



Organization for Security and Co-operation in Europe

OSCE Mission to Croatia

News in brief

31 October – 13 November 2007

‘Sellotape’ and ‘Garage’ war crimes trial begins and re-starts

On 15 October, the war crimes trial of independent parliamentarian Branimir Glavaš and six co-accused for the 1991 torture and murders of Serb civilians in the Eastern Slavonia city of Osijek began before a three-judge panel in the Zagreb County Court. The trial involves charges leveled in two indictments and is being jointly prosecuted by the Osijek and Zagreb County State Attorney. The ‘Sellotape’ indictment, so-named for the manner in which murder victims were restrained, charges Glavaš with issuing orders to the six other defendants – Ivica Krnjak, Gordana Getoš Magdic, Mirko Sivic, Dino Kontic, Tihomir Valentic, and Zdravko Dragic - that resulted in the murder of 10 Serb civilians and attempted murder of one. The ‘Garage’ indictment, so-labeled for the location of the crimes, charges Glavaš with both direct involvement in the murders of other Serb civilians as well as failing to prevent such crimes by his subordinates.

At the outset of the trial, Glavaš’ defense unsuccessfully sought the recusal of the Presiding Judge, citing his participation in war-time military court proceedings in which members of the Croatian National Guard were amnestied in relation to the murders of Serb civilians. After three hearings, the trial re-started on 5 November due to the replacement of the fourth alternate judge. The trial is being conducted in the same courtroom as the Ademi-Norac trial, hence hearings in the two cases alternate. The trial will continue in early December, with seven hearings scheduled before the end of the year. Glavaš’ co-accused have been detained for more than one year, while Glavaš has been in and out of detention, including repeated stays at medical facilities, owing to a hunger strike as well as multiple ailments. All are currently detained based on the severity of the crimes with which they have been charged.

The Presiding Judge granted requests of the prosecution and defense to hear nearly 250 witnesses. In particular, the Court granted the prosecution’s request to hear a ‘crown witness’ who in an earlier stage of the proceedings admitted to participation in crimes contained in the indictment. The identity of this witness was revealed before he could be put into the witness protection program. Although his testimony during the judicial investigation was released by Glavaš, the Presiding Judge determined that in accordance with applicable law his trial testimony would be closed to the public. The Court also granted the prosecution’s request to hear an ‘endangered’ witness who will testify under a pseudonym as well as an attempted murder survivor, who is also a party to the prosecution. During the trial, the court will consider challenges by at least one defendant to the legality of her detention, interrogation, and statements made while in police custody.

The trial has been affected in several ways by the upcoming Parliamentary elections. Several

days prior to trial, a video-tape of Glavaš, purportedly filmed while he was subject to detention in the Osijek hospital, was aired as part of the election campaign for the Slavonian regional party, for which Glavaš will head the parliamentary slate. Other similar videos appeared subsequently. In response, the Ministry of Justice fired the head of the Osijek prison. Campaign materials for another political party were distributed in the courthouse on the second day of trial, although bailiffs stopped the distribution upon the intervention of a NGO representative. Glavaš' attorneys have argued that the trial is being delayed until after the election for political reasons, repeatedly alleging that the trial is politically motivated by the ruling party.

ECHR finds fair trial violations by Supreme Court and Constitutional Court, substandard local prison conditions, and postpones extradition

In late October and early November, the European Court for Human Rights (ECHR) issued several judgments finding violations of the right to fair trial involving delays at the Constitutional Court and access to the Supreme Court. It also issued several decisions, finding that the Constitutional Court had awarded inadequate compensation for delays in the lower courts. The ECHR also issued another judgment related to sub-standard conditions in Croatia's prisons. In *Lesnina d.d. v. Croatia*, the ECHR found that a judicial proceeding, which lasted more than twelve years, violated the right to trial in a reasonable time. Specifically, an employment dispute, which under national law should be handled in an expedited manner, lasted nearly seven years after Croatia became subject to the ECHR's jurisdiction. The ECHR noted that the post-ratification delay mainly occurred at the Constitutional Court, where the case was pending for nearly four years.

In *Biondic v. Croatia*, the ECHR found a violation of another aspect of the right to fair trial, namely access to court. The ECHR found that the lower courts in an inheritance proceeding had issued judgments in contradiction of established Supreme Court case law. Nevertheless, the Supreme Court refused to review Mrs. Biondic's complaint because her husband's estate was insufficiently valuable to satisfy the rules for exercise of its 'revision' jurisdiction. The Constitutional Court also rejected Mrs. Biondic's complaint. The ECHR found that although "the domestic courts with supervisory power, namely the Supreme Court and the Constitutional Court, allowed that decision to exist ... it is obvious that the interpretation of [the lower courts] was in contravention of the Supreme Court's practice." The ECHR went on to note that Croatian law allows any person who obtains a positive ECHR judgment to request re-opening of the national proceedings based on that judgment.

Likely in anticipation of the ECHR judgment in *Biondic*, in December 2006 the Constitutional Court invalidated the legal provisions that restrict the Supreme Court's 'revision' jurisdiction to cases in which the amount in dispute exceeds 100,000 HRK (approximately €13,500). The Constitutional Court allowed the Parliament one and one-half years, until 15 July 2008, to amend the law. However, no amendments have been adopted to date.

