth 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 March 2008 and 15 June 2008.

In the reporting period, the Prosecutor and the Defendant Dušan Fuštar reached agreement on a plea agreement based on an amended indictment. The Court accepted this arrangement on 21 April 2008. Pursuant to this, the Defendant was sentenced to nine years’ imprisonment. Subsequently, on 30 May 2008, the Court pronounced its verdict orally as regards the remaining defendants Željko Mejačić, Momčilo Gruban, and Duško Knežević. The Court found these Defendants guilty on all counts of the indictment, sentencing them respectively to 21 years’ long-term imprisonment, 11 years’ imprisonment, and 31 years’ long-term imprisonment.

During the reporting period, no new issues of concern arose that the Mission’s monitoring project could presently assess as problematic from the perspective of human rights standards. The fact that the plea agreement in this case is among the first ones reached at the State level means that certain observations in this regard are important to make. But, considering that the English translation of the written verdict after the plea agreement is still pending at the time of writing, a more comprehensive overview of the issues involved will be done when the English version is issued and reviewed. Therefore, the present Report is limited to summarizing the proceedings during the reporting period, as well as annexing the relevant motions and decisions.

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

- During this reporting period, 16 main trial hearings were held, mainly in the presence of the public.¹ In total, eight witnesses testified, of which six testified under some form of protection.²
- On 27 March 2008, Defendant, Dušan Fuštar and the Prosecutor entered into an Agreement to Enter Plea of Guilty to a Proposed Amended Indictment. In view of this and upon the motion of the Parties, the Court issued on 17 April 2008 the Decision to separate the Case against *Fuštar*³ from the existing Case against *Mejačić et al.*

The Court accepted the plea agreement on 21 April 2008 and directly thereafter held a hearing on sentencing. On the following day, 22 April, the Court convened and, pursuant to the plea agreement, found the defendant guilty of Crimes Against Humanity sentencing him to nine years of imprisonment. The only mode of liability asserted in the plea agreement is the Defendant’s participation in a joint criminal enterprise. More specifically, as one of the shift leaders in the Keraterm camp, he failed to assert his authority -- while on duty and to the extent of his ability -- to protect the detainees. Likewise, the Defendant failed to improve the daily living conditions of inmates, contributing to and furthering the system of ill-treatment and persecution during the period he was shift leader.⁴

¹ On 10, 11, 17, 18, 21, 22, 23, and 24 April and 7, 12, 16, 19, 20, 22, 23 and 30 May 2008. On the 21 April, the Court held two sessions. The public was excluded only during the discussion on the identity of protected witnesses or as a measure of witness protection.

² The protected witnesses testified under a pseudonym and with one other measure of protection – two with their image distorted, two in closed session, and two with the public excluded in part and with a restriction on the publication of their images.

³ Case against Dušan Fuštar (X-KR-06/200-1).

⁴ By the indictment of 7 July 2006, Dušan Fuštar was initially indicted by the State Court, together with Željko Mejačić, Momčilo Gruban and Duško Knežević, for Crimes Against Humanity which he was alleged to have committed under Article 172 (a), (e), (f), (h), and (k) BiH CPC (murder, imprisonment, torture, persecution, other inhumane acts respectively) because of his direct perpetration, command responsibility, and participation

- By the 26 May 2008 the Appellate Panel's custody decision, Dušan Fuštar was released subject to prohibitive measures pending the finalisation of the verdict against him.⁵ Pursuant to this pronouncement, the Defendant was prohibited from leaving his place of residence (house arrest) and from travelling, while he has also been ordered to surrender his documents of identification and to report weekly to the Public Security Center in Prijedor, his town of residence. These measures apply until the verdict becomes final.⁶
- On 30 May 2008, the Court orally announced its verdict in the Case against *Željko Mejakić, Momčilo Gruban, and Duško Knežević*, finding the Defendants guilty on all counts of the indictment.

More specifically, *Željko Mejakić* was found guilty of Crimes Against Humanity (murder, imprisonment, torture, sexual violence, persecution, and other inhumane acts)⁷ 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. Defendant *Mejakić* was sentenced to 21 years' long-term imprisonment.

Momčilo Gruban was found guilty of Crimes Against Humanity (murder, imprisonment, torture, sexual violence, persecution, and other inhumane acts)⁸ under the theory of command responsibility for crimes committed in the Omarska camp, and under the theory of joint criminal enterprise. Defendant *Gruban* was sentenced to 11 years' imprisonment.

Duško Knežević was found guilty of Crimes Against Humanity (murder, torture, sexual violence, persecution, and other inhumane acts)⁹ 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. Defendant *Knežević* was sentenced to 31 years' long-term imprisonment.

- It should also be noted that victims of these crimes and the Prijedor-based NGO IZVOR protested the release of Dušan Furstar from custody on this day on account of his guilty plea.
- On the basis of the Trial Panel's decision of 30 May 2008, *Željko Mejakić, Momčilo Gruban, and Duško Knežević* remain in custody on the grounds that they are both a flight risk and threat to public security.

in a joint criminal enterprise. The Amended Indictment, dated 21 March 2008, charged the Defendant with only one count of Crimes Against Humanity for persecution under Article 172(1)(b) BiH CC.

⁵ Originally, at the sentencing hearing on 22 April, the Trial Panel extended custody against the Defendant on the ground of risk of flight and rejected the Prosecutor's motion to extend custody based on the threat to public and property security. The Trial Panel's decision was appealed only by the Defence, to which the Prosecutor filed no response. In its Decision on custody of 26 May, the Appellate Panel upheld the Defence's appeal against the extension of custody, finding, among other things, that it is unlikely the Defendant will decide to flee because he has already served two-thirds of his sentence. The Appellate Panel terminated custody of the Defendant and imposed the aforementioned prohibitive measures, having in mind the principles of proportionality and appropriateness, and considering those measures are sufficient to ensure the presence of the Defendant.

⁶ See Article 178 BiH CPC as to when a verdict becomes final. Also note that the deadline for filing an appeal against a first instance verdict is 15 days from the date when the verdict was delivered to all parties, unless extended by the Court, under CPC BiH Article 292.

⁷ Article 172 (a), (e), (f), (g), (h), and (k) BiH CC.

⁸ *Ibid.*

⁹ Article 172 (a), (f), (g), (h), and (k) BiH CC.

LIST OF RELEVANT HEARINGS - SUBMISSIONS - DECISIONS

- i) Appellate Panel's Decision refusing the Appeals of the Defence Counsel of Željko Mejakić, Dušan Fuštar and Momčilo Gruban against the Trial Panel Decision extending custody of 26 February 2008 as unfounded, dated 31 March 2008.
- ii) Main trial hearing held on 10 April 2008.
- iii) Main trial hearing held on 11 April 2008.
- iv) Agreement to Enter Plea of Guilty to a Proposed Amended Indictment together with the accompanying documents entitled Admission of Facts (Annex A) and Relevant Law (Annex B), dated 14 April 2008.
- v) Prosecutor's Motion to Amend the Indictment against the Third Defendant together with the proposed Amended Indictment, dated 14 April 2008.
- vi) Prosecutor's Motion to Separate the Third Defendant from the current Proceedings, dated 14 April 2008.
- vii) Sentencing submission of the Prosecutor's Office on reduction in the proposed sentence, dated 14 April 2008.
- viii) Statement of Contrition to be signed by the Third Defendant, dated 14 April 2008.
- ix) Main trial hearing held on 17 April 2008.
- x) Trial Panel's Decision to separate the proceedings against Fuštar from the existing case against *Mejakić et al.*, dated 17 April 2008.
- xi) Main trial hearing held on 18 April 2008.
- xii) Main trial hearing – presentation and deliberation of the Agreement on Admission of Guilt concluded between the prosecution and Dušan Fuštar and sentencing hearing, held on 21 April 2008 in the *Fuštar* case.
- xiii) Hearing on pronouncement of verdict for Dušan Fuštar, held on 22 April 2008 in the *Fuštar* case.
- xiv) Trial Panel's Decision extending custody against Dušan Fuštar, dated 22 April 2008.
- xv) Appeal of Defence Counsel of Dušan Fuštar against the decision extending custody of 22 April 2008, dated 23 April 2008.
- xvi) Trial Panel's Decision extending custody against Željko Mejakić, Momčilo Gruban and Duško Knežević, dated 23 April 2008.
- xvii) Main trial hearing held on 23 April 2008 in the *Mejakić et al.* case.
- xviii) Main trial hearing held on 24 April 2008 in the *Mejakić et al.* case.
- xix) Appeal of Defence Counsel of Željko Mejakić against the Decision extending custody of 23 April 2008, dated 26 April 2008.
- xx) Appeal of Defence Counsel of Momčilo Gruban against the Decision extending custody of 23 April 2008, dated 30 April 2008.
- xxi) Appeal of Defence Counsel of Duško Knežević against the Decision extending custody of 23 April 2008, dated 30 April 2008.
- xxii) Main trial hearing held on 7 May 2008 in the *Mejakić et al.* case.
- xxiii) Main trial hearing held on 12 May 2008 in the *Mejakić et al.* case.
- xxiv) Main trial hearing held on 16 May 2008 in the *Mejakić et al.* case.
- xxv) Main trial hearing held on 19 May 2008 in the *Mejakić et al.* case.
- xxvi) Appellate Panel's Decision refusing the Appeals of the Defence Counsel of Željko Mejakić, Momčilo Gruban and Duško Knežević against the Trial Panel Decision extending custody of 23 April 2008 as unfounded, dated 19 May 2008.
- xxvii) Main trial hearing held on 20 May 2008 in the *Mejakić et al.* case.
- xxviii) Main trial hearing held on 22 May 2008 in the *Mejakić et al.* case.
- xxix) Main trial hearing held on 23 May 2008 in the *Mejakić et al.* case.
- xxx) Written verdict in the Case against *Dušan Fuštar*, 23 May 2008
- xxxi) Session of the Appellate Panel on custody held on 26 May 2008 in the *Fuštar* case.
- xxxii) Decision of the Appellate Panel to terminate custody against Dušan Fuštar, dated 26 May 2008.
- xxxiii) Hearing on pronouncement of verdict for Željko Mejakić, Momčilo Gruban and Duško Knežević, held on 30 May 2008 in the *Mejakić et al.* case.
- xxxiv) Trial Panel's Decision extending custody against Željko Mejakić, Momčilo Gruban and Duško Knežević, dated 30 May 2008

xxxv) Appeal of Defence Counsels of Željko Mejakić, Momčilo Gruban and Dušan Fuštar against the decision extending custody of 30 May 2008, dated 3, 4 and 5 June 2008 respectively.

INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

Case No. IT-02-65-PT

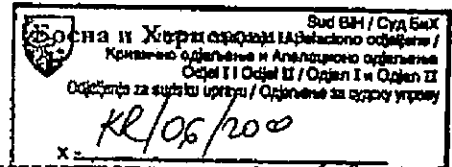
THE PROSECUTOR

v.

ŽELJKO MEJAKIĆ
MOMČILO GRUBAN
DUŠAN FUŠTAR
DUŠKO KNEŽEVIĆ

ANNEX B
TO
PROSECUTOR'S NINTH PROGRESS REPORT

Bosna i Hercegovina



Tužilaštvo-Tužiteljstvo Bosne i Hercegovine
Тужилаштво Босне и Херцеговине

No.: KT-RZ-91 06
Sarajevo, 14 April 2008

COURT OF BOSNIA AND HERZEGOVINA


No.: X-KR/06/200

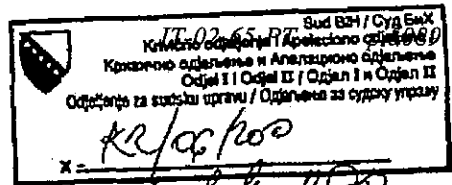
Please find attached the following documents:

- Agreement To Enter Plea Of Guilty to a Proposed Amended Indictment together with the accompanying documents entitled Admission of Facts (annex A) and Relevant Law (Annex B);
- Prosecutor's Motion to Amend the Indictment as against the Third Defendant together with the proposed Amended Indictment;
- Prosecutor's Motion to Separate the Third Defendant from the current Proceedings.
- Sentencing submission of the Prosecutor's Office on reduction in the proposed sentence.
- Statement of Contrition to be signed by the Third Defendant.

All the motions and document relate to the proposed plea agreement.

There is one outstanding document – the Sentencing Submissions for the Third defendant which we anticipate to be filed very shortly.


PROSECUTOR'S OFFICE OF
BOSNIA AND HERZEGOVINA
International Prosecutor
Peter Kidd



AGREEMENT TO ENTER PLEA OF GUILTY TO PROPOSED AMENDED INDICTMENT

INTRODUCTION

1. The Third Defendant, Dušan Fuštar, was charged in an Indictment confirmed by the ICTY on 20 August 1999. On 20 July 2005 the Referral Bench of the ICTY ordered the Third Defendant's case be referred to Bosnia and Herzegovina for disposition according to the laws of Bosnia and Herzegovina. The Third Defendant entered the jurisdiction of Bosnia and Herzegovina on 9 May 2006. The ICTY Indictment was adapted and presented for confirmation. The Court of Bosnia and Herzegovina confirmed the adapted Indictment on 14 July 2006 (the Confirmed Indictment). The Main Trial on the Confirmed Indictment commenced on 20 December 2006 and has proceeded continuously since that date.

2. The Third Defendant entered into custody on the ICTY Indictment on 31 January 2002. He had voluntarily surrendered¹. He has been in custody in Bosnia and Herzegovina since arriving in Bosnia and Herzegovina on 9 May 2006. On the charges before the Court the Third Defendant has been in custody continuously for 6 years and 57 days up to and including the date of this agreement: of which 1 year and 324 days are attributable to custody in Bosnia and Herzegovina² and 4 years and 98 days are attributable to custody at the ICTY³. Time spent in custody from the time the Third Defendant was taken into custody at the ICTY until the date he begins any sentence imposed by this Court shall be counted as provided in Article 56, CC, and Article 57, CC, and Article 2 (4), LOIC.

¹ *Prosecutor v Mejkic et al.*, Decision on Prosecutor's Motion for Referral of case Pursuant to Rule 11 bis, IT-02-65-PT, 20 July 2005, para. 14

² including 9 May 2006

³ including 31 January 2002

3. The Third Defendant, on advice of counsel, now approaches the Court with an agreement to enter a plea of guilty as set forth herein. The Third Defendant does so voluntarily, consciously and with an understanding of the consequences. Article 230(1)(a), CPC. The Prosecutor believes the agreement is in the interest of the public and endorses the agreement. The terms and conditions of the agreement are fully set forth in this document and ANNEX A which is incorporated herein by reference.

4. The Prosecutor has filed an accompanying motion pursuant to Article 26 CPC to separate the Third Defendant from the proceedings currently being conducted under the Confirmed Indictment. The Prosecutor has also filed an accompanying motion pursuant to Article 275 CPC for the Court to accept a proposed Amended Indictment, as against the Third Defendant.

5. By this written agreement (See Article 231(3), CPC) the Third Defendant, personally and on advice of counsel, and the Prosecutor as permitted and contemplated by Article 231, Criminal Procedure Code of Bosnia and Herzegovina (CPC), propose that the Court accept the Third Defendant's desire to change his plea of NOT GUILTY to the Confirmed Indictment, to a plea GUILTY to the proposed Amended Indictment.

6. This agreement fully sets out the Third Defendant's knowing and voluntary confession of guilt as to the conduct charged in the proposed Amended Indictment.

7. Further, this agreement also sets forth the Third Defendant's understanding of the rights and benefits guaranteed to him under the laws of Bosnia and Herzegovina that he is knowingly and voluntarily waiving if the Court agrees to accept his change of plea.

8. Likewise, this agreement advises the Court of all of the terms and conditions accepted by both parties in connection with this matter including all benefits and obligations that both parties accept as a consequence.

9. The Prosecutor and the Third Defendant confirm for the Court that there are no promises, benefits, or obligations as between the parties in relation to this matter other than those set out in this agreement. Article 231, CPC.

COUNSEL

10. The Third Defendant confirms for the Court that he has had the full benefit and advice of competent counsel who are acting in his best interests in relation to this agreement and with whom he is fully satisfied as to their advice on this matter and on the conduct of his defense.

AUTHORITY

11. The Prosecutor has full authority to enter into this agreement consistent with the law of Bosnia and Herzegovina and with the policies and procedures of the Prosecutor's Office of Bosnia and Herzegovina.

12. The Third Defendant is acting on his own authority and initiative with full advice of counsel.

CHANGE OF PLEA

13. By this agreement the Third Defendant proposes to change his plea of NOT GUILTY to the Confirmed Indictment to GUILTY to the proposed Amended Indictment.

14. The Third Defendant acknowledges he has been informed by his Counsel of all relevant differences between the Confirmed Indictment and the proposed Amended Indictment.

15. The Third Defendant, in particular, understands that:

- The proposed Amended Indictment constitutes one count of the Crime against Humanity of persecution under Article 172(1) per sub-clause h), in connection with Articles 180(1) and 29, of the Criminal Code of Bosnia and Herzegovina. The count of persecution encompasses: (a) the murder of Bosnian Muslims, Bosnian Croats and other non-Serbs detained in the Keraterm camp; (b) the torture and beating of Bosnian Muslims, Bosnian Croats and other non-Serbs detained in the Keraterm camp; (c) the harassment, humiliation and psychological abuse of Bosnian Muslims, Bosnian Croats and other non-Serbs detained in the Keraterm camp; (d) the confinement of Bosnian Muslims, Bosnian Croats and other non-Serbs in inhumane conditions in the Keraterm camp; and (e) Imprisonment (arbitrary and unlawful confinement of camp detainees);
- The proposed Amended indictment alleges a single mode of liability that is the "camp" version of joint criminal enterprise as encompassed by Articles 180(1) and 29, of the Criminal Code of Bosnia and Herzegovina;
- The proposed Amended Indictment does not allege that the Third Defendant personally beat any detainee;
- The proposed Amended Indictment does not allege that the Third Defendant personally killed any detainee;
- The proposed Amended Indictment alleges the Third Defendant was a participant in the joint criminal enterprise from mid to late June 1992.

16. The Third Defendant's Admission of Facts is more fully set forth in ANNEX A to this agreement, which is attached, attested to by the Third Defendant, counsel, and the Prosecutor and is incorporated herein by reference.

17. The Third Defendant acknowledges that his Admission of Facts (ANNEX A) is sufficient, that is, that there is enough evidence proving his guilt and for the Court to find him GUILTY of the Crime against Humanity of persecution under Article 172(1) per sub-clause h), in connection with Articles 29 and 180(1), of the Criminal Code of Bosnia and Herzegovina (ANNEX B).

18. Should the Court accept the Third Defendant's plea of GUILTY as set forth herein to the Amended Indictment, the Prosecutor withdraws the Confirmed Indictment, as against the Third Defendant, with prejudice. Article 283 (c) CPC.

SENTENCE

19. The Third Defendant acknowledges that the offense to which he proposes to plead GUILTY would ordinarily carry a term of imprisonment under the law of Bosnia and Herzegovina of between ten (10) year and forty-five (45) years. Article 173, CC; Article 42, CC.

20. The Prosecutor proposes a sentence of 9 years imprisonment. The Third Defendant agrees with this recommendation. The prosecutor is entitled to propose a sentence below 10 years. Article 231(2), CPC.

21. The Third Defendant understands that the Court can reject his agreement to enter a plea of guilty as set forth herein (including the proposed sentence of 9 years). Should that occur, the Third Defendant understands that he can continue with the Main Trial with no prejudice; that is, statements or admissions made in connection with this matter will not be used against him and the Court will not consider same in deciding on a verdict or imposing a sentence if the Third Defendant is subsequently convicted. Should the Court reject the agreement in question, the Third Defendant agrees to continue with the Main Trial before the same Panel. Article 230(3), CPC; Article 231(6), CPC.

22. The Third Defendant acknowledges that under the law of Bosnia and Herzegovina, Article 188, CPC, if the Court finds him guilty pursuant to this agreement it must declare in the verdict that he is required to reimburse the costs of the criminal proceeding, but understands as well that the Court may render a decision in the verdict that settles the issue of costs and relieves him of the duty to reimburse all or part of the costs of the criminal proceedings. Article 186, Article 188, CPC.

