



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

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

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

March 2008

SUMMARY OF DEVELOPMENTS

OSCE note:

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

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

To summarize the events preceding this reporting period, on 22 April 2008, the Court sentenced Dušan Fuštar to nine years' imprisonment based on the Agreement to Enter a Plea of Guilty to the Proposed Amended Indictment of 27 March 2008. On 18 June 2008, the first-instance verdict became final and Fuštar began serving his sentence at the Penal-Correctional Facility in Foča on 25 July 2008.

Furthermore, the Court rendered its first-instance verdict in the Case against *Željko Mejakić, Momčilo Gruban, and Duško Knežević* on 30 May 2008 finding those defendants guilty on all counts of the indictment. It sentenced them respectively to 21 years' long-term, 11 years', and 31 years' long-term imprisonment. Duško Knežević's defence counsel appealed against the first-instance verdict on the basis of violations of the BiH Criminal Code, Criminal Procedure Code, and establishment of facts. The Defence Counsels of Momčilo Gruban and Željko Mejakić alleged violations of the BiH Criminal Code, Criminal Procedure Code, the establishment of facts, and issues related to the criminal sanction.

During this reporting period, on 16 February 2009, the Appellate Panel held a session to discuss the parties' appeals. As of the drafting of this report, no second-instance decision has been rendered.

Throughout these second-instance proceedings, the Defendants remain in custody by the Decision of the Trial Panel on 30 May 2008 on the basis of the risk of flight and threat to public security. As reported in the OSCE's Ninth Report in the Case against *Mitar Rašević* and *Savo Todović*, the Defendants were due to be released by 28 February 2009, pursuant to Article 138 of the BiH Criminal Procedure Code. This article stipulates that custody of a defendant after the pronouncement of the first-instance verdict may last only nine months prior to the pronouncement of any second-instance decision on appeals. If no second-instance decision is rendered in nine months, the defendants must be released from custody. If a second-instance decision revoking the first-instance verdict is issued, defendants may be kept in custody for up to one year from that decision.

On 12 February 2009, the Council of Ministers adopted amendments to Article 138, which would permit an appellate panel to extend custody for an additional six months pending the appeals decision, exceptionally, in complex cases and for important reasons. These amendments were entered into the parliamentary procedure. However, considering itself seized of the urgency of this matter in connection to the pending cases, the Office of the High Representative enacted the amendments on 20 February 2009.² Pursuant to these amendments, the Defendants remain in custody.

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

² Decision Enacting the Law on Amendments to the Criminal Procedure Code of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, Nos. 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, and 12/09).