



**Organization for Security and Co-operation in Europe  
OSCE Mission to Croatia**

**News in brief**

**24 July – 4 September 2007**

**Regional prosecutors agree to exchange ‘inventories’ of war crimes cases**

In early August, the Chief State Attorney published joint conclusions on further co-operation in the prosecution of war crimes reached during a July meeting in Croatia among prosecutors from Bosnia and Herzegovina, Croatia, Montenegro and Serbia. The conclusions focused on two inter-related aspects of co-operation: first, the need for increased co-operation between national prosecutors; second, the need for enhanced co-operation between national prosecutors and the ICTY Office of the Prosecutor (OTP), particularly in light of the increasing transfer of case information from the OTP to national jurisdictions as part of the ICTY’s Completion Strategy. The prosecutors also made recommendations about staffing and training needs, which are similar in each country. Finally, the national prosecutors agreed to meet again together with the OTP in autumn 2007.

The national prosecutors from the respective countries concurred that their direct cooperation in the prosecution of war crimes was proceeding well, aided by agreements that assisted in the exchange of information. They noted, however, that additional forms of inter-state co-operation were needed, in particular access to documentation and information, including archives, from other State bodies in each country.

Each State Prosecutor committed to compiling an ‘inventory’ of war crimes cases according to agreed criteria developed in consultation with the OTP, which would then be exchanged. These inventories should assist prosecutors in avoiding the current situation in which multiple States may investigate or try the same individuals for the same crimes. The inventories should further aid the prosecutors in determining which State would be in the best position to prosecute a particular case, given legal barriers to other forms of cooperation such as extradition and transfer of proceedings. The inventories should also assist the OTP in handing over information to national prosecutors in ‘Category II’ and ‘Category III’ cases.

Recognizing an increased need by the national prosecutors for OTP assistance, including direct access to its legal staff and investigators as well as the OTP database, the ICTY Chief Prosecutor agreed to enhance OTP’s support via its Transition Team.

**Gotovina requests that ICTY allow him to await trial at home in Croatia**

In early August, Ante Gotovina requested that the ICTY Trial Chamber allow him to return to Croatia, pending the commencement of his joint trial with Ivan Cermak and Mladen Markac. The ICTY Office of the Prosecutor (OTP) has opposed Gotovina’s request.

Although originally scheduled to start in May 2007, the trial has been postponed due to the disqualification for conflict of interest of one of Markac's attorneys and both of Cermak's. No new trial date has yet been set, although Markac retained new counsel in late August and Cermak is obliged to do so by late September. Cermak and Markac are both on provisional release in Croatia, having voluntarily surrendered to the ICTY.

Gotovina argued that his release was warranted due to the trial delay and to equalize his position with that of his co-accused as well as Milan Milutinovic, the former President of Serbia, who was granted provisional release based on guarantees provided to the ICTY by Serbia. Acknowledging that he had been a fugitive for four years after the ICTY issued its indictment, Gotovina proposed that he be confined to his home on the Dalmatian Coast and monitored electronically.

Gotovina relies primarily on the Government's guarantee that it would undertake all measures, including 'extraordinary efforts' to ensure that he would appear for trial and not pose a threat to any victim or witness. Although not specified in the Government's affidavit, Gotovina states that the Government has agreed to implement electronic monitoring if the Trial Chamber were to grant his request. While the Government has provided similar guarantees for nine other Croatian and Bosnian Croat ICTY indictees who voluntarily surrendered, including Gotovina's co-defendants, this is the first time the Government has provided such assurances for an indictee who was detained by force while a fugitive. While prior Government guarantees were provided by the Minister of Justice, on this occasion Prime Minister Ivo Sanader signed the Government's guarantees on behalf of Gotovina.

The OTP argued that the guarantees are insufficient given Gotovina's history as a fugitive from both the ICTY and the French authorities. Arguing that Gotovina is a flight risk, the OTP noted that Gotovina has used false identities and forged documents in the past to evade arrest and trial. It also relied on a Croatian report indicating Gotovina benefited from ample finances and a support network including former military personnel in Croatia and abroad.

Gotovina refuted the OTP's allegations about his criminal record in France, alleging that the charges were false and politically motivated.

Supporting its contention that the Government could not guarantee Gotovina's appearance before the ICTY, the OTP noted the Government's previous failure to apprehend him for more than four years. The OTP dismissed guarantees given by the Catholic Archbishop of Zadar, within whose jurisdiction Gotovina's hometown is situated, arguing that he would have no means to enforce his guarantee that Gotovina would obey Tribunal orders. The OTP further argued that the Government has provided no specifics about how home confinement with electronic monitoring would work in practice and as such could not guarantee that Gotovina would remain accessible to the Tribunal. Finally, OTP argued that the length of Gotovina's pre-trial detention complies with international fair trial standards.

Gotovina's request has been covered widely in the Croatian media. The heads of most major political parties have made statements opining about Gotovina's innocence in advance of the upcoming Parliamentary elections.