23. The Third Defendant acknowledges that under the law of Bosnia and Herzegovina, Article 193 to Article 198, CPC, he may be subject to claims under property law for damages to property caused by the conduct which he will admit when he changes his plea of NOT GUILTY to GUILTY as set forth herein. Article 231(4)(a).

APPEAL

24. If the Court accepts the Third Defendant's proposal to change his plea from NOT GUILTY to GUILTY as set forth herein, he will not appeal the verdict or the sentence. See Article 294, CPC.

25. If the Court accepts Third Defendant's proposal to change his plea from NOT GUILTY to GUILTY as set forth herein, the Prosecutor will not appeal the verdict or the sentence. See Article 294, CPC.

STATEMENT OF REMORSE AND RECONCILIATION

26. As part of this agreement, the Third Defendant will, upon acceptance by the Court of his proposal to change his plea of NOT GUILTY to GUILTY as set forth herein, at a time deemed appropriate by the Court, but before sentence is imposed, make a personal statement of remorse and reconciliation orally and in writing to the victims of the conduct that is the subject of this agreement.

CO-OPERATION

27. As part of this agreement the Third Defendant will, upon acceptance by the Court of his proposal to change his plea of NOT GUILTY to GUILTY as set forth herein, at times and in places to be determined by the Prosecutor, and at the discretion of the Prosecutor, make full and complete disclosure to the Prosecutor or any authorized official of the Prosecutor's Office of Bosnia and Herzegovina of his knowledge of victims (their identity and location of bodies), if any, and his knowledge of the perpetrators of the executions which occurred on his shift the night following the room 3 massacre.

28. Any such disclosure by the Third Defendant to the Prosecutor will be without prejudice to the Third Defendant.

29. The agreement referred to in the previous paragraph does not involve any agreement to testify at any trials.

DEFENDANT'S WAIVER OF RIGHTS

30. The Third Defendant acknowledges that by seeking to change his plea of NOT GUILTY to GUILTY as set forth herein, he is knowingly and voluntarily waiving his right to a trial of the matters alleged in the Indictment and all of the benefits that derive therefrom.

31. The Third Defendant confirms for the Court that he has been fully advised by counsel regarding his rights and benefits and about the rights and benefits he will be waiving if the Court accepts his proposal, and chooses to proceeding notwithstanding. These rights include the presumption of innocence (See Article 3, CPC), the right against self-incrimination (See Article 6, CPC), the right to present his own defense (Article 7, CPC), and the right to call witnesses and present evidence (See Article 261, CPC). The Third Defendant confirms that he is waiving such rights on his own initiative.

VICTIMS

32. The Prosecutor spoke with victims who testified before the Court during the Prosecutor's Case-In-Chief to notify them of the Third Defendant's intention to change his plea of NOT GUILTY to GUILTY as set forth herein. Further, he spoke with others who were affected or injured by the conduct. Their concerns and considerations were taken into account in the Prosecutor's decision to agree to the terms and conditions set forth in this agreement. See Article 231(7).

ICJY

33. As this is a matter referred to Bosnia and Herzegovina pursuant to Rule 11bis, ICTY Rules, the Prosecutor notified the Office of the Prosecutor of the ICTY of the Third Defendant's intention to change his plea of NOT GUILTY to GUILTY as set forth herein. Office of the Prosecutor of the ICTY raised no objections.

IN THE EVENT THAT AGREEMENT REJECTED

34. If the Court rejects the Third Defendant's agreement as set forth herein, the prosecutor will withdraw his motion pursuant to Article 26 CPC to separate the Third Defendant from the proceedings currently being conducted under the Confirmed Indictment and his motion pursuant to Article 275 CPC for the Court to accept a proposed Amended Indictment as against the Third Defendant.

ATTESTATION AND DECLARATION OF DUŠAN FUŠTAR

I, Dušan Fuštar, have read this Plea Agreement in my own language, and have carefully reviewed every aspect of it with my defense Counsel, John R. Ostojic and Zlatko Knežević. Defense counsel have advised me of my rights, of possible defenses, and of the consequences of entering into this plea agreement. No other promises or inducement have been made to me, other than those contained in this agreement. Furthermore, no one has threatened me or forced me in anyway to enter into this agreement and I have entered into this agreement freely and voluntarily and am of sound mind. I understand the terms of this agreement, and I voluntarily agree to each of it terms

.....
 Dušan Fuštar
 Defendant
 Dated: 27 March 2008

ATTESTATION OF DEFENSE COUNSEL

.....
 John R. Ostojic

.....
 Zlatko Knežević

Counsel for the Defendant
Dated:

Counsel for the Defendant
Dated: 27 March 2008

ATTESTATION OF THE PROSEUCTOR

.....
David Schwendiman
Deputy Chief Prosecutor
Special Department for War Crimes
Prosecutors Office of Bosnia and Herzegovina
Dated: 27 March 2008

ANNEX A

ADMISSION OF FACTS

THE KERATERM CAMP AND THE CONTEXT

Widespread and systematic attack

1. There existed a widespread and systematic attack against the non-Serb civilian population throughout the municipality of Prijedor between 30 April and 30 August 1992.¹ As part of this attack against the non-Serb civilian population, non-Serbs were detained in Keraterm camp. The detainees were predominantly Muslim and Croat. They were either arrested and transferred to the camp, or rounded up when predominantly non-Serb villages were attacked or cleansed. The Keraterm camp was set up in conformity with a decision of the Bosnian Serb Prijedor civilian authorities². There was a link between the widespread and systematic attack on the civilian population and the existence of the Keraterm camp and the mistreatment of the prisoners therein.

General

2. The Keraterm camp was located on the grounds of a ceramics factory on the outskirts of the town of Prijedor in Cirkin Polje. The camp operated from 24 May 1992 to 5 August 1992 and held between approximately 1000 and 1,500 detainees. Upon the closure of the Keraterm Camp on 5 August 1992, the majority of the detainees were transferred to the Trnopolje camp.
3. Conditions at the Keraterm camp were brutal, inhumane and degrading. There was an atmosphere of terror, arising from humiliation, harassment, beatings, killings and psychological abuse.

¹ See the following Established Facts accepted or partially accepted by this Panel in its Decision dated 22 August 2007: 1-4, 6-10, 12-24, 25-26, 29-36, 38, 41-47, 49-54, 66-101, 103-132, 135-137, 291-304, 306-311, 313-342;

² Established Fact 140

Beatings

4. Many detainees were beaten. These beatings contributed to an atmosphere of terror in Keraterm. The beatings often commenced upon the arrival detainees when they were forced to run through gauntlets.³ Beatings took place mostly at night, inside and outside the rooms, near a garbage dump, or in a room used specifically for beatings. Detainees were usually called out by a guard. Some were beaten and returned to the rooms. The beatings were conducted by the camp guards and by visitors from outside, individually or together. Detainees were beaten by being punched, kicked and hit or attacked with a wide variety of instruments including truncheons, batons and knives.⁴
5. On an almost daily basis detainees were harassed, yelled at, called derogatory names and their mothers would be cursed.⁵
6. "Lunch times" were used by guards as a time to harass, beat and humiliate the detainees, to such an extent that some chose to remain in their rooms rather than suffer the beatings during lunch time⁶. In addition the toilet was used as another opportunity by the guards to beat detainees particularly in the night⁷.
7. The visitors or outsiders - usually Serb soldiers - would come into the camp alone or in groups whenever they would desire and beat prisoners⁸. The frequency of these visits was not monitored and sometimes visitors would come every day⁹.

³ Testimony of Witnesses Sakib Jakupovic, K044, Enes Crjenković, K07, K043, K08, K019, K013, K05.

⁴ Ibid.

⁵ Testimony of Witnesses K044, K09, K05, K016, K033, K043.

⁶ Testimony of Witness K044

⁷ Testimony of Witness K013

⁸ Testimony of Witnesses K014, K013

⁹ Testimony of Witnesses K013, K08, K014, K029, K016, K033.

8. Sometimes detainees were beaten to death, often after having been between over successive days.¹⁰ When beaten to death sometimes their bodies were brought back to their room, or left outside and then taken away the next day.¹¹
9. Many detainees were beaten or killed because of their rank and position in society and their membership of a particular ethnic group or nationality.¹²
10. The majority of detainees were called for interrogation at some time during their incarceration¹³. Serb inspectors from Banja Luka and Prijedor SJB carried out formal interrogations¹⁴. The inspectors arrived in the camp in the morning and left in the evening. Beatings, threats and verbal assaults accompanied the detainees' journeys to and from interrogations¹⁵.

Living conditions

11. The detainees were subjected to inhumane conditions during their confinement at the Keraterm camp.
12. Most of the detainees at Keraterm received one meal a day¹⁶, whilst a select group frequently received nothing¹⁷. The food was of the lowest quality and quantity consisting of one or two slices of bread with either some broth or soup described by prisoners as "hot water with a leaf of

¹⁰ For examples see: the successive beatings Zejor Čaušević (Witness K013); the beatings of the detainees from Brdo who arrived in July including Enes Crljenković (Witness Enes Crljenković).

¹¹ Testimony of Witnesses K033; K014; K05; K044; K08; Anto Tomić; K016; K09; K015; K043; K029; K010; K013; Edin Ganić

¹² Beatings were often accompanied by ethnic slurs – see Testimony of Witness Edin Ganić.

¹³ Testimony of Witnesses K05; K08; K013; K044; K010

¹⁴ Testimony of Witnesses K010; K05; K08; K044.

¹⁵ Testimony of Witnesses K016; K010 (the guard Banović aka Cupo beat him while escorting him to his interrogation); K033, K09, Emsud Šistik, Edin Ganić and Izet Džešević.

¹⁶ Testimony of Witnesses K08; K013; K014; K029

¹⁷ Testimony of Witnesses K07 (those in room three got nothing regularly); K016 (Not everyone received a full meal each day)

cabbage in it¹⁸ or cooked beans¹⁹. Many prisoners did not receive any food at all for up to 10 days while in the camp²⁰. The time given to the detainees to eat was usually completely inadequate, sometimes limited to seconds²¹. Detainees were never officially given access to food which friends and relatives attempted to deliver for them and were kept virtually starving throughout the period of detainment²². Detainees lost significant amounts of weight, sometimes over half of their original body weight²³.

13. The water supplied to detainees was insufficient in the extreme conditions of the camp. Detainees were filthy and wounds could not be cleaned.²⁴

14. All of the detainees were accommodated in just four rooms in Kératerm camp. These rooms were all quickly filled to excess. Room one had a cement floor and later palettes for sleeping, however with 300/400 people accommodated there, there was little room for detainees to sleep²⁵. The doors were made of tin and kept shut in the night. As a result, the temperature in that room rose to between 30 and 40 degrees²⁶. Adjacent to room one, room two was smaller in size and had ceramic tiles and wooden pallets. Numbers in this room were counted at 512 at one point during a registration of the detainees²⁷. Room 3 was also so overcrowded with around 300 people that detainees could not sit down

¹⁸ Testimony of Witnesses K014; K013; K029; K044

¹⁹ Testimony of Witnesses K05; K013

²⁰ Testimony of Witnesses K044 received food on his 6th day; K010 received food on his 10th day.

²¹ Testimony of Witnesses K05; K08; K014

²² Testimony of Witnesses K044; K029

²³ Testimony of Witnesses K010, K05; K08.

²⁴ Testimony of Witness K044

²⁵ Testimony of Witnesses K013; K06; K029

²⁶ Testimony of Witness K044

²⁷ Testimony of Witness K010

properly and was described as being like a full matchbox²⁸. The heat in room 3 was such that "it was like a gas chamber".²⁹

15. The majority of the time³⁰ detainees were only allowed to move when specifically permitted or ordered to do so³¹. The organisation of the camp did not provide the opportunity to exercise, and there was no routine whereby detainees would even be permitted to regularly go outside of their rooms for fresh air³². Even the time given for basic human and hygiene needs was limited or non-existent. As a result detainees were not always let out of their rooms to relieve themselves at all and instead used anything they could find such as barrels, plastic bottles and plastic bags³³.
16. The toilet conditions were inadequate and grossly unhygienic: there was only one toilet for all the detainees to use and access to it was at the discretion of the guards³⁴.
17. The medical care was almost non-existent. Some detainees were taken to hospital but none reported being treated effectively there, on the contrary some were hunted down and beaten while they tried to recover.³⁵

Room 3 Massacre

18. On a night between 23 and 25 July, during Dragan Kolundzija's shift,³⁶ unspecified individuals fired at Room No. 3 with machine guns which had been set up during the day on the pista in front of that room.³⁷

²⁸ Testimony of Witnesses K016; K08

²⁹ Testimony of Witness K04

³⁰ Witnesses K08; K010; K029 all state that there was more freedom available on Kolundzija's shift.

³¹ Testimony of Witnesses K08; K010; K014 Enes Crljenkovic 19/11/07

³² Testimony of Witnesses K05; K08; K029

³³ Testimony of Witnesses K08; K010; K044

³⁴ Testimony of Witnesses K05; K029

³⁵ Testimony of Witnesses K016; K013; K08; K016

³⁶ Testimony of Witnesses K014; K044; K029; K013; K08.

³⁷ Testimony of Witnesses K014; K05; K044; K016; Enes Crljenkovic; K029; K010; K013; K043; K08.

Soldiers were in the camp on this day.³⁸ At the time, detainees from the Brdo region were accommodated in Room No. 3.³⁹ A gaseous substance of some kind was dispersed inside the room⁴⁰, which caused detainees to suffocate⁴¹ and attempt to break down the door in order to escape the room.⁴² The shooting lasted at approximately 1-2 hours,⁴³ and resulted in the death of approximately 100 to 200 detainees,⁴⁴ in addition to at least 30 detainees who were wounded.⁴⁵ The following morning, the dead and wounded⁴⁶ were loaded onto a truck and taken away to an undisclosed location.⁴⁷ They were never seen alive again.⁴⁸

JOINT CRIMINAL ENTERPRISE

19. By virtue of the above, the Keraterm camp operated as a joint criminal enterprise, namely a system of ill-treatment, subjugation and persecution of Bosnian Muslims, Bosnian Croats and other non-Serbs detainees through various forms of mental and physical violence, including beatings, torture, murder and inhumane conditions of detention.

DUŠAN FUŠTAR'S ROLE

Fuštar's position at the camp

20. The commander of security at the Keraterm camp was Duško Sikirica. The guards at Keraterm camp included reserve police personnel. From about mid to late June 1992 the guards were organised into three shifts

³⁸ Testimony of Witnesses K044, K016 and K029

³⁹ Testimony of Witnesses K014; K05; K044; K016; K029; K08.

⁴⁰ Testimony of Witnesses K07; Enes Crljenkovic

⁴¹ Testimony of Witnesses Enes Crljenkovic; K07; K013; K043.

⁴² Testimony of Witnesses K016; Enes Crljenkovic; K013.

⁴³ Testimony of Witnesses K014 (1-2 hours); K05 (45 minutes to 1 hour); K044 (1 ½ hours to 2 ½ hours); K016 (30 minutes); K029 (about 2 hours).

⁴⁴ Testimony of Witnesses K014 (100-110); K044 (201 *bodies*); K016 (around 50-60 *survivors*); Enes Crljenkovic (190); K029 (122-132); K07 (more than half of the detainees in Room 3 dead or wounded); K013 (200-250 dead or wounded); K043 (120); K08 (about 98).

⁴⁵ Testimony of Witnesses K014 (30-35); K05 (approximately 47); Enes Crljenkovic (60); K043 (90); K08 (40-something).

⁴⁶ Testimony of Witnesses K016; Enes Crljenkovic; K07; K013; K043; K08.

⁴⁷ Testimony of Witnesses K05; K044; K016; Enes Crljenkovic; K029; K07; K010; K013; K08.

⁴⁸ Testimony of Witnesses K016, K08

with each shift consisting of up to 15 guards.⁴⁹ The accused Dušan Fuštar took on the role of leading one of the shifts of guards. Dušan Fuštar was a member of the reserve police force but held no rank. The other two shift leaders were Damir Došen (aka Kajin) and Dragan Kolundžija (aka Kole). The shifts rotated and were of approximately 12 hours duration. Usually one shift came on between 6 and 8 a.m. and would be on duty for 12 hours and would be relieved sometime between 6 and 8 p.m.

Beatings

21. During this period, the beatings and physical abuse of detainees referred to above⁵⁰ continued on all three shifts and included the violent attacks upon the following detainees about which specific evidence has been led: Zejro Čaušević;⁵¹ Meho Kapetanović;⁵² Katlak;⁵³ Ismet Kljajić;⁵⁴ A number of detainees from the Brdo region upon their arrival in July;⁵⁵ Enes Crljenković;⁵⁶ K016;⁵⁷ K015;⁵⁸ Esad Islamović;⁵⁹ Edin Ganić;⁶⁰ Suad Halvadžić;⁶¹ the Ališić brothers (Jasmin, Armin Edin and Feha);⁶² K010;⁶³ K013;⁶⁴ Šaban Elezović;⁶⁵ K05;⁶⁶ Suad Bajrić;⁶⁷ and Zijad Krivdić.⁶⁸

⁴⁹ Testimony of Witnesses K013, K029

⁵⁰ See paragraphs 4 to 10.

⁵¹ Testimony of Witnesses K05; K044; K016; K013; K043.

⁵² Testimony of Witnesses K044; K09.

⁵³ Testimony of Witness K044.

⁵⁴ Testimony of Witnesses K044; K016.

⁵⁵ Testimony of Witnesses K044; Enes Crljenković; K07; K043; K08.

⁵⁶ Testimony of Witnesses K044; Enes Crljenković; K07; K043; K08.

⁵⁷ Testimony of Witness K016.

⁵⁸ Testimony of Witnesses K015; K016.

⁵⁹ Testimony of Witnesses K013; K015; Anto Tomić; K09.

⁶⁰ Testimony of Witnesses Edin Ganić; K029; K013.

⁶¹ Testimony of Witness K029.

⁶² Testimony of Witnesses K029; Edin Ganić; K09.

⁶³ Testimony of Witness K010.

⁶⁴ Testimony of Witnesses K013; K029; K016; Edin Ganić.

⁶⁵ Testimony of Witness K08.

⁶⁶ Testimony of Witness K05.

⁶⁷ Testimony of Witness K05.

⁶⁸ Testimony of Witness K05.

22. More specifically, there is evidence that beatings occurred during periods of time when Dušan Fuštar was on duty and that he was aware of some of these beatings. Some detainees were beaten in his immediate or near presence. He failed to intervene and by so failing showed that he condoned the beatings. Evidence concerning three incidents which took place in Fuštar's presence were specifically led before this Court and are accepted by Fuštar:
- K016 testified about an incident during which he was hit with a baton on his back, head and arms by a military policeman, while another man kicked him in the stomach. Dušan Fuštar was present at this incident. Rather than taking steps to stop the beating, he told the two perpetrators to not hit K016 on the head.
 - In a separate incident, K010 stated that he was called out one night by the guard Kondić. Dušan Fuštar was standing on the pista at this time, and therefore in the near vicinity. K010 was taken to Room No. 5, where he sustained severe beatings by several individuals, including Kondić. K010 was beaten so severely that he was unable to walk and lost consciousness upon returning to his room after the beating. Dušan Fuštar did not intervene to stop the beating.
 - Furthermore, Enes Crljenković testified that on each of the three days preceding the "Room 3 Massacre", the detainees kept in Room No. 3 were taken out and forced to lie on the pista for the duration of the whole day. Every day, the detainees were beaten while on the pista. Dušan Fuštar was present during these beatings. Although he did not personally participate in them, he did nothing to prevent them.
23. There is also evidence that beatings occurred on Dušan Fuštar's shift albeit not in his immediate presence. Specific evidence has been led of two such examples on Fuštar's shift:

- On about the 5th of July in 1992 outsiders came to the camp and called out K016. K016 suffered a broken arm, broken nose, bleeding from the mouth, cuts on his whole body including back and knees;⁶⁹
- One night around midnight, a detainee Ismet Kljajic was called out and taken out, ordered to strip naked. When he took off his clothes, the perpetrators ordered him to roll on grass and moisturize his body. Then they started beating him with batons and baseball bats. Saw him the next morning, his head was all swollen. The skin on his back was all ruptured.⁷⁰

24. It is accepted, as part of this plea agreement, that Dušan Fuštar did not personally beat or physically abuse detainees. Further, several witnesses testified that they never saw Dušan Fuštar personally beating or abusing detainees.⁷¹

Killings and shootings

25. Also during the period between mid to late June 1992 and the closure of the camp on 5 August, detainees were beaten to death at the Keraterm camp on all three shifts by guards or visitors including: Drago Tokmadžić,⁷² Jovo Radočaj,⁷³ Jasmin (aka "Zvezdas"),⁷⁴ Džemal Mešić,⁷⁵ Dževad Karabegović,⁷⁶ Besim Hergić,⁷⁷ and Fikret Avdić.⁷⁸

26. In addition, in late July a number of detainees were called out from room 3 during the middle of the night following the room 3 massacre including Ismet Bajric, Behzad Behlic, and a man named Šolaja. This occurred on

⁶⁹ Testimony of Witness K016

⁷⁰ Testimony of Witness K044

⁷¹ Testimony of Witnesses K029, K044, K016, Enes Crljenković

⁷² Testimony of Witnesses K044; K016; K08; K09; K015: Anto Tomić; Edin Ganić.

