



Organization for Security and Co-operation in Europe

OSCE Mission to Croatia

News in brief

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Inauguration of President Mesic for his second term

On 18 February, President Stipe Mesic took the presidential oath before Constitutional Court President Petar Klaric, and formally began his second five-year mandate.

In his inaugural address, he declared that the citizens of Croatia had shown that they share his vision of “Croatia as a democratic, civilized and progressive state, based on the rule of law and tolerance, a state where nobody will be discriminated against and where everyone will have equal rights.”

Regarding neighbouring countries, the President recalled that he resolutely stood for the normalization of relations and urged that the remaining obstacles – “some on our side, some on yours” – be removed, because all the countries in the region share the goal of European integration.

President Mesic warned that the past should not be allowed to frustrate the path to the future, but the past should not be passed in silence. He called for “courage to face up to the truth, the truth about ourselves and then only about others.” He added that he would continue to advocate the right of all those who fled the country, or were forced to leave their homes, to return in peace and security.

The inauguration ceremony was attended by the Presidents of Albania, Bulgaria, Lithuania, Macedonia, Poland, Slovakia and Ukraine. Serbia and Montenegro was represented by three Presidents, Svetozar Marovic of the State Union, Boris Tadic of Serbia and Filip Vujanovic of Montenegro. Bosnia was represented by Bosnian Presidency Chairman Borislav Paravac and Presidency members Dragan Covic and Sulejman Tihic.

The Secretary-General of the Organisation for Security and Cooperation in Europe (OSCE), Jan Kubis, attended the ceremony.

Parliament confirms the Prime Minister’s nominees to lead three Ministries

On 17 February, the Parliament confirmed the appointment of Kolinda Grabar-Kitarovic as the new Minister of Foreign Affairs and European Integration, Damir Polancec as Deputy Prime Minister in charge of the Economy, and Neven Ljubicic as the new Health Minister.

The Ministry of Foreign Affairs and the Ministry of European Integration merged into the Ministry of Foreign Affairs and European Integration, following parliamentary approval.

The ruling Croatian Democratic Union (HDZ), its coalition partners and the Croatian Party of Rights voted for the Prime Minister’s nominees, while the other opposition parties abstained.

In her first public appearances, the Minister of Foreign Affairs and European Integration Grabar-Kitarovic concentrated on the issues of cooperation with the ICTY and the arrest of fugitive General Ante Gotovina, and the European Union's entry talks scheduled to commence 17 March.

Court-ordered compensation to illegal occupant may force Croatian Serb to sell repossessed house

Local courts continue to order owners to compensate temporary users, including illegal occupants, for investments in property that the users claim to have made, including those made for business purposes, while occupying the then State administered property and without the consent of the owner. This practice continues to be an impediment to refugee return and violates fundamental human rights standards.

The Pizzeria Sara case is a notable example. On 24 February, the Croatian Serb owner of this property in Korenica repossessed his house following a court-ordered eviction of the Croat illegal occupant, a settler from Istria (an area non-affected by the war), who had used the property rent-free as a successful pizzeria business for more than eight years. The eviction occurred after more than six years of administrative and judicial proceedings pursued by the house owner.

As recently as 1998 the owner requested repossession and in July 2000 the Municipal Court ordered the user to vacate the premises; that order was repeated in December 2001. In the meantime, the user's request for compensation moved rapidly through the local courts. The Korenica Municipal Court ordered that the user receive 30,000 euro from the owner to pay for investments made by the user after the Government gave her permission to use the house. This Court order was issued despite the fact that the owner has been legally prohibited from claiming off-setting amounts of rent over seven years.

On 17 February, the same Court postponed the court auction of the property originally scheduled for 24 February. However, the owner remains subject to the court's order obligating him to compensate the former occupant and might lose his house a second time.

Commenting for the media, the Head of Mission noted that such court practices should be stopped, observing that the case is about unfair and incomplete laws that are applied by biased courts which favour the interests of temporary occupants. He also stated that this case highlights the need for urgent change in legislation and court practice.

ICTY Chief Prosecutor requests referral of indictment against "Vukovar Three" to either Croatia or Serbia and Montenegro

On 9 February, the ICTY Chief Prosecutor filed a motion to the ICTY Trial Chamber requesting the transfer of the indictment against three former commanders of the Yugoslav People's Army Mile Mrksic, Miroslav Radic and Veselin Sljivancanin, the so-called "Vukovar Three," to either Croatia or Serbia and Montenegro for purposes of conducting the trial. The Prosecutor indicated that there are "evenly balanced" arguments for referring the case to Croatia where the crimes were committed, or to Serbia and Montenegro, where one of the accused was arrested and which has expressed its willingness to try all three.

The "Vukovar Three" were indicted on the basis of both direct and command responsibility for eight counts of crimes against humanity and violations of the laws or customs of war. The

crimes include persecution, extermination, murder, torture, inhumane acts, and cruel treatment. The crimes were allegedly committed as part of a joint criminal enterprise after the fall of Vukovar in November 1991 against more than 260 Croat and other non-Serb civilians who had sought refuge in the Vukovar hospital and were ultimately executed at the Ovcarica farm.

