



Organization for Security and Co-operation in Europe

OSCE Mission to Croatia

News in brief

14 – 27 November 2007

1. ‘Sellotape’ and ‘Garage’ war crimes trial starts with defense case; controversy about Glavaš’ ‘re-immunization’

In early December, the Zagreb County Court conducted a week of hearings in the war crimes trial of recently re-elected parliamentarian Branimir Glavaš and six co-accused for the 1991 torture of Serb civilians in the Eastern Slavonia city of Osijek. In accordance with the requests of all accused to present their defence prior to the prosecution’s case, the trial continued with the testimony of Glavaš and two other co-defendants. As the first witness in the trial, Glavaš testified over the course of three days dressed in the national costume of Eastern Slavonia. While acknowledging that unsolved killings of civilians had occurred in Osijek, Glavaš denied involvement in the crimes. He further stated that at the time he had informed the State leadership about the killings. Although testifying that he organized the defence of Osijek, he denied command responsibility for military or paramilitary units that committed crimes. He argued that the prosecution was politically motivated by the ruling Croatian Democratic Union (HDZ) due to the success of his break-away regional party, the Croatian Democratic Alliance of Slavonia and Baranja (HDSSB). He pointed to the former President of the Parliament, Vladimir Šeks, as the authority in Osijek at the time of the killings. He also sought to undermine the credibility of the crown witness against him as well as the police investigator in the case and a local journalist, Drago Hedl, who had written extensively about war crimes in Osijek. The Presiding Judge announced that Glavaš had begun a new hunger strike in early November. A second accused, Ivica Krnjak, also completed his defence, denying all charges. He denied that the ‘USKOK’ company, of which he was the commander, existed at the time of the killing of Serb civilians or that Glavaš had any involvement in its creation or functioning. A third accused, Gordana Getoš-Magdić, testified primarily in closed session.

In open court, Getoš-Magdić denied all wrong doing and that Glavaš and Krnjak had formed the ‘USKOK’ unit that killed Serb civilians. She stated that she did not want to testify in public about alleged brutality and coercion by the police during her initial detention and questioning, in particular as related to the presence of her minor daughter in the police station and her statement given to police investigators which implicates Glavaš. Getoš-Magdić’s allegations about police misconduct have been widely discussed in the public domain. In response to her formal complaint, the Ministry of the Interior rejected the allegations. Like the other six accused, Glavaš is detained during the trial by order of the Zagreb County Court due to the seriousness of the charges. A comment by the Presiding Judge in early December that he would soon re-consider his decision to detain Glavaš fueled media speculation about the impact of Glavaš’ recent re-election to the Parliament on his immunity from prosecution or court-ordered detention. Some commentators have observed that if Glavaš assumes a seat in the new Parliament, his Parliamentary immunity would be wholly revived, including in relation to the ‘Sellotape’

and ‘Garage’ cases. This argument would require a determination that Parliament’s four decisions to waive Glavaš’ immunity, which were a prerequisite for the initiation of criminal proceedings as well as his detention, are null and void due to its dissolution during the criminal proceeding. If this position prevails, the Parliament would become involved in directly supervising the court in the ongoing trial, determining anew whether the court could continue to detain Glavaš. Following this reasoning to its logical extent, Parliament could also make a new determination as to whether Glavaš could be prosecuted at all. These potential outcomes have significant implications for the independence of the judiciary and separation of powers.

2. ICTY rejects Gotovina's request for provisional release; Gotovina appeals and Government claims denial violates Croatia’s right to sovereign equality