⁷³ Testimony of Witnesses K016; K015: Anto Tomić; Edin Ganić; K09.

⁷⁴ Testimony of Witnesses K016; K043; K08; K09.

⁷⁵ Testimony of Witnesses K029; K010.

⁷⁶ Testimony of Witnesses K044; Ismet Dizdarević.

⁷⁷ Testimony of Witnesses K044; K010.

⁷⁸ Testimony of Witnesses K013; K043.

Fuštar's shift. Dušan Fuštar entered the room and facilitated the calling out of these detainees. Soon after having been called out they were shot dead by unspecified individuals in the camp near to room 3.⁷⁹

27. Having regard to the quality and quantity of evidence presented by the prosecution, the prosecution accepts for the purpose of this plea that Dušan Fuštar did not personally kill these detainees and that he was not aware of their fate prior to calling them out.
28. Dušan Fuštar accepts however that these men were called out in the middle of the night in what he knew to be a very dangerous and violent atmosphere especially in light of the room 3 massacre the previous night. In these circumstances the detainees were especially vulnerable. Dušan Fuštar appreciated this. Dušan Fuštar had a duty to protect the prisoners and to try to prevent such arbitrary executions and to prevent persons from coming into the camp from committing such acts. Dušan Fuštar failed to take adequate steps to ensure their safety and to prevent them being harmed. The executions also took place in furtherance of the camp joint criminal enterprise⁸⁰ in which Dušan Fuštar was a participant.
29. It is accepted, as part of this plea agreement, that Dušan Fuštar did not personally kill any detainees. It is also accepted that Dušan Fuštar had no personal or direct involvement in the room 3 massacre, which occurred on Kolundzija' shift, and in Fuštar's absence.

Comparison with other shift leaders

30. The best shift for the detainees was that of Dragan Kolundzija. He did considerably more than the other Shift leaders to alleviate the appalling conditions that prevailed in the camp. He did more to assert his authority to prevent guards from abusing the detainees, to prevent visitors to the

⁷⁹ Testimony of Witnesses K07; Enes Crljenković

⁸⁰ See below

Keraterm camp, to allow the prisoners more freedom of movement outside and between rooms, to allow the prisoners greater access to toilet facilities, and to allow prisoners to have contact with their families (including phone calls and visiting family member at the gate). There were less calls outs and beatings at night on Kolundzija's shift. Detainees could also eat their meals in peace without physical or psychological provocations.⁸¹

31. Fuštar's shift was particularly bad for the detainees especially when compared to Kolundzija's shift.⁸² A number of witnesses have testified that the largest number of call-outs and beatings occurred during Fuštar's shift.⁸³ Detainees were given less time to eat⁸⁴ and less freedom of movement on Fuštar's shift than on other shifts.⁸⁵
32. It is accepted, however, that Došen's shift was also noticeably bad for the detainees because Predrag Banovic, who was one of the most violent and abusive guards⁸⁶, served as a guard on Došen's shift.⁸⁷ However, Predrag Banovic did come to the camp on all shifts and abuse detainees, including Fuštar's shift⁸⁸.

Fuštar's participation in Joint Criminal Enterprise

33. As a guard shift leader, Fustar was in a position of trust vis-à-vis the detainees and he was under a duty to assert his authority and influence to protect the detainees. He was in a position of sufficient authority and influence to prevent or halt abuses on his shift, either by intervening

⁸¹ Apart from the room 3 massacre, which occurred on Kolundzija's shift. However, there is evidence that Kolundzija tried to prevent or minimise the killings during the room 3 massacre: see Testimony of Witnesses K08, K044, K013, K014 and K016.

⁸² Testimony of Witnesses K044, K016, K010, K029, K013

⁸³ Testimony of Witnesses K08, K044, K07 K010, K029, K013, K05

⁸⁴ Testimony of Witness K08

⁸⁵ Testimony of Witnesses K016, K010

⁸⁶ Testimony of Witnesses K08, K029, K044, Enes Crljenkovic

⁸⁷ Testimony of Witnesses K016, K029, K015; Indin Cehić, K09, K08

⁸⁸ Testimony of Witnesses K09, Indin Cehic, K029, K08

personally or by seeking assistance from others, and to report abuses committed against detainees in the camp.

34. As a guard shift leader, Dušan Fuštar had the capacity to make daily life for the detainees more tolerable and more secure and to improve conditions, although it is accepted that Dušan Fuštar was not in a position to fundamentally change the underlying conditions of detention in the camp such as the quality or quantity of food served to the detainees or amount of available sleeping space.
35. Dušan Fuštar knowingly and intentionally contributed to the furtherance of this Keraterm camp joint criminal enterprise during the relevant period⁸⁹ through his acts and omissions as described above in these admitted facts but in particular-
- By continuing as a shift leader despite being aware of this abuse and of the inhumane camp conditions; and
 - By failing to assert his authority and influence to protect detainees and improve conditions when on duty.
37. In his capacity of shift leader of guards, Dušan Fuštar played a role in keeping the detainees in the camp. In this way, he participated in the unlawful confinement of the detainees in the Keraterm camp. It is accepted, however, that Dušan Fuštar did not participate in the arrest of the detainees imprisoned at Keraterm Camp and that he did not have the power to release any detainees.
38. Dušan Fuštar thus accepts liability for the criminal acts committed at the Keraterm camp as outlined above during the relevant period.

⁸⁹ From mid to late June 1992, when he commenced as shift leader, through to the closure of the camp on 5 August 1992.

ANNEX B

RELEVANT LAW

ELEMENTS OF CRIME

Article 172 of the BiH Criminal Code

The relevant parts of Article 172 of the BiH Criminal Code provide the following for the Crime against Humanity of Persecution:

(1) Whoever, as part of a widespread or systematic attack directed against any civilian population, with knowledge of such an attack perpetrates any of the following acts:

[...]

h) Persecutions against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious or sexual gender or other grounds that are universally recognized as impermissible under international law, in connection with any offence listed in this paragraph of this Code, any offence listed in this Code or any offence falling under the competence of the Court of Bosnia and Herzegovina;

[...]

(2) For the purpose of paragraph 1 of this Article the following terms shall have the following meanings:

[...]

g) Persecution means the intentional and severe deprivation of fundamental rights, contrary to international law, by reason of the identity of a group or collectivity.

The Elements of the Crime of Persecution

The crime of persecution consists of an act or omission which discriminates in fact,¹ i.e. the perpetrator targeted the victim(s) because of their membership in a group defined on a political, racial, national, ethnic, cultural, religious, sexual gender or other basis which is impermissible in international law. It is not necessary that the victim be a member of the group against which the perpetrator

¹ See, e.g., *Paunović*, X-KR-05/16, Trial Verdict, 26 May 2006, at p. 26; *Kovačević*, X-KR-05/40, Trial Verdict, 3 November 2006; *Prosecutor v. Simić*, IT-95-9-A, Appeal Judgment, 28 November 2006, para. 177; *Prosecutor v. Kvočka*, IT-98-30/1-A, Appeal Judgment, 28 February 2005, para. 320.

intended to discriminate.² The act or persecution must moreover involve the severe deprivation of a fundamental human right laid down in international law.³ Furthermore, the act must have been committed in connection with any offence listed in Article 172(1) of the Criminal Code of BiH, and offence listed in the Criminal Code of BiH or any offence falling under the competence of the Court of Bosnia and Herzegovina.⁴

The perpetrator must act with the specific intention to discriminate on one of the listed grounds.⁵ Generally, a participant in a joint criminal enterprise must share the discriminatory intent for persecutions.⁶

The act must furthermore have been committed as part of a widespread or systematic attack directed against a civilian population, and the perpetrator must know that his act was part of such attack or intended the act to be part of the attack.

Acts encompassed by Crime of Persecution

The following acts, *when carried out on discriminatory grounds and for which the general elements of crimes against humanity have been fulfilled*, constitute persecution:

² See, e.g., *Prosecutor v. Brdanin*, IT-99-36-T, Trial Judgment, 1 September 2004, para. 993; *Prosecutor v. Krnojelac*, IT-97-25-A, Appeal Judgment, 17 September 2003, para. 185; *Prosecutor v. Simić et al.*, IT-95-9-T, Trial Judgment, 17 October 2003, para. 49; *Prosecutor v. Stakić*, IT-97-24-T, Trial Judgment, 31 July 2003, para. 734; *Prosecutor v. Naletilić and Martinović*, IT-98-34-T, Trial Judgment, para. 636; *Prosecutor v. Kvočka*, IT-98-30/1-T, Trial Judgment, 2 November 2001, para. 195.

³ See, e.g., *Paunović*, X-KR-05/16, Trial Verdict, 26 May 2006, at p. 26; *Kovačević*, X-KR-05/40, Trial Verdict, 3 November 2006; *Prosecutor v. Simić*, IT-95-9-A, Appeal Judgment, 28 November 2006, para. 177; *Prosecutor v. Kvočka*, IT-98-30/1-A, Appeal Judgment, 28 February 2005, para. 320.

⁴ See, e.g., *Paunović*, X-KR-05/16, Trial Verdict, 26 May 2006, at p. 2.

⁵ See, e.g., *Paunović*, X-KR-05/16, Trial Verdict, 26 May 2006, at p. 26; *Kovačević*, X-KR-05/40, Trial Verdict, 3 November 2006; *Prosecutor v. Stakić*, IT-97-24-A, Appeal Judgment, 22 March 2006, para. 328; *Prosecutor v. Kvočka*, IT-98-30/1-A, Appeal Judgment, 28 February 2005, para. 320; *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-A, Appeal Judgment, 17 December 2004, para. 101; *Prosecutor v. Kvočka*, IT-98-30/1-T, Trial Judgment, 2 November 2001, para. 184.

⁶ See, e.g., *Prosecutor v. Kvočka*, IT-98-30/1-A, Appeal Judgment, 28 February 2005, para. 110; *Prosecutor v. Krnojelac*, IT-97-25-A, Appeal Judgment, 17 September 2003, para. 51; *Prosecutor v. Krnojelac*, IT-97-25-T, Trial Judgment, 15 March 2002, para. 487.

- Killings (Murder).⁷
- Torture and Inhumane Treatment.⁸
- Harassment, Humiliation and Psychological Abuse.⁹
- Unlawful Detention (Imprisonment).¹⁰

MODE OF LIABILITY – JOINT CRIMINAL ENTERPRISE

Articles 180(1) and 29 of the BiH Criminal Code

Article 180(1) provides:

A person who planned, instigated, ordered, perpetrated or otherwise aided and abetted in the planning, preparation or execution of a criminal offence referred to in Article [...] 172 (Crimes against Humanity) [...] of this Code, shall be personally responsible for the criminal offence. The official position of any accused person, whether as Head of State or Government or as a responsible Government official person, shall not relieve such person of criminal responsibility nor mitigate punishment.

Article 29 provides:

If several persons who, by participating in the perpetration of a criminal offence or by taking some other act by which a decisive contribution has been made to its perpetration, have jointly perpetrated a criminal offence, [they] shall each be punished as prescribed for the criminal offence.

Camp Joint Criminal Enterprise

⁷ See, e.g., *Paunović*, X-KR-05/16, Trial Verdict, 26 May 2006, at p. 2; *Kovačević*, X-KR-05/40, Trial Verdict, 3 November 2006; *Prosecutor v. Blagojević and Jokić*, IT-02-60-T, Trial Judgement, 17 January 2005, paras. 585, 603-604; *Prosecutor v. Brđanin*, IT-99-36-T, Trial Judgement, 1 September 2004, paras. 999-101; *Prosecutor v. Blaškić*, IT-95-14-A, Appeal Judgement, 29 July 2004, para. 143; *Prosecutor v. Sikirica et al.*, IT-95-8-S, Sentencing Judgement, 13 November 2001, paras. 18, 120-122; *Prosecutor v. Kvočka*, IT-98-30/1-T, Trial Judgement, 2 November 2001, para. 189.

⁸ See, e.g., *Paunović*, X-KR-05/16, Trial Verdict, 26 May 2006, at p. 2; *Kovačević*, X-KR-05/40, Trial Verdict, 3 November 2006; *Prosecutor v. Blagojević and Jokić*, IT-02-60-T, Trial Judgement, 17 January 2005, paras. 586, 605-610; *Prosecutor v. Brđanin*, IT-99-36-T, Trial Judgement, 1 September 2004, paras. 1002-1013; *Prosecutor v. Blaškić*, IT-95-14-A, Appeal Judgement, 29 July 2004, paras. 154-155; *Prosecutor v. Sikirica et al.*, IT-95-8-S, Sentencing Judgement, 13 November 2001, paras. 18, 125; *Prosecutor v. Kvočka*, IT-98-30/1-T, Trial Judgement, 2 November 2001, para. 189.

⁹ *Prosecutor v. Sikirica et al.*, IT-95-8-S, Sentencing Judgement, 13 November 2001, paras. 18, 126, 160; *Prosecutor v. Kvočka*, IT-98-30/1-T, Trial Judgement, 2 November 2001, para. 190.

¹⁰ See, e.g., *Kovačević*, X-KR-05/40, Trial Verdict, 3 November 2006; *Prosecutor v. Simić*, IT-95-9-A, Appeal Judgement, 28 November 2006, para. 116; *Prosecutor v. Banović*, IT-02-65/1-S, Sentencing Judgement, 28 October 2003, para. 22; *Prosecutor v. Naletilić and Martinović*, IT-98-34-T, Trial Judgement, 31 March 2003, paras. 642, 652, 657.

A Joint Criminal Enterprise (JCE) may take one of three different forms. Firstly, all participants may act pursuant to a common purpose and possess the same intent to commit a crime, and one or more of them do in fact perpetrate that crime.¹¹ Secondly, and this situation is closely linked to the first, there may be an organized criminal system, such as a concentration camp, in which detainees are systematically mistreated.¹² Thirdly, there may be a common design or plan to pursue a certain course of conduct, but one of the perpetrators commits an act which, albeit outside the common purpose, was nonetheless a natural and foreseeable consequence of giving effect to the common purpose.¹³

Generally, there must also be a common plan, design or purpose, which amounts to or involves the commission of a crime.¹⁴ In the case of the second category of JCE (i.e. Camp JCE), there need neither be a formal nor an informal agreement among the participants to commit a crime; rather, the system of ill-treatment constitutes itself the common plan, design or purpose.¹⁵ Lastly, the accused must have participated in the common plan.¹⁶ He or she need not have physically committed the crime which is the object of the JCE, or any other crime,¹⁷ but must simply have assisted in, or otherwise contributed to, the execution of the common plan, design or purpose.¹⁸ The act of assistance may take the form of an omission.¹⁹ The accused must have personal knowledge of the criminal nature of the system of ill-treatment,²⁰ and he must have the intention to further the criminal purpose of the system.²¹

¹¹ See, e.g., *Kvočka* Appeal Judgment, para. 82; *Tadić* Appeal Judgment, paras. 97, 220.

¹² See, e.g., *Kvočka* Appeal Judgment, para. 82; *Tadić* Appeal Judgment, paras. 202-203, 220.

¹³ See, e.g., *Kvočka* Appeal Judgment, para. 83; *Tadić* Appeal Judgment, para. 204; *Vasiljević* Appeal Judgment, para. 99.

¹⁴ See, e.g., *Stakić* Appeal Judgment, para. 64; *Kvočka* Appeal Judgment, para. 81; *Tadić* Appeal Judgment, para. 227.

¹⁵ See, e.g., *Kvočka* Appeal Judgment, paras. 118-119, 183; *Krnjelac* Appeal Judgment, para. 97.

¹⁶ See, e.g., *Stakić* Appeal Judgment, para. 64; *Vasiljević* Appeal Judgment, para. 100; *Tadić* Appeal Judgment, para. 227.

¹⁷ See, e.g., *Stakić* Appeal Judgment, para. 64; *Kvočka* Appeal Judgment, para. 99.

¹⁸ See, e.g., *Stakić* Appeal Judgment, para. 64; *Vasiljević* Appeal Judgment, para. 100; *Tadić* Appeal Judgment, para. 227; *Brdanin* Trial Judgment, para. 263.

¹⁹ See, e.g., *Kvočka* Appeal Judgment, para. 187; *Krajišnik* Trial Judgment, para. 885.

²⁰ See, e.g., *Kvočka* Appeal Judgment, para. 198; *Limaj et al* Trial Judgment, para. 511.

²¹ See, e.g., *Stakić* Appeal Judgment, para. 65; *Kvočka* Appeal Judgment, para. 82; *Krnjelac* Appeal Judgment, paras. 89, 96.

The Application of Joint Criminal Enterprise to BiH Criminal Code

Joint Criminal Enterprise (JCE) theory of liability is currently covered by Articles 180(1) and 29 of the Criminal Code of BiH. The Court of BiH has recently convicted the Accused *Mitar Rašević* and *Savo Todović* of Crimes against Humanity on the basis of JCE for their participation in the establishment and maintenance of a system of punishment and mistreatment of detainees.²²

The Appeals Chamber of the ICTY has also concluded that “the law of the Federal Republic of Yugoslavia in force at the time did provide for criminal liability for the foreseeable acts of others in terms strikingly similar to those used to define JCE”.²³ As the Appeals Chamber noted, there was “a stream of judicial decisions, international instruments and domestic legislation which would have permitted any individual to regulate his conduct accordingly and would have given him reasonable notice that, if infringed, that standard could entail his criminal responsibility”.²⁴

²² Verdict of 28 February 2008. See also *Nikola Andrun*, X-KR-05/42, Verdict, 14 December 2006.

²³ *Prosecutor v. Milutinović et al.*, IT-99-37-AR72, Decision on Dragoljub Ojdanić's Motion Challenging Jurisdiction – Joint Criminal Enterprise, 21 May 2003, para. 40.

²⁴ *Milutinović* JCE Decision, *supra*, para. 41. See also *Prosecutor v. Tadić*, IT-94-1-A, Appeal Judgement, 15 July 1999, paras. 220-226; *Prosecutor v. Hadžihanović et al.*, IT-01-47-AR72, Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, 16 July 2003, para. 34.

Bosna i Hercegovina



Босна и Херцеговина

Tužilaštvo-Tužiteljstvo Bosne i Hercegovine
Тужилаштво Босне и Херцеговине

Number: KT-RZ-91 06
Sarajevo, 14 April 2008

COURT OF BOSNIA AND HERZEGOVINA

Ref. number: X-KR/06/200

In the criminal proceedings against Željko Mejačić et al, number KT-RZ 91/06, the Prosecutor's Office of Bosnia and Herzegovina makes this motion pursuant to Article 275 Criminal Procedure Code of BiH:

TO FILE AN AMENDED INDICTMENT AS AGAINST THE THIRD DEFENDANT

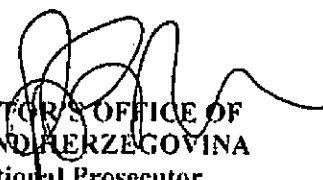
REASONS

The Motion is made so as to facilitate the Agreement of the Third Defendant to plead GUILTY to a proposed Amended Indictment pursuant to Article 231, CPC of BiH.

The proposed Amended Indictment is attached.

This Motion should be considered and decided together with the Plea Agreement and the Motion to Separate the Third Defendant from the current Proceedings, both of which were also filed today.

This Motion is subject to the terms and conditions as outlined in the Plea Agreement.


