



Organization for Security and Co-operation in Europe

OSCE Mission to Croatia

News in brief

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Croatia indicts Ademi and Norac, case transferred from ICTY under Rule 11 bis

Just before the New Year, the Zagreb State Attorney filed a 100-page indictment with the Zagreb County Court against retired Generals Rahim Ademi and Mirko Norac for war crimes committed against Serb civilians and prisoners of war during a 1993 military operation in the so-called “Medak Pocket” in south-western Croatia. The submission of the indictment follows the September 2005 decision by the ICTY Referral Bench transferring the ICTY indictment against Ademi and Norac to Croatia under Rule 11*bis* of the ICTY Rules of Procedure and Evidence pursuant to the “Completion Strategy.” During the intervening 14 months, the State, in consultation with the ICTY Prosecutor, has “translated” the ICTY indictment into an indictment under Croatian law, which included receipt of all supporting ICTY evidence and documents. Ademi/Norac is the sole ICTY indictment transferred to Croatia under Rule 11 *bis*. As of the beginning of the second week of January, the Court had not provided the indictment to the defendants’ attorneys. Upon receipt, the defendants have eight days to lodge objections.

In its indictment, the State asked the Court to detain Ademi and Norac for purposes of trial based on the gravity of crimes alleged. Ademi, originally indicted by the ICTY in 2001, has been at liberty in Croatia since 2002 after his voluntary surrender to the ICTY. Norac has served 6 years of a 12-year prison sentence handed down by the Rijeka County Court for unrelated war crimes committed in the Gospić area. The State’s request to detain Ademi has been criticized by an association of Croatian Army generals, contending that the State Attorney had not similarly sought the detention of “Chetniks” who had attacked Croatia. The detention of former members of the Croatian armed forces accused of war crimes recently attracted significant attention in relation to the judicial investigation of Parliamentarian Branimir Glavaš, released from detention as a result of a hunger strike.

In media interviews conducted since the submission, a representative of the Chief State Attorney has highlighted several differences between the Croatian and ICTY indictments, indicating that it was important for the Croatian public to understand that the State’s indictment was “less harsh.” He noted that for purposes of the indictment, the “Medak Pocket” operation was viewed as a legitimate military operation and that the State did not allege that crimes were committed as part of a “joint criminal enterprise.” He emphasized that the ICTY Chief Prosecutor had agreed that the Croatian indictment avoid any reference to “joint criminal enterprise.” Finally, the State Attorney noted that the Croatian indictment primarily accused Ademi and Norac on the basis of command responsibility of failing to prevent crimes by their subordinates, rather than planning or ordering such crimes. They are also accused of indiscriminate shelling of civilian targets. Norac’s defence attorney publicly criticized the statements by the State Attorney, contending that the State was trying to demonstrate to the public that it had “won a battle against the ICTY.” In response to news of

the indictment and request for detention, Ademi's family publicly expressed concern about the possibility of a fair trial in Croatia, indicating greater confidence in the ICTY. Notably, during the ICTY's consideration of transfer, neither Ademi nor Norac raised fair trial concerns.

ICTY Appeals Chamber affirms denial of Croatia's request to appear as "amicus curiae"

On 13 December, the ICTY Appeals Chamber upheld the Trial Chamber's earlier denial of Croatia's request to appear as "friend of the court" or *amicus curiae* in the upcoming trial against former Croatian Generals Ante Gotovina, Ivan Čermak, and Mladen Markač for crimes committed in Croatia during and after 'Operation Storm.' On the same day, the Appeals Chamber issued a similar decision with regard to Croatia's request to participate as *amicus curiae* in the ongoing trial of Jadranko Prlić and five other military and political leaders for war crimes committed in Bosnia and Herzegovina. In mid-October, the Trial Chamber rejected Croatia's requests in both cases, finding that the State's participation would not assist the Tribunal.

Finding that participation of *amicus curiae* lies within the discretion of the Tribunal, the Appeals Chamber determined that Croatia was not entitled to appeal the Trial Chamber's negative decision. The Appeals Chamber explained further that Croatia was not directly affected by the negative decision, since it did not affect any legal right of the State. The Appeals Chamber rejected Croatia's argument that the denial of Croatia's request implicated its right and that of top officials "to defend themselves from public branding for the most serious crimes."

