



Organization for Security and Co-operation in Europe

OSCE Mission to Croatia

News in brief

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Parliament votes to allow detention of MP during war crimes investigations

On 22 November the Parliament voted to lift the immunity of independent parliamentarian Branimir Glavaš, providing the necessary conditions for his continued detention during two investigations being held in Zagreb and Osijek regarding war crimes against Serb civilians. The vote affirmed the previous recess decision of the Mandate and Immunities Committee. In addition, Parliament authorized detention in both cases based on the seriousness of offenses as well as the initiation of a second war crimes investigation against Glavaš by the Osijek County Court in the so-called ‘Cellotape’ case.

Glavaš has been detained since late October in order to reduce the danger of witness tampering in the Zagreb County Court’s investigation of the so-called ‘Garage’ case. Since entering detention, Glavaš had staged a hunger strike in protest against what he contends is a politically motivated prosecution, although he regularly attends court sessions. In reaction to commentary in the Croatian media, Glavaš reportedly began to observe a more severe hunger strike regime in mid-November. A number of political figures as well as the Croatian Catholic Bishop’s Conference have publicly urged Glavaš to desist from his hunger strike and employ legal remedies. While Glavaš’ action apparently presents a novel question for the Croatian judiciary, the European Court of Human Rights (ECHR) as recently as 2005 addressed the competing interests involved when detainees engage in a hunger strike. In *Nevmerzhitsky v. Ukraine*, the ECHR noted that such a hunger strike pits the detainee’s right to physical integrity against the State’s positive obligation to preserve life. The Court stated that forced feeding for the purpose of saving the life of a detainee who consciously refuses to eat “cannot in principle be regarded as inhuman and degrading.” The ECHR cautioned however that in order for such an intervention to be consistent with the European Convention on Human Rights, it must be medically necessary to preserve life, adhere to procedural safeguards, and the method of forced-feeding should not exceed acceptable levels of severity.

Parliament’s vote to lift immunity came after a week of rancorous debate among MPs, shifting positions of the ruling Croatian Democratic Union (HDZ), and considerable public commentary about the respective roles and prerogatives of the Parliament and judiciary. During the Parliamentary debate conducted on 15 November, Parliamentary Speaker, Vladimir Šeks, indicated that the HDZ would assent to the lifting of immunity only for purposes of avoiding witness tampering, suggesting that to detain Glavaš due to the gravity of the crimes would be to treat him differently from other war crimes suspects who are granted provisional release. Numerous opposition MPs countered that a failure to lift immunity would constitute an interference with the judiciary. This position was echoed by a number of legal experts who reasoned that Parliament could not properly second-guess the court’s reasons for ordering Glavaš into detention, but could only address the political question of whether to lift immunity.

Based on the Mission's information for proceedings in 2006, it appears that more than 60% of war crimes suspects who were present for their trial in 2006, were in detention during the investigation phase of the case, although frequently released prior to trial or during trial.

Subsequent to Parliament's decision, Glavaš and his political associates have stepped up accusations against the HDZ and the Prime Minister. Glavaš has alleged that he participated in vote fraud sanctioned by the Prime Minister during the 2002 HDZ party congress to ensure his election as HDZ party president. Ivan Drmić, another ex-HDZ MP made similar allegations in relation to voter fraud in the 2004 HDZ party congress by which Šeks became Vice President. The Prime Minister has refuted the allegations.

Ombudsman recommends urgent reform of system of legal assistance

In November, amidst widely publicized allegations of overcharging and disclosure of client confidences by the defense attorney in a high-profile murder, the Ombudsman warned the Minister of Justice about the need for reform in the current system of legal aid financing. Echoing concerns expressed in his annual reports to Parliament, the Ombudsman reiterated that the current limited system of free legal aid poses a significant threat to low-income Croats whose human rights can be jeopardized due to their lack of effective access to court.

At present, free court representation in civil cases for low income Croats is provided through a *pro bona* project of the Croatian Bar Association, by which a limited number of persons can receive assistance. The bulk of free legal assistance is provided through non-governmental organizations, both those funded by the Government as well as international donors, including the Mission. The Government has been preparing free legal aid legislation for approximately two years in consultation with the Council of Europe. The most recent draft contemplates implementation in 2008. The Ombudsman has pressed the Government to adopt legislation as an urgent matter, including allocation of adequate funds in the proposed 2007 State budget currently under discussion in Parliament.

The Ombudsman has also urged the Minister of Justice to consider reform of the existing system of setting attorneys' fees, as performed by the Bar Association. The Ombudsman expressed his concern that this system amounts to a monopoly that eliminates market competition, insulates attorney practice regardless of quality or ethical standards and results in inflated fees. This, he argues, puts legal representation beyond the financial means of many citizens and can result in a dubious quality of service. The Ombudsman urged the Minister to adopt without delay legislation ensuring that attorneys and clients have the flexibility to negotiate the costs of legal services and are able to access more effective remedies against inferior and unethical service by attorneys.

