



Organization for Security and Co-operation in Europe

OSCE Office in Zagreb

News in brief

23 January – 5 February 2008

1. Developments in war crimes proceedings:

Near-completed war crimes trial interrupted when judge retires

In late January, the retirement of a judge sitting as part of a three-judge panel interrupted the war crimes trial of five former members of the Croatian Defence Forces (HOS) for the murder of the Olujić family, a Serb-Croat married couple and their two minor children, at their home near Vinkovci (eastern Croatia) in early 1992. The trial at the Vukovar County Court, which began in March 2007, was nearing completion when the judge retired. Twenty-seven hearings had been conducted, 45 lay witnesses, including Anto Đapić, the head of the Croatian Party of Rights and Member of Parliament, and eight expert witnesses had testified, and a crime reconstruction and exhumations had been conducted. Several witnesses had been recalled multiple times to testify and one defence attorney had been removed for conflict of interest after 20 hearings. As announced during the public part of the trial, during a closed hearing in mid-January, a report by the military intelligence service was discussed. Four accused have been detained since August 2006 and the fifth since October 2006. Several hearings were cancelled in November and December 2007 as well as January 2008, the first due to the Presiding Judge's role in conducting Parliamentary elections, the others either for unknown reasons or conflicting obligations of the Presiding Judge. After ten months of proceedings, the trial started from the beginning with a new judge added to the panel, the accused repeated their pleas to the charges, and the process of reading summaries of prior witness testimony began, while other witnesses will be re-called to testify again in person again. The re-trial will continue in February.

Witnesses testify via video link from Belgrade for Split war crimes proceeding; uncertainties remain as to admissibility of video link testimony during trial.

In late January, the Split County Court, which is trying Mitar Arambašić for war crimes against Croat civilians and prisoners of war, heard three days of testimony by 21 witnesses via video link from the Special War Crimes Court in Belgrade. The Split County Court initiated the request for conducting the video link in spring 2007. The co-operation between the courts in Belgrade and Split during the testimony worked well. Although the Split County Court is conducting the trial and requested the testimony; it determined that the video link testimony was subject to the Belgrade court's jurisdiction and Serbian law applied. As a result, it concluded that the testimony could not be taken during trial, instead hearing the testimony in an 'out of trial' and closed hearing. The Split County Court has indicated that at a later date it intends to read the testimony into the trial record after receiving the record of the video link from the Belgrade court together with written confirmation from the witnesses in Belgrade confirming their statements and their agreements that their testimony is used in the Croatian criminal proceedings. Inter-state judicial co-operation through the use of video link to facilitate testimony in war crimes proceedings by witnesses who reside outside Croatia was among the first issues discussed in the Office's Plenary with the Ministry of Justice,

Chief State Attorney, and representative of the Supreme Court. As a result, Croatia amended its Criminal Procedure Code effective November 2006 to permit the use of video link and ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters [Protocol], effective mid 2007. This Protocol, which has also been ratified by Serbia, sets out specific procedures for video link testimony. Despite these changes in the legislative framework, the Arambašić case highlights that questions remain about implementation, which need to be clarified either through additional training, promulgation of guidelines, or amendment of the law. Arambašić, who was convicted in absentia and sentenced to twenty years imprisonment in 1997, was extradited from the United States to Croatia in January 2006. The required retrial, which commenced in June 2006, was adjourned until early 2007 pending Russia's decision on extradition of Arambašić's co-accused, which reportedly was denied. Arambašić remains in detention based on risk of flight as well as the severity of the offence for which he is charged.

Protected witness refuses to testify in third trial of war crimes accused

In late January, the Gospić County Court acquitted Nikola Cvijetićanin after a protected witness refused to testify in the third trial of this accused in six years. During a first trial in 2002, Cvijetićanin was convicted of killing two civilians and sentenced to nine years imprisonment. After the Supreme Court reversed the conviction, the Gospić County Court acquitted Cvijetićanin in 2004. The Supreme Court reversed again in mid-2007, resulting in the third trial. The State Attorney has indicated his intention to appeal, leading to a third review by the Supreme Court and possible fourth trial.

2. Seminar on improvement of the election process held in Opatija last weekend

The UN Development Programme (UNDP) and the Croatian State Election Commission (SEC) jointly organized a three-day seminar in Opatija to review the conduct of the recent Parliamentary Election held in Croatia. Head of Office, Ambassador Fuentes, intervened repeatedly in the seminar invited by the organizers. Besides the UNDP and the SEC, the seminar gathered representatives of the Central State Office for Administration, Constitutional Court, Ministry of Interior, Ministry of Foreign Affairs and European Integration and the election monitoring NGO GONG and other electoral experts. Similarly to the three roundtables on electoral issues organized by the former OSCE Mission to Croatia, the seminar served as a brainstorming platform to discuss lessons learned and issues that would need to be improved in future elections in Croatia and how to address these ameliorations. Participants advocated incorporating all current electoral legislation into a single Election Law complemented with detailed regulations which would regulate how to implement all technical aspects of presidential, parliamentary and local elections: candidate qualifications, conduct of campaigns, voter registration, actual voting, monitoring, ascertaining of results and releasing results. The recommendations included that election commissions and voter committees should be independent and professionalized by the next election, without the need to call upon the Croatian judges again. The recommendations from the seminar will be submitted to the Croatian Parliament, the Government and to the Constitutional Court.