Constitutional Court invalidates financial limitations on access to Supreme Court

In late December, the Constitutional Court ("Court") invalidated provisions of the Civil Procedure Code that restrict third instance review known as revision by the Supreme Court to cases in which more than 100,000 HRK (approximately €13,500) is in dispute. The Court acknowledged that its decision re-visited an issue, which as recently as 2004, it had rejected as not raising constitutional questions. In reaching its judgment, the Court went beyond the constitutional violations alleged by the complaints to find that the monetary limitation interfered with the Supreme Court's constitutional obligation to ensure uniform application of laws and equity of citizens. As a consequence of this limitation on access to the Supreme Court, litigants increasingly seek a remedy from the Court. As a result, the Court intended as a forum for the protection of rights guaranteed by the Constitution was increasingly called upon to ensure uniform application of the law. The Court invalidated the provisions as of 15 July 2008, explaining that this delay was intended to give Parliament time to take corrective action in response to its judgment.

Notably, the Court has previously pointed out to Parliament its concern about this limitation on access to the Supreme Court, together with the resultant negative impact on its own docket seen in an increasing caseload. In a report submitted in early 2005, the Court recommended that the Parliament amend the Civil Procedure Code so as to ensure that the Supreme Court has jurisdiction to review decisions from county courts that resolve the same legal question differently, thus permitting the Supreme Court to harmonize the practice of lower courts. To date, Parliament has taken no action in response to this recommendation by the Court.

ECHR finds Government programme for return of occupied property impermissibly interfered with right to property and provided no effective domestic remedies

On 21 December the European Court of Human Rights (ECHR) found in *Radanović v. Croatia* that a six-year delay in returning a privately owned flat allocated by the Government to third persons during the armed conflict violated the owner's right to peaceful enjoyment of possessions. The ECHR also determined that various administrative and judicial proceedings provided for by a succession of domestic laws and regulations did not constitute an effective remedy for the owner to regain possession.

The ECHR assumed, but did not decide, that the Government's allocation of Radanović's flat in 1995/96 was justified. It instead focused its inquiry on what happened after Radanović requested in September 1996 that the Government returns her flat, with the obligation being conditioned to the Government first providing other housing to the occupant. The ECHR acknowledged that Croatia "faced an exceptionally difficult task in having to balance the rights of owners against those of temporary occupants in the context of the return of refugees and displaced persons," both of which were often "socially vulnerable individuals." It noted however that while Croatia was entitled to a wide "margin of appreciation" in such circumstances, the financial and social burdens of providing housing must be fairly distributed rather than placed solely on a particular group or individual. Under the Government scheme, Radanović was forced to bear a burden, which the ECHR indicates should have been borne by the State, of providing housing for the occupant for more than six years from November 1997, when Croatia acceded to the Convention to late 2003. Prior to late 2002, the State provided no compensation; after late 2002, limited compensation was provided. Particularly in light of the absence of adequate compensation, the ECHR concluded that Croatia imposed a disproportionate burden on Radanović.

Moreover, the ECHR found that although starting in Fall 1996 Radanović utilized the available remedies - civil action and administrative - to regain her property, these proved ineffective in providing redress for the alleged violation. Notably, the Government was unable to return the property for more than six years given its legal obligation to provide alternative accommodation to the occupant (it had not been able to do it before December 2003).

The Court awarded €6.000 for pecuniary damage based on market value for lost rent for the period after Croatia's accession that Radanović was unable to regain her flat as well as €2,500 in non-pecuniary damages.

Croatian Parliament approves the "Law on Financing of Political Parties, Independent Lists and Candidates" taking into account some recommendations by the OSCE Mission while not considering two other major recommendations.

On Friday, 15 December 2006, during the last session of the year, the Croatian Parliament approved the "Law on the Financing of Political Parties" declining two major recommendations by the OSCE Mission and by other international organizations and NGOs:

- the need to address funding of electoral campaigns
- the lack of supervision by an independent institution.