The Prosecutor's motion was submitted under Rule 11 *bis* that contemplates the transfer of an ICTY case to any domestic jurisdiction in which a fair trial can be conducted and where either the crime was committed, or the accused was arrested, or to any other jurisdiction willing and prepared to accept the case. In the motion, the Prosecutor argued that where one or more states have an interest in the same case, as here, Rule 11 *bis* can be interpreted as ranking the states in a "descending order of priority." Hence, the Prosecutor considered that "unless additional factors apply, a case should be referred to the authorities of the State where the crimes allegedly took place."

In support of its argument for transfer to Croatia, the Prosecutor noted that the crimes were committed in Croatia. Hence, transfer to Croatia would be justified given the priority in Rule 11 *bis* as well as the principle that justice in criminal matters should be rendered as closely as possible to the victims and to the place where the crimes were committed. The Prosecutor added that Croatian officials, including the Minister of Justice, the former Minister of Foreign Affairs, and the Chief State Prosecutor had expressed their willingness and readiness to try the case in the Zagreb County Court. These officials also assured the Prosecutor that all necessary legal and technical conditions would be provided for a fair trial in this case without any interference in the judicial process.

In support of her argument for transfer to Serbia and Montenegro, the Prosecutor noted that the authorities of Serbia and Montenegro are willing and adequately prepared to accept the present case and try all three accused. The Prosecutor also observed that the Republic of Serbia had established a special war crime court and prosecutor in Belgrade, and further noted that the ICTY Prosecutor has developed a good working relationship with the District Court of Belgrade in relation to war crime cases, in particular regarding the indictment of the direct perpetrators of the crimes alleged in the "Vukovar Three" indictment (a Serbian Court is currently trying the direct perpetrators). Finally, the Prosecutor argued that referral to Serbia and Montenegro would "support the principle of trying a coherent group of indictees, including the accused in the ongoing Belgrade trial and the three accused in the ICTY case in the same judicial forum."

The Prosecutor's motion has become a subject of public discussion between the governments and the judiciaries of Croatia and Serbia and Montenegro. "Given that this is the gravest crime committed in Croatia, we shall provide all necessary arguments for Croatia to get this case," Minister of Justice Vesna Skare-Ozbolt stated. Moreover, the Chief State Prosecutor said that Croatia is capable of conducting an objective and fair trial. According to media reports, he committed to personally represent the prosecution in the case. Croatian media carried statements of the President of Serbia, Boris Tadic that he would request that the trial be transferred to a court in Serbia as "any other solution would be destabilizing for the entire region."

ICTY hearing on the transfer of Norac/Ademi indictment to Croatia

On 17 February, the ICTY Trial Chamber conducted a day-long hearing on the Prosecutor's motion to transfer the ICTY indictment against Rahim Ademi and Mirko Norac to Croatia.. During the hearing, the Trial Chamber sought answers to questions about Croatian law and practice from representatives of the ICTY Prosecutor, the Government of Croatia, an *amicus curiae* from Croatia, as well as the defendant's attorneys.

The Trial Chamber requested responses to observations contained in the Mission's June 2004 report on war crime trials. In its response, the Government took issue with the Mission's reports as related to ethnic disparities in the number of proceedings, sentencing, delays in criminal procedure, lack of an impartial tribunal, and *in absentia* proceedings. The Mission report was presented to the public at a joint press conference of the Head of Mission and the Minister of Justice.

Counter-intelligence Agency (POA) allegedly wire-tapped Croatian journalists

The debate on how to reconcile the work of the secret services with an effective protection of fundamental human rights and journalistic freedom is once again in the spotlight, after the Parliamentary Committee for Internal Affairs and National Security started to look at the alleged wiretapping of five journalists by the Counter-intelligence Agency (POA) in 2003 and 2004. On 10 February, the Committee appointed a five-member team to investigate the allegations contained in a joint letter from five journalists dated 7 February.

The trigger of these developments was the printing in the 4 February edition of the weekly *Globus* of a report of the former head of POA, in which he accused the five journalists of colluding with foreign diplomats and institutions over the 'Gotovina case' with the purpose of spreading disinformation and giving Croatia a bad image through the media.

In late 2004, the Parliamentary Committee for Human Rights and the Rights of Minorities concluded that the constitutional rights of the journalist Helena Puljiz had been violated by POA, and requested that the rulebook of POA be harmonized with the Constitution and the law. Following this affair, the President and the Prime Minister dismissed the Head of POA who had been appointed in early 2004.

The Ombudsman challenges the constitutionality of the Government Order on Obligations in the Area of National Security

On 23 February, the Ombudsman submitted a request to the Constitutional Court for review of the constitutionality of the Government Order on Obligations in the Area of National Security for Legal and Physical Persons in Telecommunications, which allows the Counter-intelligence Agency (POA) to connect to phone company facilities in order to conduct wiretapping of conversations.

The Ombudsman argues in his request that the Law on Security Services explicitly establishes that the POA must obtain permission of the Supreme Court to conduct wiretapping. The Ombudsman further argues that when issuing the Order in question, the Government acted outside of its legal capacity, and hence in direct contravention of Article 112 of the Constitution, which states that the Government shall enact decrees to implement the laws as determined by the Constitution and law. The Ombudsman concludes that the Order violates the principle of rule of law and improperly infringes civil rights and freedoms protected by article 16 of the Constitution.