PROSECUTOR'S OFFICE OF
BOSNIA AND HERZEGOVINA
International Prosecutor
Peter Kidd

**BOSNIA AND HERZEGOVINA
PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA
SARAJEVO**

Case No:
Sarajevo, 21 March 2008

COURT OF BOSNIA AND HERZEGOVINA

Pursuant to Articles 275 and 231 of the *Criminal Procedure Code of Bosnia and Herzegovina* (BiH CPC) I hereby file this:

AMENDED INDICTMENT

Against:

Dušan Fuštar, son of Jovan, mother's name Zdravka, born on 29 June 1954 in Bačko Dobro Polje, the Municipality of Vrbas, Vojvodina, Republic of Serbia, formerly resident in Prijedor Municipality, of Serb nationality, citizen of the Republic of Serbia, mechanic by occupation, married, father of 1 child, no previous convictions, no other criminal proceedings, performed military service, no rank or decoration, held in custody based initially on the Decision of the Court of BiH number X-KRN/06/200 dated 10 May 2006 and upon subsequent decisions of this Court.

Because

From 30 April 1992 to the end of 1992 during an armed conflict in the Republic of Bosnia and Herzegovina and in the context of a widespread or systematic attack on Bosnian Muslim, Bosnian Croat and other non-Serb civilian populations of the Prijedor municipality by members of the Army of Republika Srpska, Territorial Defence, police and paramilitary formations ('Serb forces') and armed civilians, a plan was executed to permanently remove Bosnian Muslims, Bosnian Croats and other non-Serb inhabitants from the territory of the planned Serbian state in Bosnia and Herzegovina; as part of this plan non-Serb civilians from the area of this municipality, among them particularly intellectuals, economic and political leaders as well as wealthy citizens, were systematically captured and taken to and arbitrarily confined at, inter alia, the Keraterm camp between 24 May 1992 and 5 August 1992 which was established and operated under the direction of the Crisis Staff of the Prijedor municipality; the accused participated in the persecution of these captured non-Serb civilians in a manner that:

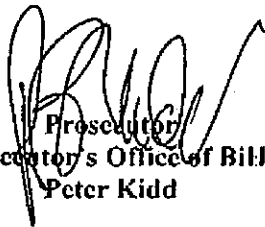
- i. The detainees held in the Keraterm camp were systematically ill-treated and persecuted through various forms of physical and mental violence namely killings, torture, beatings, harassment, humiliations, and inhumane conditions of detention such as inadequate food, drinking water and medical care, and unhygienic and cramped conditions.

- ii. Between mid to late June 1992 and 5 August 1992 ("the relevant period") the accused was leader of one of the three guard shifts in the Keraterm camp and was in a position of sufficient authority and influence to prevent or halt abuses on his shift by guards and visitors and to improve the daily living conditions for the detainees.
- iii. By performing the role of shift leader, and by failing to assert his authority and influence to protect the detainees and to improve their daily living conditions when on duty, the accused contributed to and furthered the described system of ill-treatment and persecution during the relevant period.
- iii. During the relevant period, detainees were killed at the Keraterm camp on all three shifts by guards or visitors in furtherance of the described system of ill-treatment and persecution, including the following: Drago Tokmadžić (beaten to death); Jovo Radočaj (beaten to death); Jasmin (aka "Zvezdas") (beaten to death); Džemal Mešić (beaten to death); Dževad Karabegović (beaten to death); Besim Hergić (beaten to death); Fikret Avdić (beaten to death); and a number of detainees including Ismet Bajric, Behzad Behlic, and a man named Šolaja, who were called out and shot dead in late July 1992.
- iv. During the relevant period detainees were beaten or otherwise physically abused at the Keraterm camp on all three shifts by guards or visitors in furtherance of the described system of ill-treatment and persecution, including the following: Zejro Čaušević; Meho Kapetanović; Katlak; Ismet Kljajić; a number of detainees from the Brdo region upon their arrival in July; Enes Crljenković; K016; K015; Esad Islamović; Edin Ganić; Suad Halvadžić; the Ališić brothers (Jasmin, Armin Edin and Feha); K010; K013; Šaban Elezović; K05; Suad Bajrić; Zijad Krivdić.
- v. In his capacity as shift leader, the accused participated in keeping the detainees in the camp and thus participated in arbitrarily depriving the detainees of their liberty during the relevant period.

Thus, as described above, within a widespread or systematic attack against a civilian population from the wider territory of Prijedor municipality, with knowledge of such attack, and knowing that he was participating in it DUŠAN FUŠTAR by his acts and omissions participated in the joint criminal enterprise of the Keraterm Camp during the relevant period to ill-treat and persecute Bosnian Muslims, Bosnian Croats, and other non-Serbs held in the camp through various forms of physical and mental violence and is therefore responsible for the crimes as described above committed in Keraterm camp during this relevant period, all of which were committed within the object of the joint criminal enterprise.

Whereby:

DUŠAN FUŠTAR committed the criminal offence of the Crime against Humanity of persecution under Article 172(1) per sub-clause h), in connection with Articles 29 and 180(1), of the Criminal Code of Bosnia and Herzegovina.



Prosecutor
Prosecutor's Office of BiH
Peter Kidd

Bosna i Hercegovina



Босна и Херцеговина

Tužilaštvo-Tužiteljstvo Bosne i Hercegovine
Тужилаштво Босне и Херцеговине

Number: KT-RZ-91 06
Sarajevo, 14/04/2008

COURT OF BOSNIA AND HERZEGOVINA

Ref. number: X-KR/06/200

In the criminal proceedings against Željko Mejačić et al, number KT-RZ 91/06, the Prosecutor's Office of Bosnia and Herzegovina makes this motion pursuant to Article 26 Criminal Procedure code of BiH:

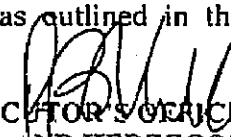
TO SEPARATE THE THIRD DEFENDANT FROM THE PROCEEDINGS

REASONS

The Motion is made so as to facilitate the Agreement of the Third Defendant to plead GUILTY to a proposed Amended Indictment, pursuant to Article 231, CPC of BiH.

This Motion should be considered and decided together with the Plea Agreement and the Motion to Amend the Indictment as against the Third Defendant, both of which were also filed today.

This Motion is subject to the terms and conditions as outlined in the Plea Agreement.


PROSECUTOR'S OFFICE OF
BOSNIA AND HERZEGOVINA
International Prosecutor
Peter Kidd

SENTENCING SUBMISSION OF THE PROSECUTOR'S OFFICE ON REDUCTION IN THE PROPOSED SENTENCE

GENERAL

It is submitted that the proposed sentence of 9 years is in the public interest.

It reflects the relevant factors to be taken into account under Articles 39 and 48, CC, including the need to express the community's condemnation of the role the accused man played in the maintenance of the terrible system of repression at the Keraterm camp, and the need to deter others from engaging in such conduct should the opportunity present itself again.

In agreeing to a reduction in the sentence, the Office of the Prosecutor has taken the following factors, in particular, into account.

THE AMENDED INDICTMENT AND FACTUAL BASIS

Under the Amended Indictment and agreed factual basis, certain aggravating factual allegations have been withdrawn such as direct and personal participation in beatings and killings. This has been done after a careful assessment of the evidence at the conclusion of the prosecution case. The proposed sentence reflects this reduced level of culpability.

PARITY

In agreeing to propose the sentence of 9 years the Office of the Prosecutor has taken into account the sentences handed down to Dušan Fuštar's co-offenders in the ICTY case of *Sikirica et al.* Fuštar's co-offender shift leaders received 3 years imprisonment (Kolundžija) and 5 years imprisonment (Došen) respectively. Fuštar's co-offender camp commander (Sikirica) received 15 years imprisonment. All these men pleaded guilty no earlier than the conclusion of the

prosecution case. Predrag Banovic, a guard, also received 8 years imprisonment for personally and directly murdering and beating many detainees.¹

The parity principle in sentencing recognizes that, as between co-offenders, there should not be a marked disparity which gives rise to a justifiable sense of grievance on the part of the co-offender who receives the higher sentence. Allowing for all the inevitable differences in culpability and personal circumstances, there should be a justified proportion between the sentences to ensure equal justice. This is an internationally recognized human rights norm.²

The *Sikirica et al* sentencing judgment is the sentencing judgment of Fustar's co-offenders on the same underlying set of facts in the same case before the referral took place to this Court under Rule 11 bis, ICTY Rules. The Office of the Prosecutor concedes that justice and fairness demand that this Court should take into account these sentences in determining or assessing whether the proposed sentence falls within the appropriate range.

That said, the Office of the Prosecutor wishes to emphasise that this Court is not in any way bound to follow the ICTY sentence regime, or its general sentencing tariffs. The State court of BiH is a Court of an independent Sovereign, exercising independent jurisdiction, under its own laws and practices. A concession that due respect should be given to the principle of parity in the sentencing of genuine co-offenders in a case referred to this Court under Rule 11 bis, should not be seen as a suggestion that this Court is obliged generally to adhere to the sentencing policies and practices of the ICTY.

¹ This sentence must be seen in light of the agreement which Banović struck with the OTP to give evidence for the prosecution. In the circumstances, this sentence offers only little guidance to this court for the sentencing of Fuštar.

² Salvatore Zappala *Human Rights in International Criminal Proceedings* pp 217-8

PLEA OF GUILTY

In agreeing to propose the sentence of 9 years the Office of the Prosecutor has taken into account the benefits in Dušan Fuštar pleading guilty. This should be considered a factor substantially mitigating the sentence.

It reflects the accused's acceptance of responsibility for these crimes especially when take in conjunction with his statement of contrition (see below). This should provide a sense of satisfaction to some victims, their relative and friends. He is entitled to a discount despite the fact that the plea of guilty is made after the presentation of the prosecution evidence: see the Sentencing Judgment of *Sikiricia et al* (Trial Chamber) para 150.

SAVING OF RECOURSES AND TIME

In addition to the human value of a plea of guilty from the accused, Court time and resources will be saved. Recourses and time that would otherwise have been expended in the conducting of the defence case, addresses, deliberations, the writing of the trial verdict, and in the conducting of any possible appeal, may now be re-deployed. It is in the public interest to promote plea agreements as a means to cope with the heavy caseloads faced by this institution.

STATEMENT OF CONTRITION

In agreeing to propose the sentence of 9 years the Office of the Prosecutor has taken into account Dušan Fuštar's statement of contrition. This should have a positive effect on some of the victims of his crimes and in their communities. If the Court accepts this statement as evidencing real and sincere remorse, it too should be treated as a mitigating circumstance. See *Kvočka et al* (Appeals Chamber) para 175.

SUBMISSION OF THE DEFENCE OF DUŠAN FUŠTAR

Pursuant to the reached Agreement on the Undertaking to Enter Plea of Guilty in the case of Court of Bosnia and Herzegovina against the Accused Dušan Fuštar, the Accused Dušan Fuštar is making the following

STATEMENT OF CONTRITION

I, Dušan Fuštar, am making this Statement of Contrition knowingly and voluntarily accepting this Undertaking to Enter Plea of Guilty that was reached between me as the Accused, my defence attorneys, John R. Ostojić and Zlatko M. Knežević, being one party, and the Prosecutor of the Prosecutor's Office of BiH, Peter Kidd, being the other party.

I

I express my profound and full contrition for my participation in the events in the Keraterm camp in Prijedor in summer 1992, and even though I hold that that I could not in any way change my posting to the position of the guard and the shift leader in the camp, I accept and I feel contrition for not trying to refuse the posting to the camp, regardless of all possible consequences for me.

II

I express my deep condolence to all families whose members were killed or died after being tortured in the camp in any way and I ask them to forgive me for my participation or for my omission to prevent attacks on their beloved ones.

III

Even though I did not hit or ill-treat anyone, the burden of my conscience requests of me to express my profound contrition to all those people who were in any way hurt by being confined in the Keraterm camp, or to those people who had to live through any form of mental or physical ill-treatment, as well as to their families for all worries they experienced.

IV

It especially hurts me because all these detained, ill-treated, tortured or killed people in the Keraterm camp were my neighbours, also people from Prijedor, and I also come from there, before the outbreak of the war I was living with them, cooperating and socialising, regardless of their ethnicity, which makes my contrition even more profound as the result of everything they had to go through, or as the result of killings committed against them; I also feel special remorse for everything that was happening to them and to their families.

V

For all these reasons I specifically wish to stress that I am convinced that such events and human sufferings should never again happen anywhere in the world, and in particular not Bosnia and Herzegovina and I also wish to reiterate that with my example and actions with respect to everybody I will exert my influence in such a way that the mutual understanding and peace are completely preserved being the greatest values.

VI

Finally, I wish to stress that all the people involved in the proceedings against me, and in particular the Court and the Prosecutor's Office of Bosnia and Herzegovina have had outstandingly fair and professional attitude and now I wish to thank them for that in this Statement.

DUŠAN FUŠTAR

SUD BOSNE I HERCEGOVINE SARAJEVO
 Primljen: neposredno / posredno (obično preporučeno)
 14 04 2008/zo god. u 1 primjerka sa
 [signature] Koga i Koga u [signature]
 Dodato poštom preporučeno na recepta dana
 [signature] godina
 Bosna i Hercegovina KM u [signature] markama
 nedostaje ta [signature] KM pisмено primljeni doz taksl
 i izmijene vrijednosti (novac, takse, [signature])

Tužilaštvo - Tužilaštvo Bosne i Hercegovine
Тужилаштво Босне и Херцеговине

Sud BiH / Суд БиХ
 Кривично одјељење и Апелационо одјељење
 Одјел I / Одјел II / Одјел III
 Одјељење за судску управу / Одјељење за судску
 Босна и Херцеговина

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Broj: KT-RZ-91 06
Sarajevo, 14 April 2008.

SUD BOSNE I HERCEGOVINE

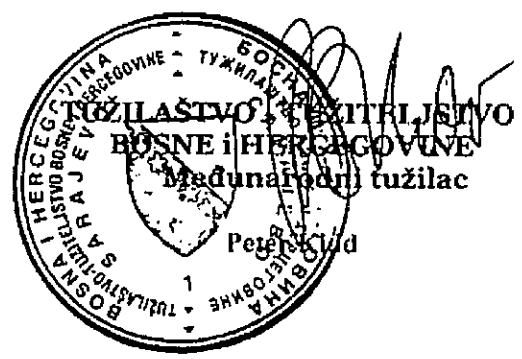
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U prilogu vam dostavljamo sljedeća dokumenta:

- Sporazum o priznanju krivice na prijedlog Izmijenjene optužnice zajedno s prapatnim dokumentima pod naslovom Priohtatanje činjenica (dodatak A) i Relevantni zakon (dodatak B);
- Prijedlog tužioca za izmjenu optužnice u odnosu na trećeoptuženog zajedno s prijedlogom Izmijenjene optužnice;
- Prijedlog tužioca za razdvajanje sadašnjeg postupka protiv trećeoptuženog od postupka koji je u toku;
- Podnesak Tužilaštva o smanjenju predložene kazne;
- Izjava o kajanju koju treba da potpiše trećeoptuženi.

Svi prijedlozi i dokumenta odnose se na prijedlog Sporazuma o priznanju krivice.

Postoji još jedan dokument – Podnesak u vezi s visinom kazne trećeoptuženom, kojeg ćemo ubrzo dostaviti.



**SPORAZUM O PRIZNANJU KRIVICE PO PRIJEDLOGU
 IZMIJENJENE OPTUŽNICE**

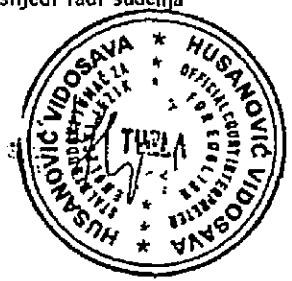
UVOD

1. Protiv trećeoptuženog, Dušana Fuštara, podignuta je optužnica koju je dana 20. avgusta 1999. godine potvrdio MKSJ. Dana 20. jula 2005. godine Vijeće za prosljeđivanje predmeta MKSJ-a naložilo je da se predmet protiv trećeoptuženog ustupi Bosni i Hercegovini na daljnje postupanje u skladu sa zakonima Bosne i Hercegovine. Trećeoptuženi je prebačen u nadležnost Bosne i Hercegovine dana 9. maja 2006. godine. Optužnica MKSJ-a je prilagođena i podnesena na potvrđivanje. Sud Bosne i Hercegovine je prilagođenu optužnicu potvrdio na dan 14. jula 2006. godine (potvrđena optužnica). Glavni pretres po potvrđenoj optužnici počeo je 20. decembra 2006. godine i od tada se odvija bez prestanka.

2. Trećeoptuženi se nalazi u pritvoru po Optužnici MKSJ-a od 31. januara 2002. godine. On se dobrovoljno predao¹. U pritvoru u Bosni i Hercegovini nalazi se od 9. maja 2006. godine, kada je stigao u Bosnu i Hercegovinu. Zbog djela koja mu se stavljaju na teret, trećeoptuženi je do dana sklapanja ovog Sporazuma kontinuirano proveo u pritvoru 6 godina i 57 dana, od čega 1 godinu i 324 dana u pritvoru u Bosni i Hercegovini², a 4 godine i 98 dana u pritvoru MKSJ-a.³ Vrijeme provedeno u pritvoru od dana kada je trećeoptuženom određen pritvor u MKSJ-u do dana kada počne izdržavati kaznu koju mu ovaj Sud izrekne, uračunava se u skladu s članom 56. i članom 57. KZ i članom 2 (4) Zakona o ustupanju predmeta.

3. Optuženi, po savjetu advokata, podnosi Sudu na razmatranje Sporazum o priznanju kriviće kako je u ovom dokumentu navedeno. Trećeoptuženi to čini dobrovoljno, svjesno i s razumijevanjem posljedica (član 230. stav (1) tačka a) ZKP-a). Tužilac smatra da je sporazum u interesu javnosti i on ga podržava.

¹ Tužilac protiv Mejakića i dr. Odluka po Zahtjevu tužioca da se ovaj predmet prosljedi radi sudjenja vlastima Bosne i Hercegovine, IT-02-65-PT, 20 July 2005. odjeljak 14
² uključujući 9. maj 2006.
³ Uključujući 31. januar 2002.



Uslovi sporazuma su u potpunosti utvrđeni u ovom dokumentu i Dodatku A koji je njegov sastavni dio i na koji se dokument poziva.

4. Tužilac je podnio propratni prijedlog u skladu s članom 26. ZKP-a za razdvajanje predmeta trećeoptuženog od postupka koji se trenutno vodi na osnovu potvrđene optužnice. Tužilac je takođe podnio propratni prijedlog Sudu u skladu s članom 275. ZKP-a za prihvatanje prijedloga Izmijenjene optužnice u odnosu na trećeoptuženog.

5. Ovim pismenim Sporazumom (vidi član 231. stav 3. ZKP-a) trećeoptuženi, lično i po savjetu advokata, i tužilac, kako je to omogućeno i predviđeno članom 231. Zakona o krivičnom postupku Bosne i Hercegovine (ZKP), predlažu da Sud prihvati želju trećeoptuženog da svoje prvobitno izjašnjenje da NIJE KRIV po potvrđenoj Optužnici zamijeni izjašnjenjem o PRIZNANJU KRIVICE u odnosu na prijedlog Izmijenjene optužnice.

6. U ovom je Sporazumu u cjelosti izneseno svjesno i dobrovoljno priznanje krivice trećeoptuženog za radnje koje mu se stavljaju na teret po prijedlogu Izmijenjene optužnice.

7. Nadalje, u ovom Sporazumu takođe je utvrđeno da su trećeoptuženom poznata prava i pogodnosti zagarantovane zakonima Bosne i Hercegovine, a kojih se svjesno i dobrovoljno odriče ukoliko Sud pristane da prihvati izmjenu njegovog izjašnjenja.

8. Ovim se Sporazumom takođe Sud upoznaje sa svim uslovima koje su prihvatile obje strane u vezi s ovom stvari, uključujući i sve pogodnosti i obaveze koje obje strane prihvataju kao njegovu posljedicu.

9. Tužilac i trećeoptuženi potvrđuju Sudu da između strana nema nikakvih drugih obećanja, pogodnosti ili obaveza u vezi sa ovom stvari, osim onih koje su navedene u ovom Sporazumu. (član 231. ZKP-a).



ADVOKAT

10. Trećeoptuženi potvrđuje za Sud da je u potpunosti iskoristio i primio savjete kompetentnih advokata koji na najbolji način zastupaju njegove interese u vezi s ovim Sporazumom i s čijim je savjetima po ovom pitanju u potpunosti zadovoljan, kao i sa vođenjem njegove odbrane.