Before the draft had been submitted to the Croatian Parliament, the OSCE Mission organized a roundtable with the presence of the Prime Minister and top-level Croatian dignitaries, to discuss it on 11 September 2006. A package with all relevant documents, conclusions, and

audio/visual recordings from the discussion, together with OSCE Mission's recommendations, was forwarded to relevant Croatian authorities, parliamentary committees, NGOs and political parties. As a result, some suggestions by the Mission and other international organizations, notably the EC Delegation, the Council of Europe (Venice Commission), ODIHR, GONG and Transparency International Croatia were incorporated, but not the ones mentioned above.

Transparency International Croatia and the leading Croatian NGO involved with the electoral process, "GONG", issued press releases noting that the approved Law does not regulate financing of electoral campaigns, nor does it provide for supervision by an independent body. GONG stressed that *"unless the issue of finance of electoral campaigns has been resolved, the transparency of the electoral process will be brought into question and the public will still not know who has financed electoral campaigns of political parties and independent candidates, and to what extent"*.

Members of Parliament who argued that these two issues should be addressed by the new law were explained in writing that these were not accepted because the *"financing of electoral campaign is one of the areas of financing of political parties, thus, although the financing of electoral campaign is not explicitly mentioned in the Law, provisions of this Law, in issues that are not stipulated otherwise by special Laws, pertain also to the financing of electoral campaign"* on the first issue, and because *"there should be confidence in the institutions of the system"*, on the second one.

Assessment

Even though the new "Law on Financing of Political Parties, Independent Lists and Candidates" does not take into account these two major issues, the OSCE Mission and other international organizations and NGOs still consider it to be a step in the right direction and an improvement over previous electoral legislation in Croatia, and that the Law, in general, corresponds to the standards of the Council of Europe in the field of financing of political parties.

It should be noted that many countries in Europe and other parts of the world do not comply with "Recommendation (2003)4 of the Council of Europe" on these mentioned issues, while others do not have electoral legislation governing the financing of electoral campaigns. Many of them do not have an independent supervisory body for financing of parties or electoral campaigns.

The OSCE Mission to Croatia and other international organizations and NGOs believe that for the specific case of Croatia that stricter regulation of electoral campaign financing and providing for an independent supervisory body to examine party and campaign financing would contribute considerably to building greater public trust in the electoral process, and would recommend that further consideration of these two items be given a high priority by the Government and Parliament.

Croatian authorities' attendance to Serb National Council Christmas reception

On 5 January, the Serb National Council (SNV) gave a reception for Orthodox Christmas. The attendance to this annual event by Croatian authorities has been progressively increasing over the years. This year registered a full presence of the top Croatian authorities. The content of some of the lectures was perceived, to some extent, as the beginning of the electoral campaign. Among those present were the Croatian Prime Minister Ivo Sanader, who never missed any of the previous receptions, Parliament Deputy Speaker Vesna Pusić on

behalf of Vladimir Šeks recovering from surgery, the Mayor of Zagreb, opposition SDP leader Ivica Račan, the Ambassadors of Serbia, Bosnia and Herzegovina, former Yugoslav Republic of Macedonia and Belgium, and representatives from all branches of Croatian life. President Stjepan Mesić could not attend, however his envoy Siniša Tatović read his special address for the event.

Extending his best wishes for the Christmas and New Year's holidays, SNV president Milorad Pupovac said that this year the SNV was marking the 10th anniversary of its foundation and of the start of return of Serb refugees to their pre-war homes in Croatia. He noted that this was the first time that representatives of Serb refugees were attending an SNV Christmas reception. Pupovac said that over the past ten years Serb returnees had been through great trials and tribulations, but that most of them had found peace and returned to their homes, which were or would be rebuilt. Pupovac underlined the importance of economic and social renewal and development of infrastructure in areas where refugees were returning to and the need for the removal of the consequences of the 1991-1995 war.

Prime Minister Ivo Sanader said that a high level of inter-ethnic tolerance and understanding had been achieved over the last three years, which he added was not easy after years of military aggression and destruction. Speaking of Croatia's path to the European Union, Sanader said that once Croatia joined the EU it would continue pushing for the admission of Serbia, Montenegro and Albania so that we can build peace and prosperity in Europe. It is to be highlighted that the Prime Minister went on to say that **“the issue of tenancy rights had been resolved and would not be reopened”**.

