



Organization for Security and Co-operation in Europe

OSCE Office in Zagreb

News in brief

9 January – 22 January 2008

1. War crime indictee's re-election to Parliament strips judiciary of jurisdiction; Parliament substitutes its judgment on necessity of detention; crime scene demolished

The war crimes proceeding against Branimir Glavaš, newly re-elected Parliamentary deputy from the Croatian Democratic Alliance of Slavonija and Baranja (HDSSB) continues to present significant challenges to State institutions, including adherence to the separation of powers between the judicial and legislative branches. On 17 January, the Supreme Court confirmed that Glavaš' re-election restored his constitutionally guaranteed immunity from prosecution and detention, including for purposes of the ongoing trial in the 'Sellotape' and 'Garage' cases for the torture and murder of Serb civilians in 1991 in Osijek. The Supreme Court upheld the Zagreb County Court's conclusion that Glavaš re-gained immunity as of 11 January when the Parliament held its constitutive session. Hence he could not be prosecuted or detained without further consent by the Parliament. The lower court, which refused Glavaš' request to attend the constitutive session, decided within hours of Parliament's first meeting and ordered Glavaš released immediately. The Supreme Court implicitly determined that Parliament's waiver in 2006 of Glavaš' immunity for both prosecution and detention had no continuing value. In response to the State Attorney's request, the Parliament on 12 January again waived Glavaš' immunity from prosecution, but refused to lift immunity for detention, contending it was unnecessary and humanitarian considerations weighed in favour of allowing Glavaš to remain at liberty. Notably, only days before, the Supreme Court had confirmed the necessity of Glavaš' detention. The Parliament's decision to substitute its judgment for that of the judiciary on the propriety of Glavaš' detention was supported by all of the new Government coalition partners except the Serbian Democratic Independent Party (SDSS). The decision was criticized by the Parliamentary opposition, which argued that the decision on detention was outside Parliament's jurisdiction. After the Supreme Court's ruling, the President of the Supreme Court publicly stated that the Parliament should have shown deference to the judiciary, which was the only appropriate body to determine the necessity of detention. NGOs that criticized the Parliament's decision and called for the Constitutional Court to address the issue were in turn criticized by a local veteran's organization. On the other hand, in a recent poll conducted by the daily Jutarnji List, 66% of those polled approved of the Parliament's decision refusing to allow detention.

The trial was postponed in mid-January, apparently in anticipation of the decision to release Glavaš and further action by the Parliament. Prior to this break, several hearings were conducted in early January during which, although the prosecution case has yet to begin, the defence case continued. Several of the accused gave statements denying responsibility for any crimes, during which the name of a presumed protected witness was stated in open court. Three defendants alleged that their incriminating statements were invalid and resulted from police coercion. In the interim, the weekly Nacional published allegations of misconduct by the police official responsible for investigating the 'Garage' case, based on a clandestinely

taped conversation between the official and a relative of one of the accused, Gordana Getoš Magdić. News media also reported that the Presiding Judge received a threatening letter related to his role in the trial, while the President of the Supreme Court received an “insulting” email also related to the case.

Also during the recess, a crime scene relevant to the ‘Sellotape’ case, a house in Osijek in the basement of which Serb civilians were allegedly tortured, was demolished, potentially hampering any reconstruction of the crimes by the trial court. The Presiding Judge granted the State Attorney’s after-the-fact request to ban further demolition and construction. Through its spokesperson, the court suggested it believed there was nothing inappropriate about the demolition. The trial resumed on 21 January with Glavaš at liberty, subject to no conditions, while his co-accused remain in detention. The defence continued to lodge repeated and duplicate motions for release of the detained defendants as well as motions related to alleged improprieties by the prosecutors and national NGOs monitoring the trial. The court began hearing testimony related to the defence allegations that Getoš Magdić’s testimony against Glavaš was the result of police coercion. It remains unclear why these allegations were not addressed during the judicial investigation. Notably, the court took no action when defence lawyers in open court instructed defence witnesses how to testify about activities of the accused.

2. ICTY Trial of Gotovina, Markač and Čermak likely to start on 10 March

At a regular status conference on 18 January, the ICTY Trial Chamber indicated that the trial of Ante Gotovina, Mladen Markač and Ivan Čermak for war crimes against Serb civilians during and after Operation ‘Storm’ will start on 10 March. Both the Office of the Prosecutor and the Defence have been advised by the Presiding Judge that the time for presenting their cases will be significantly reduced. Subsequently, Markač withdrew his appeal of the late December decision ordering him back into ICTY detention after violation of the conditions of his provisional release.

On 17 January, the ICTY Appeals Chamber rejected Gotovina’s appeal of the Trial Chamber’s refusal to grant him provisional release pending trial. The Appeals Chamber concluded that the Trial Chamber reasonably concluded that given the specific circumstances of Gotovina’s prior history as a fugitive, the Government’s guarantees that he would appear for trial were insufficient. The Appeals Chamber also rejected Croatia’s request for review of the decision denying Gotovina’s request for provisional release, concluding that Croatia was not directly affected by the decision and had no cognizable legal interest.