OVLAŠTENJA

11. Tužilac ima potpuno ovlaštenje da sklopi ovaj Sporazum u skladu sa zakonima Bosne i Hercegovine i pravilima o radu Tužilaštva Bosne i Hercegovine.

12. Trećeoptuženi postupa svojom voljom i na vlastitu inicijativu uz savjetovanje advokata u punoj mjeri.

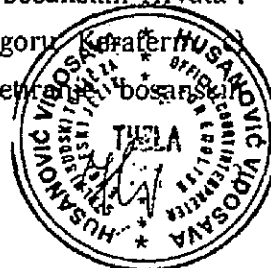
PROMJENA IZJAŠNENJA

13. Ovim sporazumom trećeoptuženi predlaže izmjenu svoga izjašnjenja da NIJE kriv po potvrđenoj optužnici na način da se izjašnjava KRIVIM u odnosu na prijedlog Izmijenjene optužnice.

14. Trećeoptuženi potvrđuje da ga je njegov advokat obavijestio o svim relevantnim razlikama između potvrđene optužnice i prijedloga izmijenjene optužnice.

15. Trećeoptuženi naročito shvata da:

- Prijedlog izmijenjene optužnice sadrži jednu tačku koja se odnosi na zločin protiv čovječnosti, progon, iz člana 172. stav 1. tačka h), u vezi s članom 180. stav 1. i članom 29. Krivičnog zakona Bosne i Hercegovine. Tačka progona obuhvata: a) ubistvo bosanskih Muslimana, bosanskih Hrvata i drugih lica nesrpske nacionalnosti zatočenih u logoru Keraterm, b) mučenje i premlaćivanje bosanskih Muslimana, bosanskih Hrvata i drugih lica nesrpske nacionalnosti zatočenih u logoru Keraterm, c) šikaniranje, ponižavanje i drugo psihičko maltretiranje zatočenih u logoru Keraterm.



Muslimana, bosanskih Hrvata i ostalih lica nesrpske nacionalnosti zatočenih u logoru Keraterm; d) držanje bosanskih Muslimana, bosanskih Hrvata i drugih lica nesrpske nacionalnosti u nečovječnim uslovima u logoru Keraterm; i e) zatvaranje (samovoljno i protupravno zatočenje zatočenika u logore);

- Prijedlog izmijenjene optužnice navodi jedan vid odgovornosti koji se odnosi na udruženi zločinački poduhvat u vezi sa logorom, a koji je obuhvaćen članom 180. stav 1. i članom 29. Krivičnog zakona Bosne i Hercegovine;
- Prijedlog izmijenjene optužnice ne navodi da je trećeoptuženi lično tukao bilo kojeg zatočenika;
- Prijedlog izmijenjene optužnice ne navodi da je trećeoptuženi lično ubio bilo kojeg zatočenika;
- Predložena izmijenjena optužnica navodi da je trećeoptuženi bio učesnik u udruženom zločinačkom poduhvatu od sredine do kraja juna 1992. godine.

16. Prihvatanje činjenica od strane trećeoptuženog u cjelosti je izneseno u Dodatku A ovoga sporazuma koji se nalazi u prilogu, a koji su potvrdili optuženi, advokat i tužilac, te on čini sastavni dio ovog sporazuma i sporazum se na njega poziva.

17. Optuženi priznaje da je njegovo prihvatanje činjenica (Dodatak A) dovoljno, odnosno, da postoji dovoljno dokaza o njegovoj krivici da ga Sud može oglasiti KRIVIM za Zločin protiv čovječnosti, progona, iz člana 172. stav 1. tačka h), u vezi s članom 29. i članom 180. stav 1. Krivičnog zakona Bosne i Hercegovine (Dodatak B).

18. Ukoliko Sud prihvati izjašnjenje trećeoptuženog da je KRIV, kako je navedeno u izmijenjenoj optužnici, tužilac povlači potvrđenu optužnicu u odnosu na trećeoptuženog i ta odluka je konačna, član 283. stav c) ZKP-a.



KAZNA

19. Trećeoptuženi prihvata da je za djelo za koje predlaže da se izjasni KRIVIM predviđena kazna zatvora od deset (10) do četrdeset i pet (45) godina u skladu sa zakonom Bosne i Hercegovine. (član 173. i član 42 KZ-a).

20. Tužilac predlaže kaznu zatvora u trajanju od 9 godina. Trećeoptuženi se slaže s ovom preporukom. Tužilac ima pravo da predloži kaznu ispod 10 godina zatvora, član 231. stav stav 2. ZKP-a.

21. Trećeoptuženi razumije da Sud može odbaciti Sporazum o priznanju krivice (uključujući i navedeni prijedlog kazne zatvora u trajanju od 9 godina). Ukoliko se to desi, trećeoptuženi razumije da može nastaviti s glavnim pretresom bez štetnih posljedica, odnosno, izjave i priznanja koji su dati u vezi sa ovim pitanjem neće se koristiti protiv njega i Sud iste neće razmatrati prilikom odlučivanja o presudi ili odmjeravanju kazne, ukoliko nakon toga trećeoptuženi bude osuđen. Ukoliko Sud odbije ovaj sporazum, trećeoptuženi je saglasan da se u odnosu na njega nastavi sa glavnim pretresom pred istim Vijećem. (član 230. stav 3 i član 231. stav 6. ZKP-a.)

22. Trećeoptuženi prihvata da, u skladu sa zakonima Bosne i Hercegovine, član 188. Zakona o krivičnom postupku, kada ga Sud oglasi krivim prema ovom Sporazumu, Sud mora objaviti u presudi da optuženi ima nadoknaditi troškove krivičnog postupka, ali također shvata da Sud u presudi može donijeti rješenje o troškovima kojim ga oslobađa obaveze da nadoknadi sve ili dio troškova krivičnog postupka (član 186. i član 188. ZKP-a.)

23. Trećeoptuženi prihvata da prema zakonu Bosne i Hercegovine, članovi 193. do 198. ZKP-a, protiv njega može biti pokrenut imovinskopravni zahtjev zbog radnji koje će priznati kada svoju prvobitnu izjavu kojom se izjasnio da



KRIV zamijeni izjašnjenjem o PRIZNANJU KRIVNJE, kako je to utvrđeno ovim sporazumom. (član 231. stav 4. tačka a) ZKP-a).

ŽALBA

24. Ukoliko Sud prihvati prijedlog trećeoptuženog da svoju prvobitnu izjavu kojom se izjašnjava da NIJE KRIV zamijeni izjašnjenjem o PRIZNANJU KRIVICE u skladu s ovim Sporazumom, on neće ulagati žalbu na presudu ili na kaznu (član 294. ZKP-a).

25. Ukoliko Sud prihvati prijedlog trećeoptuženog da svoju prvobitnu izjavu kojom se izjašnjava da NIJE KRIV zamijeni izjašnjenjem o PRIZNANJU KRIVICE u skladu s ovim Sporazumom tužilac neće ulagati žalbu na presudu ili na kaznu (član 294. ZKP-a).

IZJAVA O KAJANJU I POMIRENJU

26. U sklopu ovog Sporazuma optuženi će, nakon što Sud prihvati da optuženi svoju prvobitnu izjavu kojom se izjašnjava da NIJE KRIV zamijeni izjašnjenjem o PRIZNANJU KRIVNJE u skladu s ovim Sporazumom, u vrijeme koje Sud smatra odgovarajućim, ali prije izricanja kazne, lično dati svoju izjavu o kajanju i pomirenju, usmeno i pismeno, za žrtve njegovih radnji koje su predmet ovog Sporazuma.

SARADNJA

27. U sklopu ovog Sporazuma optuženi će, nakon što Sud prihvati ovaj njegov prijedlog da svoju prvobitnu izjavu kojom se izjašnjava da NIJE KRIV zamijeni izjašnjenjem o PRIZNANJU KRIVICE u skladu s ovim Sporazumom, u vrijeme i na mjestu koje će odrediti tužilac, prema diskrecionom pravu tužioca da o tome odluči, u potpunosti i cjelovito otkriti tužiocu ili drugoj ovlaštenoj službenoj osobi Tužilaštva Bosne i Hercegovine sve u vezi sa žrtvama (njihovim identitetom i lokacijama tijela) ako ih ima i sve o izvršiocima smaknuća koja su se dogodila u njegovoj smjeni u noći nakon masakra u prostoriji br. 3.



28. Odavanje takvih podataka tužiocu od strane trećeoptuženog neće ići na štetu trećeoptuženog.

29. Saglasnost iz prethodnog stava ne obuhvata saglasnost za svjedočenje u bilo kojem sudskom postupku.

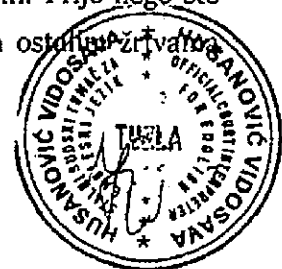
ODRICANJE OPTUŽENOG OD NJEGOVIH PRAVA

30. Optuženi prihvata da se zahtjevom da svoju prvobitnu izjavu kojom se izjašnjava da NIJE KRIV zamijeni izjašnjenjem o PRIZNANJU KRIVICE u skladu s ovim Sporazumom, svjesno i dobrovoljno odriče svog prava na suđenje u stvarima navedenim u optužnici, kao i svih pogodnosti koje iz toga proizilaze.

31. Optuženi potvrđuje Sudu da ga je advokat detaljno poučio o njegovim pravima i pogodnostima, te pravima i pogodnostima kojih će se odreći ako Sud prihvati njegov prijedlog, te da je bez obzira na to odlučio nastaviti ovaj postupak. Ta prava obuhvataju pretpostavku nevinosti (član 3. ZKP-a), pravo da ne iznosi dokaze koji ga terete (član 6. ZKP-a), pravo da iznese svoju obranu (član 7. ZKP-a), te pravo da poziva svjedoke i izvodi dokaze (član 261. ZKP-a). Trećeoptuženi potvrđuje da se odriče tih prava na vlastitu inicijativu.

ŽRTVE

32. Tužilac je razgovarao sa većim brojem žrtava koje su svjedočile pred Sudom za vrijeme izvođenja dokaza optužbe kako bi ih obavijestio o namjeri optuženog da svoju prvobitnu izjavu kojom se izjašnjava da NIJE KRIV zamijeni izjašnjenjem o PRIZNANJU KRIVICE u skladu s ovim Sporazumom. Nadalje, razgovarao je i sa drugima koji su bili pogođeni ili oštećeni radnjama trećeoptuženog. Njihovi su interesi i stavovi uzeti u obzir kada je tužilac donosio odluku da se saglasi sa uslovima utvrđenim ovim Sporazumom. Prije nego što Sud donese odluku, tužilac će nastojati da stupi u kontakt sa ostalim žrtvama.



svjedocima koji su svjedočili o logoru Keraterm u ovom postupku. (Vidi član 231. stav 7. ZKP-a)

MKSJ

33. Budući da je ovo predmet koji je Bosni i Hercegovini ustupljen u skladu sa pravilom 11bis Pravilnika MKSJ-a, tužilac je obavijestio Tužilaštvo MKSJ-a o namjeri optuženog da svoju prvobitnu izjavu kojom se izjašnjava da NIJE KRIV zamijeni izjavom o PRIZNANJU KRIVICE kako je to utvrđeno u ovom Sporazumu. Tužilaštvo MKSJ-a nije imalo primjedbi.

U SLUČAJU DA SE SPORAZUM ODBIJE

34. Ako Sud odbije ovaj Sporazum s trećeoptuženim, tužilac će, u skladu s članom 26. ZKP-a, povući svoj prijedlog za razdvajanje postupka koji se trenutno vodi protiv trećeoptuženog na osnovu potvrđene optužnice, kao i prijedlog da Sud prihvati izmijenjenu optužnicu protiv trećeoptuženog u skladu s članom 275. ZKP-a.

POTVRDA I IZJAVA DUŠANA FUŠTARA

Ja, Dušan Fuštar, pročitao sam na svom jeziku ovaj Sporazum o priznanju krivice i pažljivo sam s mojim advokatima, Johnom R. Ostojicom i Zlatkom Kneževićem, proučio svaki njegov aspekt. Advokati su me obavijestili o mojim pravima, mogućoj odbrani i posljedicama sklapanja ovog Sporazuma o priznanju krivice. Nisu mi data nikakva obećanja ili poticaji, osim onih koji se nalaze u ovom Sporazumu. Nadalje, niko mi nije prijetio niti me na bilo koji način prisiljavao da zaključim ovaj Sporazum i ja sam ga zaključio svojom slobodnom voljom i pri čistoj svijesti.



Razumijem uslove ovog Sporazuma i dobrovoljno dajem svoju saglasnost na svaku njegovu odredbu.

Dušan Fuštar
Dušan Fuštar
optuženi

datum: 27. mart 2008.

POTVRDA ADVOKATA

John R. Ostojic
John R. Ostojic
advokat

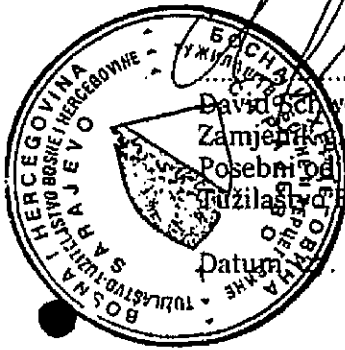
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Zlatko Knežević
Zlatko Knežević
advokat

datum: 27. mart 2008.

POTVRDA TUŽIOCA

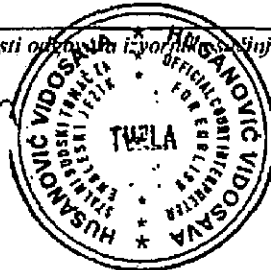
David Selvendijan
David Selvendijan
Zamjenik glavnog tužioca
Posebni Odjel za ratne zločine
Tužilaštvo Bosne i Hercegovine
Datum: 27. mart 2008.



Potvrđujem da ovaj prijevod u potpunosti odgovara izvornom tekstu i potvrđen je u skladu sa ovim potvrđenjem na engleskom jeziku.

Sarajevo, 27. mart 2008. godine

Husanović Vidosa
Vidosava Husanović,
Stalni sudski tumač za engleski jezik



ANEKS A

PRIHVATANJE ČINJENICA

LOGOR KERATERM I KONTEKST

Široki i sistematični napad

1. U periodu od 30.04.1992. do 30.08.1992. godine u čitavoj opštini Prijedor postojao je široki i sistematični napad na nesrpsko civilno stanovništvo.¹ Kao dio tog napada na nesrpsko civilno stanovništvo, lica nesrpske nacionalnosti bila su zatvarana u logor Keraterm. Zatočenici su bili pretežno Muslimani i Hrvati. Oni su bili hapšeni i prebacivani u logor, ili su bili okupljani kada su napadana i čišćena pretežno nesrpska sela. Logor Keraterm bio je uspostavljen u skladu s odlukom civilnih vlasti bosanskih Srba u Prijedoru.² Postojala je veza između širokog i sistematičnog napada na civilno stanovništvo i postojanja logora Keraterm i zlostavljanja zarobljenika u njemu.

Uopšte

2. Logor Keraterm bio je smješten na prostoru fabrike keramičkih proizvoda u Čirkin Polju, u predgrađu Prijedora. Logor je bio u funkciji od 24.05.1992. do 05.08.1992. godine i u njemu je bilo smješteno približno između 1000 i 1500 zatočenika. Po zatvaranju logora dana 05.08.1992. godine, većina zatvorenika prebačena je u logor Trnopolje.
3. Uslovi u logoru Keraterm bili su brutalni, nehumani i ponižavajući. Vladala je atmosfera straha koja je poticala od poniženja, šikaniranja, premlaćivanja, ubijanja i psihološkog maltretiranja.

¹ Vidi sljedeće utvrđene činjenice koje je Vijeće u svojoj odluci od 22.08.2007. godine prihvatilo ili djelomično prihvatilo: 1-4, 6-10, 12-24, 25-26, 29-36, 38, 41-47, 49-54, 66-101, 103-102, 105-137, 140-141, 143-144, 146-147, 149-150, 152-153, 155-156, 158-159, 161-162, 164-165, 167-168, 170-171, 173-174, 176-177, 179-180, 182-183, 185-186, 188-189, 191-192, 194-195, 197-198, 200-201, 203-204, 206-207, 209-210, 212-213, 215-216, 218-219, 221-222, 224-225, 227-228, 230-231, 233-234, 236-237, 239-240, 242-243, 245-246, 248-249, 251-252, 254-255, 257-258, 260-261, 263-264, 266-267, 269-270, 272-273, 275-276, 278-279, 281-282, 284-285, 287-288, 290-291, 293-294, 296-297, 299-300, 302-303, 305-306, 308-309, 311-312, 314-315, 317-318, 320-321, 323-324, 326-327, 329-330, 332-333, 335-336, 338-339, 341-342.

² Utvrđena činjenica 140.



Premlaćivanja

4. Mnogi zatočenici bili su premlaćivani. Ova premlaćivanja pojačavala su atmosferu straha u Keratermu. Često su premlaćivanja počinjala po dolasku zatočenika kada su bili prisiljavani da trče kroz špalir.³ Premlaćivanja su vršena uglavnom noću, u prostorijama ili izvan njih, blizu deponije smeća ili u posebnoj prostoriji koja je korištena za premlaćivanje. Zatočenike bi obično prozvao stražar. Neki su bili premlaćeni i vraćeni u prostoriju. Premlaćivanja su vršili logorski stražari ili lica koja bi dolazila u logor, pojedinačno ili zajedno. Zatočenike su tukli pesnicama, nogama i udarali ih, ili na njih nasrtali raznim predmetima, između ostalog policijskim i drugim palicama i noževima.⁴
5. Skoro svakodnevno zatočenici su bili šikanirani, na njih se vikalo, nazivani su pogrđnim imenima i psovana im je majka.⁵
6. Stražari su "vrijeme za ručak" koristili kao vrijeme za šikaniranje, premlaćivanje i ponižavanje zatočenika do te mjere da su neki od njih odabrali da rađe ostanu u svojim prostorijama nego da trpe premlaćivanja za vrijeme ručka⁶. Osim toga, stražari su nužnik koristili kao još jednu priliku da tuku zatočenike, naročito noću⁷.
7. Posjetioci ili osobe koje su dolazile sa strane – obično srpski vojnici – dolazili bi u logor sami ili u grupama kad god bi poželjeli da tuku zatočenike⁸. Nije praćena učestalost ovih posjeta i ponekad bi posjetioci dolazili svaki dan⁹.

³ Svjedočenje svjedoka Sakiba Jakupovica, K044, Enesa Crljenkovića, K07, K043, K08, K019, K013, K05

⁴ Ibid.

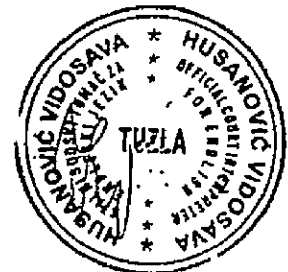
⁵ Svjedočenje svjedoka K044, K09, K05, K016, K033, K043.

⁶ Svjedočenje svjedoka K044.

⁷ Svjedočenje svjedoka K013.

⁸ Svjedočenje svjedoka K014, K013.

⁹ Svjedočenje svjedoka K013, K08, K014, K029, K016, K033.



8. Ponekad su zatočnici bili premlaćivani na smrt, često nakon premlaćivanja tokom više uzastopnih dana.¹⁰ Kada su bili premlaćeni na smrt, tijela su im bila vraćena u prostoriju ili ostavljena napolju i onda odnesena sljedećeg dana.¹¹
9. Mnogi zatočnici bili su premlaćivani ili ubijeni zbog svog čina i položaja u društvu i pripadnosti određenoj etničkoj grupi ili naciji.¹²
10. Većina zatočenika bila je pozvana na ispitivanje u neko doba tokom njihovog zatočenja¹³. Srpski inspektori iz Banje Luke i SJB Prijedor vršili su službena inspitivanja¹⁴. Inspektori su dolazili u logor ujutro i odlazili uveče. Premlaćivanje, prijetnje i verbalni napadi pratili su zatočenike na putu za ispitivanje i u povratku sa ispitivanja¹⁵.