Questionable suspension of Croatian Radio and Television (HRT) journalists

The Croatian Radio and Television (HRT) Editor-in-Chief of the Current Affairs Section, Vladimir Rončević, on 10th December 2006 temporarily suspended two HRT journalists/editors, Danko Družijanić and Goran Rotim, because they broadcasted a report with citations of a contentious speech by President Stjepan Mesić glorifying the *Ustasha* regime in the prime-time evening news the day before. HRT explained its decision saying that the two journalists failed to co-operate with the Editor-in-Chief and other senior editors and did not inform the HRT management that such a report will be broadcasted. They also said that the report was made in an unprofessional way, with several technical errors. The decision was notified to the HRT management which agreed that several professional mistakes were made in the report, adding that the news was published out of context, its source and content were not properly checked, and the news did not have all necessary elements to be reliable. The Croatian Journalists' Association (HND) asked the HRT management to revoke the suspension of the journalists and demanded that the HRT Programme Council urgently discuss the case. After a very long and exhausting session, the Council concluded that the broadcasting of the above-mentioned report was legitimate and not in contradiction with the HRT's role as a public broadcaster. The Reporters without Borders (RSF) also condemned the suspension of the two HRT journalists. Their statement read: *“We are astonished to see that the Director General is prepared to use self-censorship in order to please the President. The independence of media, including the public media, is especially important in the run-up to the next parliamentary elections”*

According to HRT internal procedures, the HRT management passed the case to its Ethics Committee to give an opinion on the professional conduct of the two journalists. The Committee has concluded that they did not breach the HRT Code of Ethics under which information must be correct, true, objective, complete, and verified. *“Based on the*

Committee's opinion, the HRT Director General, Mirko Galić, decided that he would not initiate any procedure against the editors" HRT Spokesperson Janoš Roemer said.

The Mission also commented that the suspension of the two HRT editors was one example of problems of management of human resources at HRT mentioned by the Mission in earlier occasions. According to the Mission, the journalists only broadcasted a piece of information which had already been disclosed by another media and they only reported about its existence and that in accordance with the rules of the profession. The decision to temporarily suspend the journalists was then questionable and raised concern.

MISSION ACTIVITIES

Catholic and Orthodox Churches continue dialogue facilitated by OSCE Mission

Roman Catholic Archbishop of Zadar, Ivan Prendža, and the Orthodox Bishop of Dalmatia, Fotije, met on 18 December 2006 at the Monastery of Krka to continue the dialogue initiated last June on reconciliation between Serbs and Croats in Dalmatia. The meeting was facilitated by HOM Ambassador Jorge Fuentes, and attended by Development Ministry State Secretary Zdravko Livaković, Serb minority Parliamentarian Milorad Pupovac, and the Ambassadors of Serbia and BiH to Croatia.

The organization of joint religious seminars and meetings for people and priests of both confessions to discuss initiatives for the promotion of peaceful co-existence as well as the return and reintegration of refugees were mentioned.

In the course of the discussions, Archbishop Prendža mentioned the reconciliatory letter of Sofija Škorić from Biljane Donje addressing Škabrnja villagers. The dignitaries appreciated the initiative but recommended to wait for the true *momentum* to make it public. Instead, Prendža and Fotije agreed on a common prayer or religious service to which Pupovac requested to be invited.

In a meeting with FO Zadar, Archbishop Prendža re-iterated that the Church is an institution autonomous from politics and has its own ways to achieve reconciliation among people. Political and religious leaders, however, can at all levels complement their efforts in achieving the same objective.

Both religious leaders conveyed a message of peace to believers and announced the continuation of co-operation in the spirit of ecumenical movement.

Since Churches are the strongest instrument in the efforts of achieving reconciliation among Serbs and Croats, the highest ecclesiastical dignitaries in the Country may yield a stronger impact. This can also be concluded from Pupovac's request to be invited on behalf of the Serb community when Fotije and Prendža come together for a joint religious service aspiring to reconciliation.