Court schedules eviction of former OTR holder who has no housing care option

Local courts continue to order the eviction of Serb families from their former occupancy/tenancy rights (OTR) flats, although housing care has not been provided. The Government adopted measures as recently as August 2006 aimed at accelerating the provision of housing care to former OTR holders. However, lack of coordination between various State institutions repeatedly results in families being threatened with eviction although housing care has not yet been provided.

In the most recent case, Karlovac Municipal Court ordered the eviction of Milenko Vukelić and his family on November 30 from a flat owned by Croatian Railways, a public company. Mr. Vukelić's OTR was terminated in 1992 during a court proceeding conducted in his

absence. Since returning to Croatia in 1996, Mr. Vukelić and his family have lived continuously in the flat and have exercised legal remedies to seek review of the termination decision. Mr. Vukelić's request for housing care submitted in 2005 has not yet been resolved.

Despite the fact that Karlovac County Court sent Mr. Vukelic's case back to the Karlovac Municipal Court for a retrial, until mere days before the scheduled eviction the local court continued to act on the basis of the eviction order, which had been quashed. At the eleventh hour and after Mission intervention with the relevant Ministry, the eviction was postponed pending the final resolution of the OTR termination. Eviction runs contrary to the agreement between the State Attorney and the Ministry responsible for housing care. This requires courts to observe a moratorium on evictions until former OTR holders have been provided with housing.

Legal challenge seeks to enforce local right to official use of Czech language

In November, the National Council for National Minorities (NCNM) filed a complaint to the Constitutional Court regarding official use of the Czech language in Daruvar, Central Croatia. The NCNM contends that Czechs, who make up approximately 19 per cent of the population in Daruvar according to the 2001 census, have an acquired right to the official use of Czech based on past practice. In particular, the NCNM argues that by failing to provide for the official use of Czech, the town statute is violating the Constitutional Law on the Rights of National Minorities (CLNM) and the Law on Official Use of Minority Language and Script.

The NCNM submitted the complaint after political and administrative efforts by representatives of the Czech minority were unsuccessful in obtaining changes to the statute. This is the first time the NCNM has exercised its right to challenge alleged violations of national minority rights through recourse to legal remedies, as envisaged in the CLNM.

Joint Mission-Government working group closes majority of civil society agenda

On 24 November 2006 the Mission and the Ministry of Foreign Affairs co-hosted the sixth and final meeting of the Civil Society Working Group. Eleven experts from key governmental, non-governmental and international community offices and organizations have met regularly during the year, as part of the monthly negotiation platform established between the Mission and the Government at the beginning of 2006. Five benchmarks were identified in January forming the basis for a joint approach

- (1) establishment of a legal and institutional framework for civil society development
- (2) implementation of a national strategy for civil society development
- (3) development of charters on cooperation between local authorities and NGOs
- (4) development of an NGO support infrastructure
- (5) support to the national-level Local Democracy Academy.

Four of these chapters have been successfully concluded, while the remaining issue of developing an NGO support structure was handed over to the Government Office for Associations, the National Foundation for Civil Society Development and the Council for Civil Society Development. The strengthening of these institutions has been an integral part of the Mission's work, which has come full circle as they step up to address outstanding civil society issues.

HoM attends 14th session of the Igman Initiative in Montenegro

Between 16 to 17 November, the HoM attended a Presidential session of the Igman Initiative,

along with his counterparts from Bosnia and Herzegovina, from Serbia and from Montenegro. This was the 14th annual meeting on developing ‘good neighbourly relations’ between signatory countries to the Dayton Agreement. This summit held in the coastal resort of Milocer in Montenegro, is the fourth at the Head of State level following the previous three held in Croatia, Serbia and Bosnia and Herzegovina. The Igman Initiative was launched by a collection of 100 NGOs from Croatia, Serbia and Montenegro, Bosnia and Herzegovina in Zagreb in 2000 and is sponsored by ‘Freedom House’. With the exception of President Milan Tadić of Serbia, who had prior engagements, the President of Croatia, Stjepan Mesić, the President of Montenegro, Filip Vujanović and the Serbian representative of the rotating Presidency of Bosnia and Herzegovina, Nebojsa Radmanović were all present.