In late November, the ICTY Trial Chamber rejected Ante Gotovina's request to be allowed to return to Croatia pending the commencement of trial, anticipated to begin in mid-2008. Gotovina has been detained in The Hague for two years, since his arrest in the Canary Islands. In contrast, the ICTY Appeals Chamber allowed his co-defendants, Mladen Markač and Ivan Čermak, who voluntarily surrendered in 2004, to return to Croatia in late 2004 based in part on Government guarantees. Also in late November, the ICTY granted provisional release during a break in the trial to the six accused in the Prlić et al. case, based on guarantees by the Government. The Trial Chamber found that Gotovina’s ability to evade arrest and failure to surrender created significant doubt whether he would return for trial if released to Croatia. While Gotovina pledged to return, which promise was supported by the Archbishop of Zadar, the Trial Chamber remained unconvinced that Gotovina had changed his attitude. To the contrary, the Trial Chamber found that Gotovina had “simply adapted to the situation [in which] he finds himself at present.” Because of the accused’s history as a fugitive, the Trial Chamber concluded that Croatia’s guarantee that Gotovina would appear for trial was insufficient, particularly given the security measures proposed by Gotovina, i.e., home confinement with electronic surveillance. The Trial Chamber found that these measures were of limited utility for preventing escape. In his appeal lodged in early December Gotovina argued that the Trial Chamber had erred in failing to consider the guarantee provided by the Archbishop of Zadar that Gotovina had “changed his attitude regarding his willingness to appear before the Tribunal.” Gotovina also argued that the Trial Chamber was wrong to base its decision on his past conduct rather than his current promise as supported by the Archbishop. He also contended that the ICTY Prosecution had produced no evidence that he had committed crimes and new Tribunal decisions were favorable to him, hence his incentive to flee was reduced. Finally, Gotovina argued that the Trial Chamber erred when it found the Government’s guarantee insufficient, given Croatia’s co-operation with the Tribunal and its election to the UN Security Council. Also in early December, the Government lodged a request for review signed by Deputy Prime Minister Jadranka Kosor, arguing that Croatia was directly affected by the denial of Gotovina’s request. The Government contended that the Trial Chamber violated Croatia’s right to sovereign equality under the UN Charter because it treated Croatia’s guarantee on behalf of Gotovina less favorably than the Tribunal had treated similar guarantees by Serbia in other cases. The Government argued that its guarantees were at least as credible as Serbia’s, if not more so, given its full co-operation with the Tribunal and its recent election to the UN Security Council. The Government contended that it is fully capable of ensuring Gotovina’s home detention and return to the Tribunal. The Government used

the same legal device - request for review as an affected State – as it did after its request to appear as *amicus curiae* in the Gotovina et al. case was rejected. On that occasion, the Appeals Chamber determined that Croatia was not entitled to seek review as it was not directly affected by the negative decision within the meaning of the ICTY's rules, nor was any legal right of the State affected.

3. War crimes proceedings in local courts: new indictment issued for 'Vukovar Three' acquittee; Russia rejects extradition request; protected witness refuses to testify; Riehl-Kir murder trial continues

In addition to high-profile war crimes proceedings such as the 'Sellotape' and 'Garage' case trial, the Mission continues to follow numerous often less well-known proceedings. Following considerable negative public reaction to the ICTY's acquittal of Miroslav Radić, one of the 'Vukovar Three', in late November, the Osijek County State Attorney issued a new indictment against Radić, charging him with five crimes related to the fall of Vukovar in 1991, in particular the murder of a Croat prisoner of war. The State Attorney requested that the indictment be merged with a 2002 indictment against Radić, the two other 'Vukovar Three,' Mile Mrksić and Veselin Šljivančanin as well as Veljko Kadijević, Goran Hadžić, Vojislav Šešelj as well as several others. Kadijević, the last Minister of Defense of the former Yugoslavia, is the subject of three indictments that have been joined in the Osijek County Court. Reportedly, Croatia has recently requested Kadijević's extradition from Russia, which apparently rejected Croatia's requests to extradite Milan Mandić and Dragan Arnaut, both convicted of war crimes in absentia, in 1994 by the Osijek County Court and 1997 by the Split County Court, respectively. Also in late November, the re-trial of Antun Gudelj for the war-time murder of the Osijek Police Chief and two local Serb officials continued in the Osijek County Court. Half of the witnesses scheduled for November hearings failed to appear to testify. Rejecting Gudelj's request to be released from detention, the Osijek County Court, relying on Supreme Court precedent, determined that release with bail was not an option for Gudelj since he is detained due to gravity of the charges. In early December, the Rijeka County Court postponed the start of the war crimes trial against Željko Šuput and Milan Panić for the fourth time since July 2007, as the case file had been sent to the Supreme Court for that court's consideration of the accused's appeal of their detention, which has continued for one year. The trial has been re-scheduled to start in January 2008. Šuput and Panić are charged with crimes committed against prisoners of war in Korenica's police station in 1991 and 1992. The trial has been marked by repeated delays. The trial was delayed in July, September, and October due to the lack of readiness and then the withdrawal or non-appearance of defence counsel. Also in early December, the Gospić County Court postponed the start of the war crimes trial against Nikola Cvijetičanin for the second time because a protected witness refused to testify. The trial was delayed in October because of technical problems with providing protection for this same witness. This marks the third trial of Cvijetičanin, whose 2002 conviction and 2004 acquittal were both reversed by the Supreme Court. The Gospić County Court has ordered that the protected witness be brought to the court by force in January 2008 for purposes of testifying.