Životni uslovi

11. Zatočnici su bili podvrgnuti nehumanim uslovima za vrijeme zatočenja u logoru Keraterm.
12. Većina zatočenika dobivala je jedan obrok na dan¹⁶, dok odabrana grupa često ne bi ništa dobila¹⁷. Hrana je bila najgoreg kvaliteta i kvantiteta i sastojala se od jedne ili dvije kriške hljeba s čorbom ili supom koju su zatočnici opisivali kao "toplu vodu s lišćem kupusa u njoj"¹⁸ ili kuhanim grahom¹⁹. Dok su bili u logoru, mnogi zatočnici nisu uopšte dobivali

¹⁰ Kao primjere vidi: uzastopna premlaćivanja Zejra Čauševića (svjedok K013); premlaćivanja zatočenika iz Brda koji su stigli u julu, uključujući Enesa Crljenkovića (svjedok Enes Crljenković).

¹¹ Svjedočenje svjedoka K033, K014, K05, K044, K08, Ante Tomića, K016, K09, K015, K043, K029, K010, K013, Edina Ganića.

¹² Svjedočenja su često bila praćena uvredama na etničkoj osnovi – vidi svjedočenje Edina Ganića.

¹³ Svjedočenje svjedoka K05, K08, K013, K044, K010.

¹⁴ Svjedočenje svjedoka K010, K05, K08, K044.

¹⁵ Svjedočenje svjedoka K016, K010 (stražar Banović, zv. Čupo tukao ga je za vrijeme odvođenja na ispitivanja), K033, K09, Emsuda Šisteka, Edina Ganića i Izeta Dješevića.

¹⁶ Svjedočenje svjedoka K08, K013, K014, K029.

¹⁷ Svjedočenje svjedoka K07 (oni u prostoriji br. 3 nisu ništa redovno dobivali), K016 (Nisu svi svaki dan dobivali redovne obroke).

¹⁸ Svjedočenje svjedoka K014, K013, K029, K044.

¹⁹ Svjedočenje svjedoka K05, K013.



hranu i po 10 dana.²⁰. Zatočenicima je obično davano krajnje nedovoljno vremena za jelo, ponekad je ono bilo ograničeno na sekunde²¹. Zatočenicima nikada nije službeno omogućen pristup hrani koju su pokušavali da im dostave prijatelji ili rođaci i praktično su izgladnjivani za sve vrijeme zatočeništva²². Zatočnici su značajno izgubili na težini, ponekad više od polovine njihove prvobitne tjelesne težine²³.

13. Voda koja je dostavljana zatočenicima bila je nedovoljna u ekstremnim uslovima u logoru. Zatočnici su bili prljavi, a rane se nisu mogle očistiti.²⁴
14. Svi zatočnici su bili smješteni u samo četiri prostorije u logoru Keraterm. Sve ove prostorije su brzo postale pretrpane. Prostorija broj jedan imala je cementni pod i kasnije palete za spavanje, međutim, s obzirom na 300-400 ljudi koji su tamo bili smješteni, zatočnici su imali nedovoljno prostora za spavanje²⁵. Vrata su bila od lima i noću bi bila zatvorena. Kao posljedica toga, u toj prostoriji temperatura bi dostizala od 30 do 40 stepeni²⁶. Uz prostoriju br. 1, bila je prostorija br. 2 koja je bila manja i imala je keramičke pločice i drvene palete. Broj zatočenih u ovoj sobi je u jednom trenutku za vrijeme registracije dostigao 512²⁷. Prostorija br. 3 bila je tako pretrpana s približno 300 ljudi, da zatočnici nisu mogli da sjednu kako treba i upoređena je s punom kutijom šibica²⁸. Vrelna u prostoriji br. 3 bila je takva da je „bila poput gasne komore”.²⁹

²⁰ Svjedočenje svjedoka K044 hranu je dobio četvrtog dana. K010 dobio je hranu je desetog dana.

²¹ Svjedočenje svjedoka K05, K08, K014.

²² Svjedočenje svjedoka K044, K029.

²³ Svjedočenje svjedoka K010, K05, K08.

²⁴ Svjedočenje svjedoka K044.

²⁵ Svjedočenje svjedoka K013, K06, K029.

²⁶ Svjedočenje svjedoka K044.

²⁷ Svjedočenje svjedoka K010.

²⁸ Svjedočenje svjedoka K016, K08.

²⁹ Svjedočenje svjedoka K04.



15. Veći dio vremena³⁰ zatočenici su se mogli kretati samo kada im je to izričito dozvoljeno ili naređeno³¹. Organizacija logora nije pružala mogućnost fizičkog vježbanja, nije čak postojala ni rutinska mogućnost da zatočenici redovno izađu iz svojih prostorija na svjež vazduh³². Čak je i vrijeme za osnovne ljudske i higijenske potrebe bilo ograničeno, ili ono nije ni postojalo. Shodno tome, zatočenicima nije uvijek bilo dozvoljeno da izađu iz svojih prostorija ni da bi se olakšali i umjesto toga oni su koristili sve što su mogli naći, poput, buradi, plastičnih boca i plastičnih vrećica³³.
16. Uslovi u nužniku bili su neadekvatni i krajnje nehigijenski: postojao je samo jedan nužnik za sve zatočeničke, a pristup njemu zavisio je od volje stražara³⁴.
17. Zdravstvena zaštita skoro da i nije postojala. Neki zatočenici bili su odvedeni u bolnicu, ali niko nije rekao da je tamo bio zaista liječen, naprotiv, neki su bili progonjeni i premlaćivani dok su pokušavali da se oporave.³⁵

Masakr u prostoriji br. 3

18. U noći 23. i 25. jula, za vrijeme smjene Dragana Kolundžije,³⁶ neidentifikovana lica su pucala na prostoriju br. 3 iz mitraljeza koji su tokom dana bili postavljeni na pistu ispred te prostorije.³⁷ Tog dana u logoru su bili vojnici.³⁸ U to vrijeme u prostoriji br. 3 bili su smješteni zatočenici s područja Brda.³⁹ Nekakva gasovita supstanca bila je ubačena

³⁰ Svjedoci K08, K010, K029 svi tvrde da je bilo više slobode dostupno u Kolundžijinoj smjeni.

³¹ Svjedočenje svjedoka K05, K010, K014 Enesa Crljenkovića 19/11/07.

³² Svjedočenje svjedoka K05, K08, K029.

³³ Svjedočenje svjedoka K08, K010, K044.

³⁴ Svjedočenje svjedoka K05, K029.

³⁵ Svjedočenje svjedoka K016, K013, K08, K016.

³⁶ Svjedočenje svjedoka K014, K044, K029, K013, K08.

³⁷ Svjedočenje svjedoka K014, K05, K044, K016, Enesa Crljenkovića; K029, K010, K013, K08.

³⁸ Svjedočenje svjedoka K044, K016 i K029.

³⁹ Svjedočenje svjedoka K014, K05, K044, K016, K029, K08.



u sobu⁴⁰, što je izazvalo gušenje kod zatočenika⁴¹ i pokušaja da provale vrata kako bi pobjegli iz sobe.⁴² Pucnjava je trajala približno 1 – 2 sata⁴³, a rezultat je bio smrt približno 100 – 200 zatočenika,⁴⁴ i uz to, najmanje 30 zatočenika je bilo ranjeno.⁴⁵ Sljedećeg su jutra mrtvi i ranjeni⁴⁶ utovareni na kamion i odvezeni na nepoznatu lokaciju. ⁴⁷ Nikada više ih niko nije vidio žive.⁴⁸

UDRUŽENI ZLOČINAČKI PODUH VAT

19. Na osnovu gore navedenog, logor Keraterm je funkcionisao kao udruženi zločinački poduhvat, naime, kao sistem zlostavljanja, podjarmljivanja i progona bosanskih Muslimana, bosanskih Hrvata i ostalih nesrpskih zatočenika putem raznih oblika mentalnog i psihičkog nasilja, uključujući premlaćivanja, mučenja, ubistva i nečovječne uslove zatočenja.

ULOGA DUŠANA FUŠTARA

Fuštarov položaj u logoru

20. Komandir obezbjeđenja u logoru Keraterm bio je Duško Sikirica. Među stražarima u logoru Keraterm bilo je pripadnika rezervne policije. Približno od sredine do kraja juna 1992. godine stražari su bili organizovani u tri smjene, a svaka smjena se sastojala od najviše 15 stražara. ⁴⁹ Optuženi Dušan Fuštar preuzeo je ulogu vođe jedne smjene straže. Dušan Fuštar je bio pripadnik rezervnih policijskih snaga, ali nije

⁴⁰ Svjedočenje svjedoka K07, Enesa Crljenkovića.

⁴¹ Svjedočenje svjedoka Enesa Crljenkovića, K07, K013, K043.

⁴² Svjedočenje svjedoka K016, Enesa Crljenkovića, K013.

⁴³ Svjedočenje svjedoka K014 (1-2 sata), K05 (45 minuta do jedan sat), K044 (1 ½ sat do 2 ¼ sata), K016 (30 minuta), K029 (oko dva sata).

⁴⁴ Svjedočenje svjedoka K014 (100-110), K044 (201 tijelo), K016 (približno 50-60 preživjelih), Enesa Crljenkovića (190), K029 (122-132), K07 (više od polovine zatočenika iz prostorije 3 mrtvi ili ranjeni), K013 (200-250 mrtvih ili ranjenih), K043 (120), K08 (oko 98).

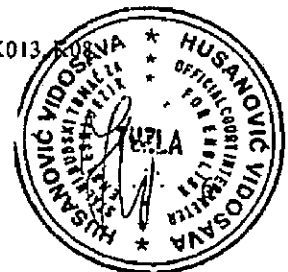
⁴⁵ Svjedočenje svjedoka K014 (30-35), K05 (približno 47); Enes Crljenković (60), K043 (90), K08 (40- nešto).

⁴⁶ Svjedočenje svjedoka K016, Enes Crljenković, K07, K013, K043, K08.

⁴⁷ Svjedočenje svjedoka K05, K044, K016, Enesa Crljenkovića, K029, K07, K010, K013.

⁴⁸ Svjedočenje svjedoka K016, K08.

⁴⁹ Svjedočenje svjedoka K013, K029.



imao čin. Druga dvojica vođe smjene straže bili su Damir Došen (zv. Kajin) i Dragan Kolundžija (zv. Kole).

Smjene su se smjenjivale i trajale su približno 12 sati. Obično je jedna smjena dolazila između 6 i 8 sati prije podne i bila bi na dužnosti 12 sati, a onda bi bila zamijenjena negdje između 6 i 8 sati poslije podne.

Premlaćivanja

21. Za vrijeme ovog perioda premlaćivanja i fizička zlostavljanja zatočenika o kojima je već bilo riječi⁵⁰ nastavljala su se u sve tri smjene i uključivala su žestoke nasrtaje na sljedeće zatočenike u vezi s kojima su uvedeni konkretni dokazi: Zejro Čaušević,⁵¹ Meho Kapetanović,⁵² Katlak,⁵³ Ismet Kljajić;⁵⁴ jedan broj zatočenika s područja Brda po njihovom dolasku u julu,⁵⁵ Enes Crljenković,⁵⁶ K016,⁵⁷ K015,⁵⁸ Esad Islamović,⁵⁹ Edin Ganić,⁶⁰ Suad Halvadžić,⁶¹ braća Ališić (Jasmin, Armin Edin i Feha,⁶² K010,⁶³ K013,⁶⁴ Šaban Elezović,⁶⁵ K05,⁶⁶ Suad Bajrić⁶⁷ i Zijad Krivdić.⁶⁸
22. Konkretno, postoje dokazi da su se premlaćivanja dešavala u vrijeme kada je Dušan Fuštar bio na dužnosti i da je on znao za neka od tih premlaćivanja. Neki zatočenici bili su premlaćeni u njegovoj neposrednoj ili bliskoj prisutnosti. On nije intervenisao i time što nije intervenisao

⁵⁰ Vidi odjeljke 4 do 10.

⁵¹ Svjedočenje svjedoka K05, K044, K016, K013, K043.

⁵² Svjedočenje svjedoka K044, K09.

⁵³ Svjedočenje svjedoka K044.

⁵⁴ Svjedočenje svjedoka K044, K016.

⁵⁵ Svjedočenje svjedoka K044, Enesa Crljenkovića, K07, K043, K08.

⁵⁶ Svjedočenje svjedoka K044, Enesa Crljenkovića, K07, K043, K08.

⁵⁷ Svjedočenje svjedoka K016.

⁵⁸ Svjedočenje svjedoka K015, K016.

⁵⁹ Svjedočenje svjedoka K013, K015, Ante Tomića, K09.

⁶⁰ Svjedočenje svjedoka Edina Ganića, K029, K013.

⁶¹ Svjedočenje svjedoka K029.

⁶² Svjedočenje svjedoka K029, Edina Ganića, K09.

⁶³ Svjedočenje svjedoka K010.

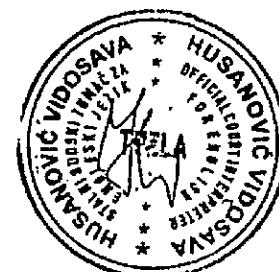
⁶⁴ Svjedočenje svjedoka K013, K029, K016, Edina Ganića.

⁶⁵ Svjedočenje svjedoka K08.

⁶⁶ Svjedočenje svjedoka K05.

⁶⁷ Svjedočenje svjedoka K05.

⁶⁸ Svjedočenje svjedoka K05.



pokazao je da je odobravao premlaćivanja. Konkretni dokazi koji se odnose na tri događaja koji su se desili u Fuštarovoj prisutnosti uvedeni su pred ovim Sudom i Fuštar ih je prihvatio:

- KO16 svjedočio je o događaju kada je ga je vojni policajac palicom udario po leđima, glavi i rukama, dok ga je drugi muškarac nogom udario u stomak. Dušan Fuštar je bio prisutan kod ovog događaja. Umjesto da preduzme mjere da premlaćivanje zaustavi, on je počinocima rekao da KO16 ne udaraju po glavi.
- U posebnom događaju KO10 je izjavio da ga je jedne noći prozvao stražar Kondić. U to vrijeme Dušan Fuštar je stajao na pisti, odnosno u neposrednoj blizini. KO10 je odveden u prostoriju br. 5 gdje je pretrpio surovo premlaćivanje od strane nekoliko lica, a među njima je bio i Kondić. KO10 je bio tako surovo premlaćen da nije mogao da hoda i po povratku u sobu nakon premlaćivanja izgubio je svijest. Dušan Fuštar nije intervenisao da zaustavi premlaćivanje.
- Osim toga, Enes Crljenković je svjedočio da su svakog od tri dana koja su prethodila „masakru u prostoriji br. 3“, zatočenici koji su bili držani u prostoriji br. 3 bili izvođeni napolje i prisiljeni da leže na pisti, što je trajalo čitav dan. Svaki dan zatočenike su tukli dok su bili na pisti. Dušan Fuštar je prisustvovao ovim premlaćivanjima. Iako on lično u njima nije učestvovao, nije ništa uradio da ih spriječi.

23. Takođe postoje dokazi da su se premlaćivanja dešavala u smjeni Dušana Fuštara, iako ne u njegovom neposrednom prisustvu. Uvedeni su konkretni dokazi za dva takva primjera u Fuštarovoj smjeni:

- Oko 05.07.1992. lica sa strane su došla u logor i prozvala KO16. KO16 je zadobio lom ruke, imao je slomljen nos, krvario je na usta, zadobio je posjekotine po cijelom tijelu, uključujući leđa i koljena;⁶⁹

⁶⁹ Svjedočenje svjedoka KO16.



- Jedne noći oko ponoći prozvan je i izveden zatočenik Ismet Kljajić i naređeno mu je da skinu svu odjeću. Kad je skinuo odjeću počinio su mu naredili da se valja po travi i da ovlaži svoje tijelo. Nakon toga počeli su da ga tuku policijskim i *baseball* palicama. Vidio ga je sljedećeg dana, glava mu je skroz otekla. Koža na leđima bila je sva razderana.⁷⁰

24. Kao dio ovog sporazuma o priznanju krivice, prihvata se da Dušan Fuštar nije lično tukao ili fizički zlostavljao zatočenike. Nadalje, nekoliko zatočenika je svjedočilo da nikad nisu vidjeli da Dušan Fuštar lično tuče ili zlostavlja zatočenike.⁷¹

Ubistva i pucanje

25. Isto tako, u periodu od sredine do kraja juna 1992. godine pa sve do zatvaranja logora 5. avgusta, zatočenike u logoru su premlaćivali stražari u sve tri smjene kao i posjetioci, među kojima su bili: Drago Tokmadžić,⁷² Jovo Radočaj,⁷³ Jasmin (zv. "Zvezdaš"),⁷⁴ Džemal Mešić,⁷⁵ Dževad Karabegović,⁷⁶ Besim Hergić,⁷⁷ i Fikret Avdić.⁷⁸
26. Osim toga, krajem jula i usred noći nakon masakra u prostoriji br. 3 prozvan je jedan broj zatočenika među kojima su bili Ismet Bajric, Behzad Behlić i čovjek po imenu Šolaja. To se desilo u Fuštarevoj smjeni. Dušan Fuštar je ušao u prostoriju i omogućio prozivku ovih zatočenika. Nedugo nakon što su prozvani neidentifikovana lica su ih ubila pucnjima iz vatrenog oružja u logoru blizu prostorije br. 3.⁷⁹

⁷⁰ Svjedočenje svjedoka K044

⁷¹ Svjedočenje svjedoka K029, K044, K016, Enesa Crljenkovića

⁷² Svjedočenje svjedoka 044, K016, K08, K09, K015, Ante Tomića; Edina Ganića.

⁷³ Svjedočenje svjedoka K016, K015, Ante Tomića, Edina Ganića, K09.

⁷⁴ Svjedočenje svjedoka K016, K043, K08, K09.

⁷⁵ Svjedočenje svjedoka K029, K010.

⁷⁶ Svjedočenje svjedoka K044, Ismeta Dizdarevića.

⁷⁷ Svjedočenje svjedoka K044, K010.

⁷⁸ Svjedočenje svjedoka K013, K043.

⁷⁹ Svjedočenje svjedoka K07, Enesa Crljenkovića



27. Imajući u vidu kvalitet i kvantitet dokaza koje je optužba izvela, optužba prihvata u svrhu ovog sporazuma o priznanju krivice da Dušan Fuštar nije lično ubio ove zatočenike i da nije znao kakva im je sudbina namijenjena prije nego što ih je prozvao.
28. Dušan Fuštar, međutim, prihvata da su ovi muškarci bili prozvani usred noći u atmosferi za koju je znao da je vrlo opasna i nasilna, posebno u svjetlu masakra od prethodne noći u prostoriji br. 3. U ovim okolnostima zatočenici su bili posebno ugroženi. Dušan Fuštar je to znao. Dužnost Dušana Fuštara bila je da zarobljenike zaštititi i da pokuša da spriječi takva samovoljna smaknuća, te da spriječi osobe koje su došle u logor da počine takva djela. Dušan Fuštar nije preduzeo adekvatne mjere da im pruži sigurnost i spriječi da im se naudi. Ova smaknuća su se takođe desila u okviru jačanja udruženog zločinačkog poduhvata u logoru⁸⁰ u kojem je Dušan Fuštar bio učesnik.
29. Kao dio ovoga sporazuma o priznanju krivice, prihvata se da Dušan Fuštar nije lično ubio nijednog zatočenika. Takođe se prihvata da nije bio lično ili direktno umiješan u masakr u prostoriji br. 3. koji se dogodio u Kolundžijinoj smjeni i u Fuštarovom odsustvu.