In a presidential statement, entitled ‘The Countries of the Dayton Agreement on the Path to the EU – Results and Obstacles’, later signed by President Tadić, the three Heads of State made pledges on a wide range of issues, including facilitating refugee return, integrating national minorities, co-operating with the ICTY and supporting the efficient prosecution of domestic war crimes. Specifically on the issue of refugees the statement read, ‘We will not allow individuals or institutions at a lower level to actively or passively undermine the political will at the highest level to enable the return of refugees and displaced people. The four Presidents also announced their commitment to facing the truth about events from the past and strengthening their respective country’s capacity to adjust legislation, practice and institutions with those of the European Union and other bodies.

Mission roundtable examines local minority employment in public service

On 27 November, a roundtable on implementation of the 2002 Constitutional Law on the Rights of National Minorities (CLNM) regarding the employment of minorities at the local and regional level was held in Parliament. The event was co-sponsored by the Mission, the Central State Administration Office (CSAO), and Parliament’s Committee on Human Rights and National Minorities. The CLNM addresses the political, cultural, educational and employment rights of national minorities. While aspects of the CLNM related to minority political representation have been widely implemented in elections conducted since 2003, those related to the employment of minorities in the public service sector – State and local administration as well as the judiciary - remain significantly under-implemented. The roundtable served as the first in a series of follow-ups to a Mission conference held in October 2005.

The roundtable gathered approximately 50 representatives of local self-government units, the State administration and Parliament, as well as national minority members. Other participants included the Ombudsman, members of the international community, and a representative of the OSCE High Commissioner on National Minorities. The event focused on practical issues and open questions faced by local officials obligated to implement the minority employment guarantee, such as how national minorities can invoke their minority status during the recruitment procedure and how employers should factor minority status into their employment decisions. The participants agreed on the importance of prospective implementation of the guarantee as vacancies became available, including the development of employment plans during the annual budget process.

The CSAO provided preliminary statistics on the extent to which minorities are employed in local administration. Such statistics are a necessary precondition for determining the extent to which the law is currently implemented and assessing the need for additional measures. According to the CSAO, given the independence of local governments, an open question remains as to what remedies are available if local governments fail to implement the law.

Noting significant achievements in terms of political representation, the Head of Mission stressed that minority employment remained a key challenge to full implementation of the CLNM. A representative of the European Commission Delegation to Croatia underlined the importance of CLNM implementation to the EU accession process as well as development of a non-discrimination strategy.

Mission assists World Bank development project in return areas

The Mission has agreed to facilitate implementation of the Croatian Social and Economic Recovery Project (CSERP) co-sponsored by the Government and the World Bank by contributing to CSERP's information gathering effort in the field, particularly in the less developed returnee municipalities, which are disadvantaged when competing for funds. The Mission and the Government will institutionalise their mode of co-operation at the beginning of December.

The project will take on a multi-faceted approach to development in the Areas of Special State concern (ASSC), including targeting returnees as beneficiaries. The CSERP budget totals €60 million, out of which the Government will contribute €25 million and the World Bank €35 million. Implementation will be conducted by the Ministry of Maritime Affairs, Tourism, Traffic and Development.

The most substantial part of the project is the Community Investment component, worth over €36 million, which will mainly finance infrastructure and economic revitalisation. The Mission will be facilitating implementation of this module to ensure that the returnee population maximises the benefits from these funds and the sustainability of return is improved.

Mission promotes charters on co-operation in Gospic, Karlovac and Vukovar

As part of the Mission's effort to encourage the signing of 'charters on co-operation' between NGOs and local self-government units, a series of promotional events took place in the counties of Karlovac, Virovitica-Podravina and Lika-Senj throughout November. These were followed by a conference on models of co-operation between local authorities and civil society held in Vukovar covering eastern Croatia's five counties. The attendance of senior level Mission members at these events, including the DHoM, sent a clear message to authorities in formerly war-affected areas that partnership between local authorities and NGOs is essential. This helped stimulate support from County Prefects, Heads of Departments for Social Affairs and European Integration and co-operation with NGO networks.

The events featured exchange visits and peer presentations by Croatian town and county authorities bringing examples of Croatian best practice to less developed regions. This helped emphasise that the goal was not only to formalize partnership relations with a charter, but to implement practical co-operation in social service delivery, the transparent allocation of funds, citizen participation in decision-making processes and community development. The out-sourcing of technical assistance and education for local officials by towns to competent NGOs was also held up as a good practice example.

While turnout at these events was generally good, the attendance of local authorities ranged between 30 to 60 per cent, suggesting that the process will need to develop further in some areas. The Vukovar conference set three priorities for 2007: to create county, municipal and

community development teams; to establish NGO support centres and regional development foundations; and to improve information sharing among NGOs and between NGOs and local governments. The Mission's role was regarded by local interlocutors as having been essential in supporting the charter process across the country, a process highlighted as a priority by the HoM and the Prime Minister when the 'Platform' was established in January 2006.