



Organization for Security and Co-operation in Europe

OSCE Mission to Croatia

## News in brief

18 October – 31 October 2006

### ICTY rejects Croatia's *amicus curiae* request in Gotovina, Čermak, and Markač Trial

On 18 October the ICTY denied Croatia's request to participate as a “friend of the court” or *amicus curiae* in the upcoming trial of Generals Ante Gotovina, Ivan Čermak, and Mladen Markač for crimes committed in Croatia during and after ‘Operation Storm’ in 1995. The ICTY decision follows by one week a similar rejection of Croatia’s request to participate in the ongoing trial of Jadranko Prlić and five others for crimes committed in Bosnia and Herzegovina. The Government decided on 24 October to request that the ICTY reconsider its negative decision in both cases.

In its request, Croatia argued that it could assist the ICTY “in the determination of the truth” regarding the allegation that Croatia’s war-time leadership participated in a ‘joint criminal enterprise’ to permanently remove the Serb population from the Krajina region of Croatia. Through his defence counsel, Gotovina argued that Croatia should participate because of its interest “in ensuring that the Tribunal’s judgments are historically accurate.” Gotovina stated that this was important for regional stability and reconciliation as well as ensuring that the “ICTY does not erroneously establish precedents that could be used in subsequent litigation against Croatia” seeking damages. He further argued that since the alleged ‘joint criminal enterprise’ included former leaders who are now deceased, including former President Franjo Tuđman, these un-indicted individuals could only be represented by Croatia acting as *amicus curiae*.

In its opposition to Croatia’s request, the ICTY Prosecutor argued *inter alia* that Croatia lacked adequate impartiality and that its interest in participating was not to assist the Tribunal but to protect itself against “possible adverse socio-political or financial considerations.” In support of this contention, the Prosecutor attached *inter alia* a de-classified top secret document from 1998 outlining the Government’s intelligence activities directed against the Hague Tribunal.

Rejecting Croatia’s request, the Trial Chamber stated that it “is not satisfied” that Croatia’s participation would assist in the proper determination of the case. It re-iterated that the primary role of *amicus curiae* was to assist the Tribunal clarify legal questions, while Croatia sought to participate primarily in relation to “questions of fact, such as the existence and scope of the alleged joint criminal enterprise and the broader historical and political context in which the events referred to in the Indictment took place.” The Chamber noted that such facts are addressed by the parties - prosecutor and defendants - during the trial. Finally, the Chamber noted that any relevant information possessed by Croatia could be provided to the parties.

## **ECHR finds that inadequate compensation for excessive judicial delays constitutes violation of right to fair trial**

Several recent decisions issued by the European Court of Human Rights (ECHR) indicate that judicial delays could have increasingly significant financial repercussions for Croatia. On 19 October, in *Tomašić v. Croatia*, the ECHR issued its first judgment finding that Croatia violated the right to a fair trial because it inadequately compensated excessive delay in a court proceeding.

The Croatian Constitutional Court had found the applicant's right to fair trial violated because of excessive delays and denial of access to court. The ECHR determined that the compensation awarded - 4,400 HKN (approximately € 600) - was insufficient. The ECHR noted that the amount of compensation, approximately 15 per cent of what the ECHR generally awards in similar cases involving Croatia, was manifestly unreasonable.

Croatia's representative to the ECHR warned of this problem during a July 2006 presentation to the Parliamentary Committee on Human Rights and National Minorities. Apparently, in anticipation of the *Tomašić* decision, the Constitutional Court and local courts have significantly increased the average compensation award for judicial delays since May this year. According to the State Agent, as of June 2006, Croatia has been ordered to pay approximately € 640,000 in damages by the ECHR, the greater part of which relates to fair trial violations, including delays and lack of access to court.

On 12 October, the ECHR found in *Debelić v. Croatia* that a delay of more than two and a half years between the conclusion of a proceeding and the delivery of a court's written decision violated the right to fair trial in a reasonable time. In late September, the ECHR accepted a friendly settlement in *Sorsa and 27 others v. Croatia*, awarding € 68,500 in what appears to be the highest compensation in a single case. The Constitutional Court had refused to review this complaint involving judicial delays in 28 identical cases.

Cases involving various issues related to the excessive length of proceedings constitute the majority of the ECHR's judgements against Croatia.

## **MP detained to minimize danger of witness tampering in war crimes investigation**

On 26 October, Independent parliamentarian Branimir Glavaš was detained by order of the Zagreb County Court, which is currently investigating allegations in the so-called 'Garage' case that Mr. Glavaš was involved in the detention, torture, and killing of Serb civilians in the eastern Slavonian city of Osijek in 1991. On 23 October, after having rejected several similar requests by the prosecution, the court ordered the detention of Mr. Glavaš to prevent any possible witness tampering. Concerns about witness security have surrounded this proceeding, which started in May 2006. Mr. Glavaš is the first MP to be detained during a criminal investigation.