Poređenje s drugim vođama smjena

30. Za zatočenike je najbolja smjena bila smjena Dragana Kolundžije. Za ublažavanje užasnih uslova koji su vladali u logoru on je učinio znatno više od ostalih vođa smjena. On je više koristio svoja ovlaštenja kako bi spriječio stražare i posjetioce u logoru Keraterm da zlostavljaju zatočenike, kako bi zatočenicima dao više slobode kretanja izvan i između prostorija, kako bi zatočenicima omogućio češći pristup prostorijama s nužnicima, kako bi zatočenicima omogućio kontakte s članovima

⁸⁰ Vidi dole navedeno



porodice na glavnom ulazu (što je uključivalo i telefonske pozive i posjete članova porodice na glavnom ulazu). Bilo je manje prozivanja i premlaćivanja noću u Kolundžijinoj smjeni. Zatočenici su takođe mogli da na miru pojedu svoj obrok bez fizičkih ili psiholoških provokacija.⁸¹

31. Fuštarova smjena je po zatočenike bila posebno loša, naročito u poređenju s Kolundžijinom smjenom.⁸² Jedan broj svjedoka je svjedočio da se najveći broj prozivki i premlaćivanja događao u Fuštarovoj smjeni.⁸³ Zatočenici su imali manje vremena za jelo⁸⁴ i manje slobode kretanja u Fuštarovoj smjeni nego u drugim smjenama.⁸⁵
32. Međutim, prihvata se da je po zatočenike Došenova smjena bila isto tako izrazito loša jer je Predrag Banović, koji je bio jedan od najnasilnijih i najagresivnijih stražara⁸⁶, bio stražar u Došenovoj smjeni.⁸⁷ Međutim, Predrag Banović je u svim smjenama, uključujući i Fuštarovu, dolazio u logor i zlostavljao zatočenike⁸⁸.

Fuštarovo učešće u zločinačkom udruženom poduhvatu

33. Kao vođa smjene straže, Fuštar je bio na položaju od povjerenja u odnosu na zatočenike i njegova je dužnost bila da upotrijebi svoja ovlaštenja i uticaj kako bi zaštitio zatočenike. On je bio na položaju s dovoljno ovlaštenja i uticaja da spriječi ili zaustavi zlostavljanja u svojoj smjeni, bilo ličnom intervencijom, bilo traženjem pomoći od drugih, kao i izvještavanjem o zlostavljanjima koja su u logoru počinjena nad zatočenicima.

⁸¹ Osim masakra u prostoriji br. 3, koji se dogodio u Kolundžijinoj smjeni. Međutim, postoje dokazi da je Kolundžija pokušao da spriječi ili umanjí ubijanja tokom masakra u prostoriji br. 3: vidi svjedočenje svjedoka K08, K044, K013, K014 and K016.

⁸² Svjedočenje svjedoka K044, K016, K010, K029, K013

⁸³ Svjedočenje svjedoka K08, K044, K07 K010, K029, K013, K05

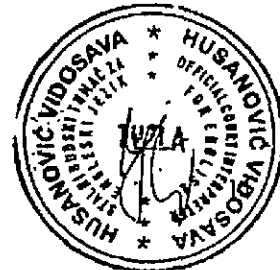
⁸⁴ Svjedočenje svjedoka K08

⁸⁵ Svjedočenje svjedoka K016, K010

⁸⁶ Svjedočenje svjedoka K08, K029, K044, Enes Crljenković

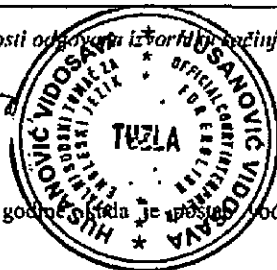
⁸⁷ Svjedočenje svjedoka K016, K029, K015: Indin Cehić, K09, K08

⁸⁸ Svjedočenje svjedoka K09, Indin Cehić, K029, K08.



34. Kao vođa smjene straže, Dušan Fuštar je imao mogućnost da zatočenicima učini dnevni život podnošljivijim i sigurnijim, kao i da poboljša uslove, iako se prihvata da Dušan Fuštar nije bio u položaju da iz temelja izmijeni osnovne uslove zatočenja u logoru, kao što je kvalitet i kvantitet hrane koje se davala zatočenicima, ili veličinu raspoloživog prostora za spavanje.
35. Dušan Fuštar je svjesno i namjerno doprinio jačanju ovog udruženog zločinačkog poduhvata u logoru Keraterm tokom perioda o kojem je riječ⁸⁹ svojim postupcima i propustima kako je opisano u navedenim prihvaćenim činjenicama, a naročito:
- Time što je i dalje bio vođa smjene iako je bio svjestan ovih zlostavljanja i nečovječnih uslova u logoru i
 - Propuštanjem da upotrijebi svoja ovlaštenja i uticaj kako bi zaštitio zatočeničke i poboljšao uslove dok je bio na dužnosti.
37. U svojstvu vođe smjene straže, Dušan Fuštar je imao određenu ulogu u držanju zatočenika u logoru. Na taj način on je učestvovao u nezakonitom zatočenju zatočenika u logoru Keraterm. Međutim, prihvata se da Dušan Fuštar nije učestvovao u hapšenju zatočenika zatvorenih u logoru Keraterm i da nije imao ovlaštenja da oslobodi bilo kojeg zatočenika.
38. Ovim Dušan Fuštar prihvata odgovornost za navedena krivična djela počinjena u logoru Keraterm tokom relevantnog perioda.

Potvrđujem da ovaj prijevod u potpunosti odgovara izvorniku počinjenom na engleskom jeziku.
 Sarajevo, 27. mart 2008. godine
Huseinović Vidosa
 Vidosa Husanović,
 Stalni sudski tumač za engleski jezik



⁸⁹ Od sredine do kraja juna 1992. godine, perioda je 1992. vođa smjene do zatvaranja logora dana 05.08.1992.

DODATAK B

RELEVANTNI ZAKON

ELEMENTI ZLOČINA

Član 172 Krivičnog zakona BiH

Relevantni dijelovi člana 172 Krivičnog zakona BiH propisuju sljedeće za krivično djelo zločin protiv čovječnosti - progon:

(1) *Ko, kao dio širokog ili sistematičnog napada usmjerenog protiv bilo kojeg civilnog stanovništva, znajući za takav napad, poćini bilo koje od sljedećih djela:*

[...]

h) Progon bilo koje grupe ljudi ili kolektiva na političkoj, rasnoj, nacionalnoj, etničkoj, kulturnoj, vjerskoj, spolnoj ili drugoj osnovi koja je univerzalno prihvaćena kao nedopustiva po međunarodnom pravu, u vezi s bilo kojim krivičnim djelom iz ovog stava ovog zakona, bilo kojim krivičnim djelom propisanim u ovom zakonu ili bilo kojim krivičnim djelom u nadležnosti Suda Bosne i Hercegovine;

[...]

(2) *Izrazi upotrijebljeni u stavu 1 ovog člana imaju sljedeće značenje:*

[...]

g) Progon znači namjerno i grubo uskraćivanje osnovnih prava, protivno međunarodnom pravu, zbog identiteta grupe ljudi ili kolektiva.

Elementi zločina progona

Zločin progona se sastoji od radnje ili nećinjenja kojim se u stvari provodi diskriminacija,¹ odnosno poćinilac je ciljao na žrtvu(e) zbog toga što su pripadnici neke grupe ljudi definisane na političkoj, rasnoj, nacionalnoj, etničkoj, kulturnoj, vjerskoj, spolnoj ili nekoj drugoj osnovi, što je nedopustivo u međunarodnom pravu. Nije obavezno da žrtva bude pripadnik grupe protiv koje je poćinilac namjeravao da provodi diskriminaciju.² To djelo ili progon mora,

¹ Vidi, na pr., Paunović, X-KR-05/16, Presuda pretresnog vijeća, 26. maj 2006., na str. 26; Kovaćević, X-KR-05/40, Presuda pretresnog vijeća, 3. novembar 2006.; Tužilac protiv Simića, IT-95-9-A, Presuda apelacionog vijeća, 28. novembar 2006., stav. 177; Tužilac protiv Kvaćke, IT-98-30/1-A, Presuda apelacionog vijeća, 28. februar 2005., stav 320.

² Vidi, na pr., Tužilac protiv Brđanina, IT-99-36-T, Presuda pretresnog vijeća, 1. septembar 2004., stav 993; Tužilac protiv Krnojelac, IT-97-25-A, Presuda apelacionog vijeća, 17. septembar

osim toga, sadržavati grubo uskraćivanje osnovnog ljudskog prava koje je utemeljeno u međunarodnom pravu.³ Nadalje, to djelo je moralo biti počinjeno u vezi sa bilo kojim krivičnim djelom iz člana 172 stav (1) Krivičnog zakona BiH, i krivičnim djelom iz Krivičnog zakona BiH ili bilo kojim krivičnim djelom koje spada u nadležnost Suda Bosne i Hercegovine.⁴

Počinitelj mora postupati sa određenom namjerom da provodi diskriminaciju po jednom od navedenih osnova.⁵ Uglavnom, učesnik u udruženom zločinačkom poduhvatu mora učestvovati u diskriminirajućoj namjeri za progonom.⁶

Djelo je nadalje moralo biti počinjeno kao dio rasprostranjenog ili sistematičnog napada usmjerenog protiv civilnog stanovništva, a počinitelj mora znati da je njegova radnja bila dio takvog napada ili je imao namjeru da to djelo bude dio tog napada.

Djela koja obuhvataju zločin progona

2003., stav 185; *Tužilac protiv Simića i dr.*, IT-95-9-T, Presuda pretresnog vijeća, 17. oktobar 2003., stav 49; *Tužilac protiv Stakića*, IT-97-24-T, Presuda pretresnog vijeća, 31. juli 2003., stav 734; *Tužilac protiv Naletilića i Martinovića*, IT-98-34-T, Presuda pretresnog vijeća, stav 636; *Tužilac protiv Kvočke*, IT-98-30/1-T, Presuda pretresnog vijeća, 2. novembar 2001., stav 195.

³ Vidi, na pr., *Paunović*, X-KR-05/16, Presuda pretresnog vijeća, 26. maj 2006., na str. 26; *Kovačević*, X-KR-05/40, Presuda pretresnog vijeća, 3. novembar 2006; *Tužilac protiv Simića*, IT-95-9-A, Presuda apelacionog vijeća, 28. novembar 2006., stav 177; *Tužilac protiv Kvočke*, IT-98-30/1-A, Presuda apelacionog vijeća, 28. februar 2005., stav 320.

⁴ Vidi, na pr., *Paunović*, X-KR-05/16, Presuda pretresnog vijeća, 26. maj 2006., na str. 2.

⁵ Vidi na pr., *Paunović*, X-KR-05/16, Presuda pretresnog vijeća, 26. maj 2006., na str. 26; *Kovačević*, X-KR-05/40, Presuda pretresnog vijeća, 3. novembar 2006.; *Tužilac protiv Stakića*, IT-97-24-A, Presuda apelacionog vijeća, 22. mart 2006., stav 328; *Tužilac protiv Kvočke*, IT-98-30/1-A, Presuda apelacionog vijeća, 28. februar 2005., stav 320; *Tužilac protiv Kordića i Čerkeza*, IT-95-14/2-A, Presuda apelacionog vijeća, 17. decembar 2004., stav 101; *Tužilac protiv Kvočke*, IT-98-30/1-T, Presuda pretresnog vijeća, 2. novembar 2001., stav 184.

⁶ Vidi na pr., *Tužilac protiv Kvočke*, IT-98-30/1-A, Presuda apelacionog vijeća, 28. februar 2005., stav 110; *Tužilac protiv Krnojelac*, IT-97-25-A, Presuda apelacionog vijeća, 17. septembar 2003., stav 51; *Tužilac protiv Krnojelac*, IT-97-25-T, Presuda pretresnog vijeća, 15. mart 2002., stav 487.

Sljedeća djela, kada su počinjena na osnovama diskriminacije i za koja su ispunjeni opšti elementi zločina protiv čovječnosti, predstavljaju progon:

- Ubistva (Ubojstvo).⁷
- Mučenje i nečovječno postupanje.⁸
- Zlostavljanje, ponižavanje i psihičko zlostavljanje.⁹
- Nezakonito zadržavanje (zatvaranje).¹⁰

VRSTA ODGOVORNOSTI – UDRUŽENI ZLOČINAČKI PODUHVAAT

Član 180 stav (1) i član 29 Krivičnog zakona BiH

Član 180 stav (1) propisuje:

Osoba koja planira, pokrene, naredi, učini ili podstrekava ili pomaže u planiranju, pripremanju ili učinjenju krivičnih djela iz člana [...] 172 (Zločin protiv čovječnosti) [...] ovog zakona, individualno je odgovorna za to krivično djelo. Službeni položaj bilo kojeg okruženog, bilo da se radi o šefu države ili vlade, ili o odgovornoj službenoj osobi vlade, ne oslobađa takvu osobu krivične odgovornosti niti utiče na ublažavanje kazne.

Član 29 propisuje:

Ako više osoba, učestvovanjem u učinjenju krivičnog djela ili preduzimajući što drugo čime se na odlučujući način doprinosi učinjenju krivičnog djela,

⁷ Vidi na pr., Paunović, X-KR-05/16, Presuda pretresnog vijeća, 26. maj 2006. na str. 2; Kovačević, X-KR-05/40, Presuda pretresnog vijeća, 3. novembar 2006.; Tužilac protiv Blagojevića i Jokića, IT-02-60-T, Presuda pretresnog vijeća, 17. januar 2005., stavovi 585, 603-604; Tužilac protiv Brdanina, IT-99-36-T, Presuda pretresnog vijeća, 1. septembar 2004., stavovi 999-101; Tužilac protiv Blaškića, IT-95-14-A, Presuda apelacionog vijeća, 29. juli 2004., stav 143; Tužilac protiv Sikirice i dr., IT-95-8-S, Zatvorska kazna, 13. novembar 2001., stavovi 18, 120-122; Tužilac protiv Kvočke, IT-98-30/1-T, Presuda pretresnog vijeća, 2. novembar 2001., stav 189.

⁸ Vidi, na pr., Paunović, X-KR-05/16, Presuda pretresnog vijeća, 26. maj 2006., na str. 2; Kovačević, X-KR-05/40, Presuda pretresnog vijeća, 3. novembar 2006.; Tužilac protiv Blagojevića i Jokića, IT-02-60-T, Presuda pretresnog vijeća, 17. januar 2005., stavovi 586, 605-610; Tužilac protiv Brdanina, IT-99-36-T, Presuda pretresnog vijeća, 1. septembar 2004., stavovi 1002-1013; Tužilac protiv Blaškić, IT-95-14-A, Presuda pretresnog vijeća, 29. juli 2004., stavovi 154-155; Tužilac protiv Sikirice i dr., IT-95-8-S, Zatvorska kazna, 13. novembar 2001., stavovi 18, 125; Tužilac protiv Kvočke, IT-98-30/1-T, Presuda pretresnog vijeća, 2. novembar 2001., stav 189.

⁹ Tužilac protiv Sikirice i dr., IT-95-8-S, Zatvorska kazna, 13. novembar 2001., stavovi 18, 126, 160; Tužilac protiv Kvočke, IT-98-30/1-T, Presuda pretresnog vijeća, 2. novembar 2001., stav 190.

¹⁰ Vidi na pr., Kovačević, X-KR-05/40, Presuda pretresnog vijeća, 3. novembar 2006.; Tužilac protiv Simića, IT-95-9-A, Presuda apelacionog vijeća, 28. novembar 2006., stav 116; Tužilac protiv Banovića, IT-02-65/1-S, Zatvorska kazna, 28. oktobar 2003., stav 22; Tužilac protiv Naletilića i Martinovića, IT-98-34-T, Presuda pretresnog vijeća, 31. mart 2003., stavovi 642, 652, 657.

zajednički učine krivično djelo, [oni] će se kazniti sa kaznom propisanom za to krivično djelo.

Logorski udruženi zločinački poduhvat

Udruženi zločinački poduhvat (UZP) može imati jedan od tri različita oblika. Kao prvo, svi učesnici mogu djelovati u skladu sa zajedničkim ciljem i imati istu namjeru da počine zločin. Ali jedan ili više njih zaista počine taj zločin.¹¹ Kao drugo, a ova situacija je blisko vezana za prvu, može postojati organizovani zločinački sistem, kao što je koncentracioni logor, u kojem su zatočenici sistematski zlostavljani.¹² Kao treće, može postojati zajednički projekat ili plan za primjenu određenog toka ponašanja, ali jedan od počinitelja počini djelo koje je, uprkos vanjskog zajedničkog cilja, ipak bilo prirodna i predvidiva posljedica ostvarivanja zajedničkog cilja.¹³

Uglavnom, mora postojati i zajednički plan, projekat ili cilj, koji vodi do ili uključuje počinjenje zločina.¹⁴ U slučaju druge kategorije UZP (odnosno logorskog UZP), nema potrebe ni za formalnim niti neformalnim dogovorom između učesnika o počinjenju zločina; već, sistem zlostavljanja predstavlja sam po sebi zajednički plan, projekat ili cilj.¹⁵ Na kraju, optuženi je morao učestvovati u zajedničkom planu.¹⁶ On ili ona nisu morali fizički počiniti zločin koji je cilj UZP, ili bilo koji drugi zločin,¹⁷ nego su jednostavno morali pomagati u, ili na neki

¹¹ *Vidi*, na pr., Presudu apelacionog vijeća u predmetu *Kvočka*, stav 82; Presuda apelacionog vijeća u predmetu *Tadić*, stavovi 97, 220.

¹² *Vidi*, na pr., Presuda apelacionog vijeća u predmetu *Kvočka*, stav 82; Presuda apelacionog vijeća u predmetu *Tadić*, stavovi 202-203, 220.

¹³ *Vidi*, na pr., Presuda apelacionog vijeća u predmetu *Kvočka*, stav 83; Presuda apelacionog vijeća u predmetu *Tadić*, stav 204; Presuda apelacionog vijeća u predmetu *Vasiljević*, stav 99.

¹⁴ *Vidi*, na pr., Presuda apelacionog vijeća u predmetu *Stakić*, stav 64; Presuda apelacionog vijeća u predmetu *Kvočka*, stav 81; Presuda apelacionog vijeća u predmetu *Tadić*, stav 227.

¹⁵ *Vidi*, na pr., Presuda apelacionog vijeća u predmetu *Kvočka*, stavovi 118-119, 183; Presuda apelacionog vijeća u predmetu *Krnjelac*, stav 97.

¹⁶ *Vidi*, na pr., Presuda apelacionog vijeća u predmetu *Stakić*, stav 64; Presuda apelacionog vijeća u predmetu *Vasiljević*, stav 100; Presuda apelacionog vijeća u predmetu *Tadić*, stav 227.

¹⁷ *Vidi*, na pr., Presuda apelacionog vijeća u predmetu *Stakić*, stav 64; Presuda apelacionog vijeća u predmetu *Kvočka*, stav 99.

drugi način doprinijeti, provođnju zajedničkog plana, projekta ili cilja.¹⁸ Djelo pomaganja može imati oblik nečinjenja.¹⁹ Optuženi mora imati lično znanje o zločinačkoj prirodi sistema zlostavljanja,²⁰ i mora imati namjeru da ostvaruje cilj tog sistema.²¹

Primjena udruženog zločinačkog poduhvata na Krivični zakon BiH

Teorija odgovornosti udruženog zločinačkog poduhvata (UZP) je trenutno obuhvaćena Članom 180 stav (1) i članom 29 Krivičnog zakona BiH. Sud BiH je nedavno osudio optužene *Mitra Raševića* i *Savu Todovića* za zločin protiv čovječnosti na osnovu UZP za njihovo učešće u osnivanju i provođenju sistema kažnjavanja i zlostavljanja zatočenika.²²

Apelaciono vijeće MKSJ je takođe došlo do zaključka da je "zakon Federalne Republike Jugoslavije koji je bio na snazi u to vrijeme propisivao krivičnu odgovornost za predvidiva djela drugih lica prema uslovima koji su veoma slični uslovima korištenim za definisanje UZP."²³ Kao što je Apelaciono vijeće konstatovalo, postojalo je "mnoštvo pravosudnih odluka, međunarodnih instrumenata i domaćih zakonskih odredbi koje bi dozvoljavale bilo kojem pojedincu da reguliše svoje ponašanje prema njima i opravdano ga opominjući da bi, ako dođe do kršenja standarda, isto moglo povući za sobom njegovu krivičnu odgovornost".²⁴

¹⁸ Vidi, na pr., Presuda apelacionog vijeća u predmetu *Stakić*, stav 64; Presuda apelacionog vijeća u predmetu *Vasiljević*, stav 100; Presuda apelacionog vijeća u predmetu *Tadić*, stav 227; Presuda pretresnog vijeća u predmetu *Brdanin*, stav 263.

¹⁹ Vidi, na pr., Presuda apelacionog vijeća u predmetu *Kvočka*, stav 187; Presuda pretresnog vijeća u predmetu *Krajišnik*, stav 885.