### **ECHR and Croatian judiciary continue to address occupancy/tenancy rights**

Questions related to the legal status of occupancy/tenancy rights (OTR) flats continue to be addressed in individual cases by both the European Court of Human Rights (ECHR) as well as the Croatian judiciary.

In July, the ECHR determined in *Raseta v. Croatia* that the son of an OTR holder could not inherit his mother's right to purchase/privatize an OTR flat. Holding that Croatian law defined the right to purchase an OTR flat as a personal and non-transferable right, the ECHR found that the death of Mrs. Raseta prior to finalization of the privatization process meant her son had no legitimate expectation to purchase the flat and hence no property interest. Thus, Croatia did not violate the son's right to property when it denied his request to continue the privatization process after his mother's death, even though the privatization process was not complete due to extended proceedings before the national courts. The ECHR's decision is consistent with prior decisions by the Constitutional Court.

As indicated by the ECHR, Mr. Raseta's mother used various legal remedies over a period of four to five years. In 1994, she requested that the owner of her OTR flat, Croatian Post and Telecommunications, conclude a contract of sale. The owner refused although obligated to sell under the applicable law. The Karlovac Municipal Court twice recognized her right to purchase the apartment in judgments issued in 1995 and 1998. However, both were reversed by the Karlovac County Court, the first because the owner had failed to participate in the proceeding and the second because Mr. Raseta's mother had died in 1999. Seven years after the request to privatize was submitted, the local court determined that the son was ineligible to continue the privatization lawsuit.

As demonstrated by a recent decision of the Zagreb Municipal Court, the Croatian judiciary has continued to terminate OTR rights after the September 2005 deadline for former OTR holders to apply for housing care. This has resulted in a gap where persons recently determined by a court to have had their OTR terminated no longer have the opportunity to request housing from the Government. In addition, these people cannot benefit from a moratorium on evictions for those whose housing care applications are pending. Such cases include families who continue to reside in their OTR flats and who now face eviction. One such example is the Sedlar family, which applied to purchase their OTR apartment in 1993. Their request remained unanswered by the owner, the Ministry of the Interior. Instead, the Ministry initiated a lawsuit to terminate their OTR, which was finally granted in mid 2006. The court has ordered that the Sedlar family be evicted in September 2007.

### **New Law on Foreigners provides favourable conditions for returnees**

On 13 July, Parliament adopted a new Law on Foreigners regulating the entrance, movement and stay of foreigners in Croatia and specifying the terms and conditions for obtaining Croatian citizenship. The new Law will enter in force on 1 January 2008.

In line with firm recommendations by the Mission and other international partners, the Law has established favourable conditions for returnees who had been unable to regulate their status under previous legislation regulating foreigners. All proceedings currently pending will be completed in accordance with the new Law, and applications previously rejected can be re-submitted under current legislation.

The Law now provides returnees and other vulnerable groups, such as victims of trafficking, exemption on humanitarian grounds from certain conditions necessary for acquiring temporary residence, including proof of means of subsistence, health insurance and accommodation. The new Law also allows refugees with temporary residence in Croatia who return permanently as part of the *Return and Housing Care Programme for Refugees and Internally Displaced Persons* to acquire permanent residence, providing they fulfill the technical preconditions. However, they are exempt from the linguistic preconditions, proof of means of subsistence and five-year uninterrupted stay in Croatia applicable to other foreigners not resident in Croatia prior to 8 October 1991. A more lenient definition of ‘an uninterrupted stay of five years’ will be applied to all foreigners wishing to obtain permanent residence, allowing for temporary movement in and out of the country.

### **National TV networks call for amendments to campaign coverage legislation**

On 19 August, the public broadcaster Croatian Radio and Television (HRT) and two commercial television networks, NOVA TV and RTL, petitioned Parliament Speaker Vladimir Šeks to abolish the legal requirement that national television networks provide all parties and slates with equal coverage during the electoral campaign.

Current legislation stipulates that national networks must allocate each political party, coalition, independent slate and candidate on a national minority slate equal broadcast time in the pre-election period. Commercial networks must allocate 15 minutes to each party/slate while HRT must allocate 45 minutes. With over 100 registered political options in Croatia, news editors complain that the networks are flooded with party political broadcasts and subsequently the programming and ratings are adversely affected. In addition, no penalties for violating this legislation currently exist, giving commercial networks an unfair advantage over the HRT, which must follow the guidelines, if the commercial channels choose to ignore the regulations.

The Media Council of the Croatian Helsinki Committee for Human Rights (HHO) agree with the three national networks, citing international media experts who recommend equal media coverage in the first cycle of democratic elections in transition countries, followed by representation according to the size of a party or candidate’s electoral body in consolidated democracies. While the majority of parliamentary parties support the proposal so as to improve campaign coverage, they recall that under the Croatian Constitution legislation governing elections cannot be amended within a time period of one year prior to elections. The Parliamentary Committee on the Constitution, Standing Orders and Political System is due to discuss the proposal in early September.