



Organization for Security and Co-operation in Europe

OSCE Mission to Croatia

News in brief

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ICTY issues contempt indictments for publication of protected witness testimony in Croatian media

Recent ICTY contempt indictments for publication of protected witness testimony in Croatian media have triggered the beginning of a public discussion about the need to reconcile journalistic freedom on the one hand and protective witness security as a requirement for successful war crime prosecution on the other.

On 26 April, the ICTY indicted the former head of the Croatian secret service and three journalists for contempt of the Tribunal for publishing both the identity of a protected witness and the content of protected witness testimony. Under the Tribunal's rules, contempt is punishable by up to seven-year imprisonment and a fine of up to 100,000 €. The indictments were served on the defendants by the Croatian authorities in the early days of May.

The first indictment was raised against a journalist (and also editor-in-chief) of the weekly "Hrvatski List" and against the former head of the Security Information Service (SIS). The indictment alleges that in November 2004 "Hrvatski List" published an article which revealed that the former head of SIS provided the journalist with the identity of an ICTY protected witness, copies of the statement the witness gave to the ICTY, and a transcript of the testimony the witness gave before the Trial Chamber in closed session. The indictment further alleges that the article indicate that both parties were aware that their actions were in violation of ICTY protective orders.

The second indictment was raised against the publisher and editor of the weekly "Hrvatsko Slovo". The indictment alleges that in November 2004, this weekly printed excerpts from the testimony of an ICTY protected witness and revealed the identity of the witness. It also alleges that the weekly indicated that the November issue was the first of ten issues to feature such excerpts. In early December 2004, the ICTY ordered "Hrvatsko Slovo" to cease and desist publication of the protected witness testimony [see Fortnightly Report No. 21/2004]. The indictment further alleges that the publisher notified the Tribunal of his intention to comply with the Order, whereas the other advised that he would neither recognize nor comply with the Tribunal's Order and indicated an intention to continue publication of the protected witness testimony, which he did in mid-December.

Most Croatian media outlets and legal commentators recognized that the publication of protected witness testimony exceeded the bounds of responsible journalism, although others found the contempt indictments an infringement of journalistic freedom. In addition, numerous journalists still refer to the protected witness by his name, apparently not understanding that this also is contrary to the protective order. The president of one prominent human rights NGO, the Croatian Helsinki Committee, expressed the view that while there was a legal basis for the indictments, they made no sense since the trial was already completed, and expressing the view that the witnesses were not in any danger.

Answering a question from the media, the Mission has emphasized that the OSCE is very sensitive to the freedom of media and access to information. However, *“it is also sensitive to the protection of witnesses. Revealing their identity and testimonies can endanger their lives.”*

The Mission has previously reported that witness security is key to the success of war crime prosecution [see Background Report: Domestic War Crime Trials 2004], not only at the ICTY but in particular in Croatia in cases involving allegations of crimes committed by members of the Croatian armed forces. In addition, there is a danger that exposure of some protected witnesses would have a deterring effect on others coming forward to provide witness testimony.

The indictments provide a vehicle for public discussion about the need to comply with court orders related to witness protection as well as to find an appropriate balance between media freedoms and the public’s right to know and witness’ right to security. Resolution of such questions is relevant not only for domestic prosecutions but in light of the ICTY Completion Strategy, with the possible transfer of ICTY cases to Croatian courts.

The ruling Croatian Democratic Union expels regional leader in the run-up to the local elections and loses three MPs in Parliament

On 21 April, the National Council of the ruling Croatian Democratic Union (HDZ) unanimously decided to expel Branimir Glavas, a very influential regional party leader, and two other party members from Eastern Croatia. The three of them are Members of Parliament.

The decision followed Mr. Glavas’s announcement of his proposals to establish a citizens’ association called “The Croatian Democratic Parliament of Slavonia and Baranja,” and to divide Croatia into five regions to better administer the country. Mr. Glavas came under the spotlight in early Spring when he proclaimed fugitive General Gotovina a hero, and later on, when he walked out of the Parliament in refusal to support the declaration on anti-Nazi struggle, which had HDZ support.

In a press conference on 21 April, President of HDZ and Prime Minister Ivo Sanader explained the decision to expel Glavas and two other Members of Parliament due to their support to the idea of regionalization of Croatia, “which is completely contrary to the political programme of the HDZ.” He added that the HDZ leadership had shown that it had the vision of how to reform the party, prepare it for elections and make it credible again.

In addition, Prime Minister Sanader commented about the possible effects of the departure of three MPs on the party capacity to maintain the bare parliamentary majority by saying that the replacements had already been secured through the pledges of three MPs from marginal parties and one independent.

Government resolves long-standing citizenship problem of 126 Bosniaks living in bordering areas with Bosnia and Herzegovina

In early May, the Ministry of Interior granted Croatian citizenship to 126 Bosniaks living in Central Croatia in areas along the border with Bosnia and Herzegovina. The Mission has learned that the decisions were based on article 12 of the Croatia’s Law on Citizenship, i.e., on the ground that they are persons of particular interest to the Republic of Croatia. Thereby, they did not have to satisfy the standard eligibility requirements imposed on non-Croats who seek to become naturalized citizens, i.e., five years of permanent residence and renunciation of prior citizenship.

The decision resolves the long-standing citizenship problem of members of the Bosniak minority who resided in the former Socialist Republic of Croatia in areas close to the current (then inexistent) border with Bosnia and Herzegovina. They tended to register birth, death and citizenship in the former Socialist Republic of Bosnia and Herzegovina. With the dissolution of the Socialist Federation of Republics of Yugoslavia, they received citizenship from Bosnia and Herzegovina, where they subsequently fled at the onset of the war in 1991. Upon returning to Croatia in 1998, a significant number of them became foreigners according to the Croatia's Law on Citizenship.

Resolution of this problem was one of the commitments made by Prime Minister Sanader to the Bosniak minority in the *Agreement for Cooperation between the Government of Croatia and the Party of Democratic Action of Croatia (SDAH) for the support of the Government in the Parliament* of early January 2004. According to the agreement, the MP of the SDAH provides support to the minority Government of Prime Minister Sanader, which has a bare majority in Parliament.

On 19 January 2005, Croatia signed the Council of Europe's European Convention on Nationality, which regulates *inter alia* the situation of persons in danger of being left stateless as a result of state succession. The Convention establishes that in deciding on the granting or the retention of nationality in cases of state succession, states should consider in particular the genuine and effective link of the person concerned with the state as well as his/her habitual residence at the time of succession.

Prompt ratification of the Convention as well as harmonization of the Croatia's Law on Citizenship with its provisions would likely facilitate citizenship acquisition on an equal and transparent basis by all non-Croat pre-war residents who reside in or want to return to Croatia and have difficulties acquiring citizenship.