²⁰ Vidi, na pr., Presuda apelacionog vijeća u predmetu *Kvočka*, stav 198; Presuda pretresnog vijeća u predmetu *Limaj i dr.*, stav 511.

²¹ Vidi, na pr., Presuda apelacionog vijeća u predmetu *Stakić*, stav 65; Presuda apelacionog vijeća u predmetu *Kvočka*, stav 82; Presuda apelacionog vijeća u predmetu *Krnjelac*, stavovi 89, 96.

²² Presuda od 28. februara 2008. Vidi takođe *Nikola Andrun*, X-KR-05/42, Presuda, 14. decembar 2006.

²³ Tužilac protiv *Milutinovića i dr.*, IT-99-37-AR72, Odluka o prijedlogu Dragoljuba Ojdanića kojim se osporava nadležnost – Udruženi zločinački poduhvat, 21. maj 2003., stav 40.

²⁴ Odluka o UZP u predmetu *Milutinović*, *supra*, stav 41. Vidi takođe *Tužilac protiv Tadića*, IT-94-1-A, Presuda apelacionog vijeća, 15. juli 1999., stavovi 220-226; *Tužilac protiv Hadžihasanovića i dr.*, IT-01-47-AR72, Odluka o posebnoj žalbi kojom se osporava nadležnost u odnosu na komandnu odgovornost, 16. juli 2003., stav 34.

Bosna i Hercegovina



Босна и Херцеговина

Tužilaštvo-Tužiteljstvo Bosne i Hercegovine
Тужилаштво Босне и Херцеговине

Broj: KT-RZ-91/06
Sarajevo, 14.04.2008.

SUD BOSNE I HERCEGOVINE

Broj: X-KR/06/200

U krivičnom postupku broj KT-RZ 91/06 protiv Željka Mejakića i dr. i u skladu s članom 275. Zakona o krivičnom postupku BiH, Tužilaštvo Bosne i Hercegovine podnosi ovaj prijedlog

ZA IZMJENU OPTUŽNICE U ODNOSU NA TREĆEOPTUŽENOG

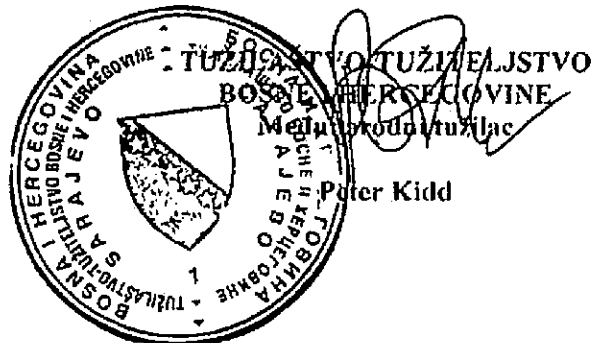
OBRAZLOŽENJE

Ovaj Prijedlog se podnosi u svrhu realizacije Sporazuma s trećeoptyženim kako bi se izjasnio da je KRIV u odnosu na prijedlog Izmijenjene optužnice u skladu s članom 231. ZKP BiH.

U prilogu je prijedlog Izmijenjene optužnice.

Ovaj Prijedlog treba razmatrati i o istome odlučiti zajedno sa Sporazumom o priznanju krivice i Prijedlogom za razdvajanje postupka protiv trećeoptyženog od postupka koji je u toku, a oba prijedloga su danas podnesena.

Prijedlog podliježe uslovima navedenim u Sporazumu o priznanju krivice.



BOSNA I HERCEGOVINA
 TUŽILAŠTVO – TUŽITELJSTVO BOSNE I HERCEGOVINE
 SARAJEVO
 Broj: KT-RZ-91/06
 Sarajevo, 27. mart 2008. godine

SUD BOSNE I HERCEGOVINE

Na osnovu člana 275. i člana 231. *Zakona o krivičnom postupku Bosne i Hercegovine* (ZKP BiH) podnosim ovu

IZMIJENJENU OPTUŽNICU

protiv:

Dušana Fuštara, sina Jovana i majke Zdravke, rođenog 29.6.1954. godine u Bačkom Dobrom Polju, opština Vrbas, Vojvodina, Republika Srbija, ranije živio u opštini Prijedor, Srbin po nacionalnosti, državljanin Republike Srbije, mehaničar po zanimanju, oženjen, otac 1 djeteta, nije osuđivan, protiv njega se ne vode drugi krivični postupci, odslužio vojsku, nema čina ni odlikovanja, nalazi se u pritvoru koji mu je prvo određen Rješenjem Suda BiH, broj X-KRN/06/200 od 10. maja 2006. godine, te nakon toga na osnovu rješenja ovog Suda o produženju pritvora.

Zbog toga što je:

U periodu od 30. aprila 1992. godine do kraja 1992. godine u vrijeme oružanog sukoba u Republici Bosni i Hercegovini, u kontekstu širokog i sistematičnog napada na bosanske Muslimane, bosanske Hrvate i ostalo nesrpsko civilno stanovništvo s područja opštine Prijedor, koji napad su izveli pripadnici vojske Republike Srpske, Teritorijalne odbrane, policije i paravojne formacije („Srpske snage“) te naoružani civili, izvršavajući plan trajnog preseljenja bosanskih Muslimana, bosanskih Hrvata i ostalih nesrpskih stanovnika sa područja planirane srpske države u Bosni i Hercegovini, u okviru tog plana nesrpski civili sa područja te opštine, među kojima posebno intelektualci, privrednici, političke vode, kao i imućniji građani, u periodu od 24. maja 1992. do 5. avgusta 1992. bili su sistematski zarobljavani i odvođeni i samovoljno zatvarani, između ostalog, u logor Keraterm, koji je bio formiran i koji je djelovao prema direktivama Kriznog štaba opštine Prijedor, optuženi učestvovao u progonu ovih zarobljenih nesrpskih civila na način što su:



- i. Zatočenici koji su držani u logoru Keraterm bili sistematski zlostavljani i proganjani putem raznih oblika fizičkog i mentalnog nasilja, odnosno, ubistava, mučenja, premlaćivanja, šikaniranja, ponižavanja i držanja u nehumanim uslovima zatočenja bez adekvatne ishrane, pitke vode i zdravstvene zaštite, te u nehumanim uslovima i prenatrpanim prostorijama.
- ii. U periodu od kraja juna 1992. do 5. avgusta 1992. godine ("relevantni period") optuženi je bio vođa jedne od tri smjene straže u logoru Keraterm te je imao dovoljno ovlaštenja i uticaja da spriječi ili zaustavi zlostavljanja u svojoj smjeni od strane stražara i posjetilaca i da poboljša svakodnevne uslove života zatočenika.
- iii. Vršeci ulogu vođe smjene i propustivši da primjeni svoja ovlaštenja i uticaj kako bi zaštitio zatočenike i popravio njihove svakodnevne uslove života dok je bio na dužnosti, optuženi je doprinio i pospješio sistem zlostavljanja i progona u relevantnom periodu.
- iii. Tokom relevantnog perioda zatočenike u logoru Keraterm ubijali su u svim smjenama stražari ili posjetioци pospješujući opisani sistem zlostavljanja i progona, a među ubijenima su: Drago Tokmadžić (smrt usljed premlaćivanja); Jovo Radočaj (smrt usljed premlaćivanja); Jasmin (zv. "Zvezdas") (smrt usljed premlaćivanja); Džemal Mešić (smrt usljed premlaćivanja); Dževad Karabegović (smrt usljed premlaćivanja); Besim Hergić (smrt usljed premlaćivanja); Fikret Avdić (smrt usljed premlaćivanja, te jedan broj zatočenika među kojima su Ismet Bajrić, Behzad Behlić i čovjek po imenu Šolaja, koji su bili prozvani i ubijeni pucnjima iz vatrenog oružja krajem jula 1992.
- iv. Tokom relevantnog perioda zatočenike u logoru Keraterm su premlaćivali ili na neki drugi način zlostavljali u svim smjenama stražari ili posjetioци pospješujući opisani sistem zlostavljanja i progona, a među zlostavljanim su: Zejro Čaušević, Meho Kapetanović, Katlak, Ismet Kljajić, jedan broj zatočenika s područja Brda po njihovom dolasku u julu, Enes Crljenković, K016, K015, Esad Islanović, Edin Ganić, Suad Halvadžić, braća Ališić (Jasmin, Armin Edin i Feha), K010, K013, Šaban Elezović, K05, Suad Bajrić, Zijad Krivić.
- v. U svojstvu vođe smjene optuženi je učestvovao u držanju zatvorenika u logoru i na taj način učestvovao u samovoljnom lišavanju slobode zatočenika za vrijeme relevantnog perioda.

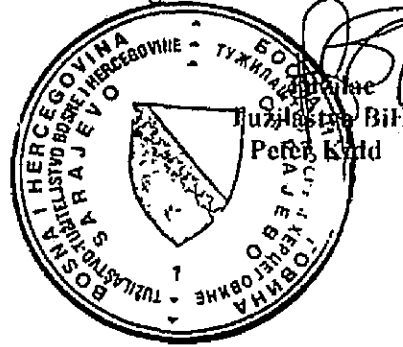
Dakle, kako je gore opisano, u sklopu širokog ili sistematičnog napada usmjerenog protiv civilnog stanovništva na širem području opštine Prijedor, znajući za takav napad i znajući da je učestvovao u istom, DUŠAN FUŠTAR je svojim činjenjem i nečinjenjem učestvovao u udruženom zločinačkom poduhvatu u logoru Keraterm tokom relevantnog perioda s ciljem zlostavljanja i progona Muslimana, Hrvata i ostalih lica ^{nesrpske} nacionalnosti zatočenih u logoru putem različitih oblika fizičkog i psihičkog nasilja.



stoga je odgovoran za sva gore navedena krivična djela počinjena u logoru Keraterm, a sva ta djela su počinjena u okviru udruženog zločinačkog poduhvata,

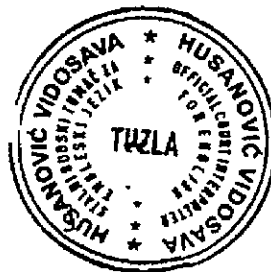
Čime je:

DUŠAN FUŠTAR počinio krivično djelo Zločin protiv čovječnosti iz člana 172. stav 1. tačka h) u vezi s članom 29. i 180. stav 1. Krivičnog zakona Bosne i Hercegovine.



Potvrđujem da ovaj prijevod u potpunosti odgovara izvorniku sačinjenom na engleskom jeziku.
Sarajevo, 27. mart 2008.. godine

Husanović Vidosa
Vidosava Husanović,
Stalni sudski tumač za engleski jezik



Bosna i Hercegovina



Босна и Херцеговина

Tužilaštvo-Tužiteljstvo Bosne i Hercegovine
Тужилаштво Босне и Херцеговине

Broj: KT-RZ-91 06
Sarajevo, 14.4.2008.

SUD BOSNE I HERCEGOVINE

Broj: X-KR/06/200

U krivičnom postupku broj KT-RZ 91/06 protiv Željka Mejakića i dr. i u skladu s članom 26. Zakona o krivičnom postupku BiH, Tužilaštvo Bosne i Hercegovine podnosi ovaj prijedlog

ZA RAZDVAJANJE POSTUPKA PROTIV TREĆEOPTUŽENOG

OBRAZLOŽENJE

Ovaj Prijedlog se podnosi u svrhu realizacije Sporazuma s trećeoptuženim kako bi se izjasnio da je KRIV u odnosu na prijedlog Izmijenjene optužnice u skladu s članom 231. ZKP BiH.

Ovaj Prijedlog treba razmatrati i o istome odlučiti zajedno sa Sporazumom o priznanju krivice i Prijedlogom za izmjenu optužnice protiv trećeoptuženog od postupka koji je u toku, a oba prijedloga su danas podnesena.

Prijedlog podliježe uslovima navedenim u Sporazumu o priznanju krivice



PODNEŠAK TUŽILAŠTVA O SMANJENJU PREDLOŽENE KAZNE

GENERALNO

Smatramo da je predložena kazna od 9 godina od javnog interesa.

Ista odražava relevantne faktore koje treba uzeti u obzir u skladu sa članovima 39 i 48, KZ, uključujući potrebu za izražavanjem društvene osude uloge koju je optuženi imao u provođenju strašnog sistema represije u logoru Keraterm, te potrebu da se utiče na druge da ubuduće ne čine takva krivična djela ako bi se ponovo ukazala takva prilika.

Prilikom prihvatanja smanjnja kazne, Tužilaštvo je uzelo u obzir posebno sljedeće faktore.

IZMIJENJENA OPTUŽNICA I ČINJENIČNA OSNOVA

Na osnovu izmijenjene optužnice i dogovorene činjenične osnove, povučeni su određeni otežavajući činjenični navodi kao što je neposredno i lično učešće u premlaćivanjima i ubistvima. To je učinjeno nakon pažljive procjene dokaza na kraju provođenja dokaza tužilaštva. Predložena kazna odražava ovaj umanjeni nivo krivice.

JEDNAKOST

Prihvatajući da predloži kaznu od 9 godina Tužilaštvo je uzelo u obzir kazne izrečene supočiniocima Dušana Fuštara u predmetu *Sikirica i dugi*. Fuštarovi supočinioci – vođe smjene su dobili 3 godine kazne zatvora (Kolundžija) i 5 godina kazne zatvora (Došen) pojedinačno. Fuštarov supočinilac – komandant logora (Sikirica) je dobio 15 godina kazne ztvora. Svi ovi ljudi su se izjasnili da su krivi na kraju provođenja dokaza tužilaštva. Predrag Banović, stražar, takode je

dobio 8 godina kazne zatvora zbog toga što je lično i neposredno ubio i premlaćivao veliki broj zatočenika.¹

Princip jednakosti u određivanju kazne potvrđuje da, između supočinilaca, ne bi trebalo da bude izražena različitost koja prouzrokuje opravdani osjećaj nepravde kod supočinioca koji dobije veću kaznu. Uzimajući u obzir sve neizbježne razlike u krivici i lične okolnosti, trebalo bi da postoji opravdana proporcija između kazni u cilju osiguranja jednake pravde. Ovo je međunarodno priznata norma o ljudskim pravima.²

Osudjuća presuda u predmetu *Sikirica i drugi* je osudjuća presuda Fuštarovih supočinilaca po istoj osnovnoj skupini činjenica u istom predmetu prije nego što je predmet ustupljen ovom Sudu prema Pravilu 11 bis, Pravila MKSJ. Tužilaštvo potvrđuje da pravda i pravičnost nalažu da ovaj Sud treba da uzme u obzir ove presudeprilikom utvrđivanja ili procjene da li predložena presuda ima odgovarajući domet.

Rekavši to, Tužilaštvo želi da istakne da ovaj Sud ni na koji način nije obavezan da se pridržava režima određivanja kazne MKSJ, ili njegovih opštih pravila. Državni sud BiH je Sud samostalnog suvereniteta, koji primjenjuje samostalnu sudksu nadležnost, u skladu sa vlastitim zakonima i praksama. Ustupak da se ukaže dužno poštovanje principu jednakosti u određivanju kazne supočiniocima u predmetu koji je ustupljen ovom Sudu na osnovu pravila 11 bis, ne treba shvatiti kao sugestiju da je ovaj Sud generalno obavezan da se pridržava politike i prakse određivanja kazne MKSJ.

¹ Ovu kaznu treba posmatrati u svjetlu sporazuma kojeg je Banović sklopio sa Uredom tužilaštva (OTP) za davanje iskaza za tužilaštvo. S obzirom na okolnosti, ova kazna daje samo malu uputu ovom sudu za određivanje kazne Fuštaru.

² Salvatore Zappala *Ljudska prava u međunarodnim krivičnim postupcima*, str. 217-8

IZJAŠNENJE DA JE KRIV

Prihvatajući da predloži kaznu od 9 godina Tužilaštvo je uzelo u obzir prednosti u izjašnjenju Dušana Fuštara da je kriv. Ovo treba smatrati za faktor koji bitno ublažava kaznu.

Isto pokazuje prihvatanje odgovornosti optuženog za te zločine posebno kada se isto poveže sa njegovom izjavom o pokajanju (vidi dalji tekst). To daje osjećaj zadovoljstva nekim žrtvama, kao i njihovim rođacima i prijateljima. On ima pravo na umanjenje kazne bez obzira na činjenicu da je izjašnjenje da je kriv dato poslije provođenja dokaza tužilaštva: vidi osuđujuću presudu u predmetu *Sikiricia i drugi* (Pretno vijeće) stav 150.

UŠTEDA SREDSTAVA I VREMENA

Pored ljudske vrijednosti izjašnjenja optuženog da je kriv, uštediće se sredstva i vrijeme Suda. Sredstva i vrijeme koji bi se inače utrošili na provođenje dokaza odbrane, vijećanja, pisanje prvostepene presude, te na podnošenje eventualne žalbe, mogli bi se sada prerasporediti. U interesu je javnosti da se sporazumi o izjašnjenju o krivici stimulišu kao sredstva za rješavanje ogromnog obima predmeta sa kojim se ova ustanova susreće.

IZJAVA O POKAJANJU

Prihvatajući da predloži kaznu od 9 godina Tužilaštvo je uzelo u obzir izjavu Dušana Fuštara o pokajanju. Ovo bi trebalo da ima pozitivan uticaj na neke od žrtava njegovih zločina a i na njihove sredine. Ako Sud prihvati ovu izjavu kao izjavu koja pokazuje stvarno i iskreno kajanje, to bi se onda trebalo smatrati kao olakšavajuća okolnost. Vidi *Kvočka i drugi* (Pretno vijeće) stav 175.

PODNEŠAK ODBRANE DUŠANA FUŠTARA

Shodno postignutom Sporazumu o priznanju krivnje u predmetu Suda Bosne i Hercegovine , protiv optuženog Dušana Fuštara, optuženi Dušan Fuštar daje slijedeću

IZJAVU O KAJANJU

Ja, Dušan Fuštar, svjesno i dobrovoljno prihvatajući Sporazum o priznanju krivnje koji je postignut između mene kao optuženog, mojih branioca advokata John R. Ostojića i Zlatka M. Knezevića sa jedne strane i tužioca Tuzilastva BiH Peter Kidd sa druge strane, dajem ovu izjavu o kajanju.

I

Izrazavam duboko i potpuno kajanje mojim učesćem u dešavanjima u logom Keraterm u Prijedoru u toku ljeta 1992. godine i mada smatram da nisam mogao ni na koji način promjeniti svoj raspored na mjesto strazara i vodje smjene u logoru, prihvatam i kajem se što nisam pokušao da odbijem raspored u logor bez obzira na eventualne posledice po mene .

II

Izrazavam moje duboko saučešće svim porodicama čiji su članovi ubijeni ili umrli nakon što su u logoru bili na bilo koji način mučeni i moli ih da mi oprostite moje učešće ili moje propuštanje da sprečim napade na njihove najblize.

III

Mada lično nisam nikoga ni udario ni na bilo koji način malteretirao , pritisak moje savjesti trazi da iskazem najdublje kajanje svima koji su na bilo koji način povredjeni zatvaranjem u logoru Keraterm, koji su prezivjeli bilo koji oblik psihičkog ili fizičkog zlostavljanja kao i njihovim porodicama za sve brige koje su prezivjele.

IV

Posebno me pogađa što su svi zatvoreni, maltretirani, mučeni ili ubijeni u logoru Keraterm bili moje komsije, ljudi također iz Prijedora odakle sam i ja i sa kojima sam prije izbijanja rata živio, saradjivao i družio se bez obzira na nacionalnu pripadnost, pa je time moje kajanje zbog svega što su oni prezivjeli ili zbog počinjenih ubistava nad njima još dubije i osjećam posebnu grizu savjesti zbog svega što se dešvalo njima i njihovim porodicama.

V

Iz svih ovih razloga želim posebno da naglasim da sam uvjeren da se nikada više ne treba nigdje u svijetu da ponove ovakvi događaji i ljudske patnje a pogotovo na području Bosne i Hercegovine i želim da ponovim da ću svojim primjerom i djelovanjem prema svima ulicati da se međusobno razumjevanje i mir u potpunosti očuvaju kao najveće vrijednosti.

VI

Na kraju, naglašavam da želim da istaknem da su svi u postupku koji se vodi prema meni a posebno Sud i Tuzilaštvo Bosne i Hercegovine imail izuzetno korektan i profesionalan odnos i želim da im se na tome i sada zahvalim u ovoj izjavi.