4. Update on post-election negotiation about forming a new government

Negotiations between political parties continue on coalition agreements to assure the 77 seats needed for parliamentary majority. The President of the Republic, Stjepan Mesić, could be ready to bestow the mandate for forming a new Government this Saturday, 15

December. Prime Minister Sanader's party Croatian Democratic Union (HDZ) has the best chances to receive the President's mandate to form a Government following the support of the newly elected representative of Roma and other national minorities as well as the Pensioners' Party (HSU), which altogether gave him a total of 68 seats in the Sabor. HDZ continues negotiations with the Croatian Peasant and Social Liberal Parties (HSS-HSLS) to gain the support of eight additional parliamentarians. The implementation of a "Fishing and Environmental Protection Zone (ZERP)" by Croatia as of 1 January 2008 and the possibility of calling a referendum on NATO membership remain the crucial demands of the HSS-HSLS in order to form a coalition with the HDZ. The leader of the Social Democratic Party (SDP) Zoran Milanovic, on the other side, is discussing with seven national minority representatives that, for the time being, remain hesitant.

5. Implementation of the Government housing care commitments for outside the Areas of Special State Concern (ASSC)

The Mission in co-operation with the UNHCR assessed the current standing of the Government's commitment to provide accommodation to 400 former occupancy/tenancy right (OTR) holders outside the Areas of Special State Concern (ASSC) before the end of 2007, following the completion of the first round of field survey on programme's implementation of housing care programme inside the ASSC completed in October. The housing care commitments for 2007 (1.000 housing units inside and 400 outside the ASSC, respectively) were first agreed at the regular Government's Plenary meeting with the Zagreb based International Community in March, and confirmed later in writing in the Government's document on progress in the mandate-related issues of 8 November 2007. There, the physical provision of housing, referred to as "keys-in-hands" principle was accepted as a criterion according to which the accomplishment of the above benchmark would be measured/evaluated. It is expected that the commitment for outside the ASSC will be met administratively, while the physical allocation of all 400 flats will continue into 2008. The Ministry for Maritime Affairs, Tourism, Transport and Development/Directorate for Displaced Persons, Returnees and Refugees (the Ministry) admits that no more than 250 physical allocations will have been made before the end of the year. By this, not more than around 60 percent of the agreed commitment can be expected to be physically resolved this year. The Ministry is advancing well, however, in carrying out the process of purchasing the planned 400 flats on the private real estate market. The verification on the programme's implementation was conducted in the field based on the Ministry's statistical update of 31 October. The data indicated that 243 flats were purchased until that date and administrative consents were issued to 198 beneficiaries. Out of those, keys of flats were handed over to 103 beneficiary families. The verification confirmed the Ministry's data, establishing that keys were indeed handed over to 102 beneficiaries. All allocated flats have been found in good condition. It should also be noted that not all beneficiaries were found to live in the allocated flats permanently, possibly as a number of those are still in the phase of move. Field checks identified at least one case, marked as resolved, where a beneficiary is pending eviction procedure resulting from the termination of her OTR status concerning a flat owned by the Ministry of Defence. The beneficiary is in fact not provided with housing care. This issue would require further clarification and effort by the responsible Ministry as to the scope of the problem and the approach to its solution.

The Government has pledged to deal with the remaining number of housing care applications till the end of 2009, currently estimating that outside the ASSC, around 2,200 applicants will be found eligible for housing care out of 4.500 pending. The

Ministry intends to secure the vast majority of flats through purchase, rather than the earlier foreseen construction under the “Public-Private Partnership” model. This will inevitably increase the overall costs of the programme. A firm commitment should be made by the Government in this regard. For those applicants found not eligible for housing care, the Mission continues to strongly advocate for the introduction of a proper appellate procedure, both outside and inside the ASSC. The Mission is not aware at this moment of any negative decision actually issued by the Ministry, although several hundred housing care applications are expected to be processed negatively in the administrative procedure. At this point, there is no possibility for the unsuccessful housing care applicants to seek an effective remedy against the individual administrative act issued by the first instance body.

6. DHOM recognized by leading Croatian Human Rights Organization for defence and support of Human Rights in Croatia

Deputy Head of Mission Robert (Todd) Becker was awarded the “Mika Tripalo Award” by the Croatian Helsinki Committee (HHO) in the presence of the Prime Minister and a representative of the President of the Republic at the annual observance of Human Rights Day in Croatia on 8 December. DHOM Becker was cited for extraordinary work over seven years with the Mission in working throughout the country at all levels of government and society to promote human rights, build democratic institutions and improve legal structures supporting human rights. He is the first non-Croatian to be so recognized by the HHO. While Becker was cited for his individual work, he noted in turn that the award also reflected the work of the entire Mission as well as the continuing partnership with many government offices, NGO’s and dedicated Croatian citizens concerned with advancing human rights in Croatia.