3. Presidents highlights OSCE contributions during New Year Presidential address to Zagreb diplomatic corps

The address by the President of the Republic, Stjepan Mesić, at the traditional New Year reception for the diplomatic corps on 15 January kept a general approach to foreign policy without mentioning specific States or international organizations (except for a very short quoting of the EU, and of the Croatian election as a non-permanent member at the UN Security Council). However, the President did devote two large paragraphs to the former OSCE Mission. He said: “The closure of the Mission is certainly recognition of Croatia’s progress. However, there is still a lot to be done, and I welcome both observation and evaluation – because they help us. I am convinced that both those who advocated the closing of the Mission and those who pleaded for the continuation of its mandate are equally our friends”. He then continued, “let me thank the OSCE Mission for its activity carried out – let me stress this point in particular – in the interest of Croatia. I also note with pleasure that the OSCE will keep its Croatian Office, which will monitor war crime trials and progress in the

process of return of our citizens- refugees and displaced persons. We have nothing to hide, and we do not mind having foreign observers”.

4. Government Program address few Office mandate issues while HDZ-SDSS coalition agreement address them lengthily

On 11 January during the constitutive session of Parliament, the new Government presented a Program for its four year mandate, 2008-2011, and issued a 107-page document summarizing its plans and objectives in 28 fields. The Program essentially includes the coalition agreement between the Croatian Democratic Union (HDZ) and its largest coalition partners, the Croatian Peasants Party (HSS) and Croatian Social Liberal Party(HSLS). In addition to the Coalition Agreement, the HDZ also reached agreement with smaller coalition partners, including the Independent Serbian Democratic Party (SDSS), the Bosniak Croatian Party of Democratic Action (SDAH) as well as four agreements with individual national minority deputies. The Government Program has some references to issues included in the OSCE Office’s new mandate but considerably less than the Program of the previous Government four years ago. The agreement between the SDSS and HDZ (Agreement) does however address a number of mandate-related issues, as described briefly below.

The Agreement includes several items related to the prosecution of war crimes. These include activities – such as inter-state co-operation between national prosecutors and revision of the list of war crimes suspects – that are within the exclusive domain of the Chief State Attorney, a constitutional officer independent of the Government, selected by and reporting to the Parliament. Other issues are within the domain of the Ministry of Justice or other Government bodies, including enhancing witness protection and support, inter-state judicial co-operation. Most of the war crimes related issues are among the topics discussed by the Office in its periodic war crimes proceedings plenary with the Ministry of Justice, Chief State Attorney and representative of the Supreme Court. On this topic, the Agreement also encourages progress on the issue of missing persons, including enhanced inter-state co-operation as well as steps to ensure equal treatment of all civilian victims of war through the establishment of an inter-ministerial working group, including representatives of the Serb community.

The Agreement also addresses a number of issues followed by the prior Mission, including employment of national minorities in public service as part of the implementation of the Constitutional Law on the Rights of National Minorities. Following on recommendations from an OSCE-sponsored roundtable, the Agreement contemplates the establishment of a Department of National Minorities within the Central State Administration Office. It further contemplates adoption of an Anti-Discrimination Law and a national plan for combating discrimination as well as the adoption of a system of free legal aid in civil cases. Finally, the Agreement includes objectives of specific concern to the Serb community related to co-operation with neighboring states on issues related to the conflict and dissolution of the former Yugoslavia as well as Croatia’s overriding foreign policy goals of joining NATO and the European Union. In the field of Housing Care, the Program does not specifically refer to any of the issues covered by the mandate of the Office, nor the issues which had been followed by the former OSCE Mission. Primarily, it does not make any reference to the implementation of the housing care programmes, and doesn’t outline any governmental activities planned to ensure their successful and timely implementation, including co-operation with the Office. To some extent, the mandate issues are tackled by the SDSS-HDZ Agreement. The reconstruction of residential properties is noted in a more detail, including specific implementation plans and deadlines. The housing care issue is, however, mentioned only briefly, noting deadlines for the completion of the respective programmes. Concerning the programme outside the Areas of Special State Concern, the coalition agreement suggests that the deadline for implementation is to be extended until the end of 2010, one year later

then the Government presented to the OSCE and the international community last year. It offers no explanation, however, for such extension. Moreover, some specific issues pertaining to full implementation of these programmes remain unaddressed, notably the issues of possible buy-off of housing units, and the issue of second instance appeal mechanism against negative housing care decisions.

Some crucial issues deriving from the regional processes, including the so-called Sarajevo Declaration, are not featured in the document. While the need for “resolution of remaining open issues in relationship with the neighbours, such as: return of refugees, property rights and other ex-SFRY succession matters” is noted under the agreement’s chapter on cooperation with neighbours and foreign policy, no specific reference is made to the outstanding problem of the comprehensive solution for former OTR holders not willing to return to Croatia, or the issue of convalidation of working years between 1991 and 1995 in the areas under Serb control. It remains therefore unclear whether and in what manner have both coalition partners agreed to resolve these key issues, and what steps by the Government are to be expected in this context.

On a formal side, the coalition agreement bears some factual mistakes, in particular making a reference to the Governmental Action Plan for the implementation of reconstruction and housing care programmes as to reportedly having been presented to the OSCE Permanent Council in Vienna in December 2007.

5. Recognition by the Croatian Council of National Minorities

On 14 January, with the occasion of the closure of the Mission to Croatia and the launching of the Office in Zagreb, the President of the Council for National Minorities, Aleksandar Tolnauer, awarded three certificates of recognition to Ambassador Fuentes, former Deputy HoM, Ambassador Becker, and to Ms. Mary Wyckoff, head of war crimes monitoring in acknowledgment of their contributions to the advancement of the rights of national minorities in Croatia. It is the first time that the Council, in formal session, approved such certificates of recognition for representatives of an international organization.