In *Štitić v. Croatia*, the ECHR found that the conditions of Mr. Štitić's imprisonment in the Gospić prison amounted to degrading treatment. Key to the ECHR's judgment was its finding that although there was no apparent intention by State authorities to humiliate him; Mr. Štitić was confined to a damp cell with another inmate with no access to natural light for approximately twenty hours per day. Moreover, the ECHR found that Mr. Štitić lacked any effective remedy through which to contest the conditions of his detention,

since when he complained in accordance with Croatian law to the Gospić County Court, that court expressly declined jurisdiction.

In early November, the ECHR temporarily enjoined Austria's extradition to Croatia of Vladimir Zagorec, a former Croatian Ministry of Defense official, until such time as it assessed Zagorec's claims that he could not receive a fair trial in Croatia. Croatia has requested that Austria extradite Zagorec, who is suspected of embezzlement related to wartime procurement of arms.

Progress in implementation of the Government housing care commitments

The current stage of implementation of the Housing Care Programmes within and outside the Areas of Special State Concern (ASSC) indicates that the responsible Ministry for Maritime Affairs, Tourism, Transport and Development/Directorate for Displaced Persons, Returnees and Refugees (the Ministry) will administratively have completed their commitment to allocate 1,400 housing units fully before the end of 2007. The physical allocation of these housing units will, however, continue well into 2008.

According to the Ministry data as of the mid November, 550 beneficiaries had moved into apartments by that date (the "keys-in-hands" principle) within the ASSC. This is just slightly more than a half of the 1,000 cases committed for allocation within the ASSC in 2007, with only six weeks remaining till the end of the year. Concerning the areas outside the ASSC, just around 100 beneficiaries have moved in so far, amounting to only one fourth of the planned figure of 400 allocations there in 2007.

Outside the ASSC, the Ministry has advanced well in securing the committed housing units by purchasing 243 apartments as mid November. The process is on a good track to reach the planned 400 apartments before the end of 2007. The Ministry admits, however, that no more than 250 physical allocations will have been made before the end of the year. Inside the ASSC, the Mission's Field Offices have conducted a verification of the Ministry statistics on implementation of its housing care commitments. The survey encompassed majority of 489 cases where, as of September 2007, consent for housing care had been issued, and therefore housing units were to be physically allocated. It was identified that almost 80% of beneficiaries in the verified sample have indeed moved inside the allocated housing units. The Ministry admitted as of mid-November that not all of the remaining 20% will have been physically allocated by the end of 2007.

Disregarding the "keys-in-hands" principle, in around 85% of the verified sample the Ministry can be considered to have completed their task. In 14% of those the beneficiaries are awaiting the delivery of building material. In great majority of these cases the beneficiaries need to obtain a location and building permit first, a precondition for the Ministry to initiate delivery. It is unlikely that the delivery will be possible before the end of 2007.

In not more than 20% of the completed cases, a complaint was noted by the beneficiaries regarding the quality of the housing provided to them. Some beneficiaries reportedly invested their own funds to repair their housing, while some are expecting assistance from the Ministry in this regard. It should be also noted that among the completed cases, around 6% of beneficiaries are not minority returnees (i.e. ethnic Serbs)¹. While the housing care program for inside the ASSC is indeed open to all former OTR holders regardless of their ethnicity, its applicability to the solution to the issue of regional return should be taken into account.

In addition to the systematic verification of the consents issued, the Mission also randomly checked on the status of 528 beneficiaries for whom the so-called

recommendations have been issued, i.e. for which a housing care model has been identified. The field checks indicate that the time frame for the planned reconstruction/repair of apartment buildings will be difficult to achieve in 2007, since many local self-governments lag behind with the issuance of the necessary documentation. The Ministry data of mid-November confirm that only around 100 beneficiaries will be able to physically solve their housing in 2008 only.

In view of the delay in reconstruction/repair of apartment buildings (around 100 beneficiaries), and the belated delivery of building material (about 80 beneficiaries with either issued consent or recommendation), it could be estimated that between 80-85 % of the planned 1.000 cases will be solved in the ASSC in line with the “keys-in-hands” principle. Reflecting the “keys-in-hands” principle for the total commitment of 1.400 housing units to be allocated within 2007 for both inside and outside the ASSC, the combined projection indicates around 76% of cases physically resolved.

The Mission foresees a similar verification exercise to take place for the areas outside the ASSC. A joint verification with the Ministry will be conducted before the end of 2007 to verify on the remaining caseload within the ASSC. As for the implementation of Government housing care programmes beyond 2007, the Ministry outlined its plan to solve the outstanding number of housing care applications till the end of 2009 in line with the “keys-in-hands” principle.

Mission funds judicial seminar related to war crimes trials

In early November, the Mission provided €25,000 for a two-day seminar organized by the Ministry of Justice’s Judicial Academy, which focused on practical and legal aspects of conducting a trial, with a particular emphasis on ensuring a fair trial in the context of war crimes proceedings. The seminar addressed topics such conducting the trial, use of evidence, the court’s role in ensuring an adequate defense, witness protection, and use of video link in obtaining testimony. Thirty judges and states attorneys from the southern parts of Croatia participated in the seminar. Presentations were provided by several Supreme Court judges, the Chief State Attorney’s Office, judges from the Osijek and Zagreb County Courts as well as the Ministry of Justice.