Mr. Glavaš' detention came after days of legal disputes regarding the prerogatives and roles of the Zagreb County Court and the Parliament in relation to the detention of a parliamentarian. According to the rules of Parliament, a MP can be criminally investigated or detained only after his or her immunity has been lifted. In May 2006 Parliament lifted Mr. Glavaš' immunity for the purposes of initiating the 'Garage' case investigation. After ordering Mr. Glavaš' detention, the court requested that the Parliamentary Mandate and Immunities Committee (Committee) lift his immunity for the purposes of detention. Although

initially declining on the grounds that the court was required to seek a waiver of immunity prior to ordering detention, the Committee lifted Mr. Glavaš' immunity on 26 October. Parliament must ratify this decision at its next session. The court then issued an arrest warrant and Mr. Glavaš surrendered to the police. Mr. Glavaš, who reportedly began a hunger strike after his detention, to protest what he contends are politically motivated investigations, was transferred to the Zagreb prison hospital on 31 October.

Simultaneous with the dispute in Zagreb, the prosecutor in Osijek lodged a request to include Mr. Glavaš in a second investigation into the murder of Serb civilians in Osijek in 1991 - the so-called 'Celotape' case. While the Committee waived Mr. Glavaš' immunity for investigation and detention in this case on 23 October, the Osijek County Court initially declined to initiate an investigation, arguing that it lacked jurisdiction over Mr. Glavaš because of the ongoing investigation in Zagreb. However on 30 October, following a decision by the court panel that the Osijek court had jurisdiction, the court opened an investigation. The question remains whether the investigations should be joined.

The various disputes surrounding the investigations of Mr. Glavaš have featured prominently in media reports and elicited public comment from legal experts and political figures. Several legal experts expressed concern about the Constitution's lack of clarity and that of relevant laws, which was seen as resulting in significantly different interpretations of the required procedures and standards. Prime Minister Ivo Sanader stated that while the Glavaš case should not be politicized, he was concerned as a citizen with how proceedings were being handled by the judiciary, adding that "the EU's insistence on judicial reform is now receiving its best confirmation." President Stjepan Mesić commented that legal disagreements in relation to Mr. Glavaš' case had created "a judicial scandal." In response, the Croatian Judges Association issued a statement that comments by Government officials and MPs on ongoing judicial proceedings undermined the judiciary's independence and impartiality and constituted an infringement on the separation of powers.

### **Composition of national News Agency's Steering Committee remains unclear**

On 12 October, the Steering Committee (Committee) of the national News Agency HINA elected a new director, Ms. Smiljanka Škugor-Hrnčević, as a successor to the incumbent Mirko Bolfek. In response, the Government proposed to Parliament that the current four-member Committee be dissolved, citing the fact that a new director had been appointed before the fifth and final member of the Committee. In line with the Law on HINA, a fifth member of the Committee should be elected from among HINA employees. Claiming a deficit of democratic procedure in the election of the new HINA Director, Prime Minister Ivo Sanader said that in terms of democracy, it would have been more important to wait for the election of the fifth member than comply with the deadline for appointing a new director.

Three regular Committee members immediately resigned, objecting to what they described as "a blind alley situation," in which the appointment of the fifth Committee member was being deliberately deferred by the Government, while the legal deadline for the appointment of the new agency director was running out. Considerable controversy had surrounded the initial appointment of the four Committee members in July this year. Insisting that they had respected all legal procedures in their work, the three Committee members described the situation as politicized and detrimental to the normal functioning of the Agency.

On 19 October, the Parliamentary Committee on Media approved the Government's proposal to dissolve the four-member Steering Committee. Simultaneously, it also approved the

appointment of a fifth member representing the Agency's staff. The proposal was endorsed by members of the ruling Croatian Democratic Union (HDZ) while members of the opposition abstained from voting, underscoring their opposition to what many saw as an irresponsible and negligent move, i.e. proposing the dismissal of four members while appointing a fifth. Following a potential lack of quorum in Parliament, the decision on dissolving the Steering Committee has been postponed until 8 November.

It is of extreme importance that members of HINA's steering committee, its directors and editor-in-chief are elected in accordance with professional and not political criterion. A transparent and democratic procedure, without political interference, will be a guarantee of the Agency's credibility in the future.

### **HoM attends OSCE 'Tolerance Implementation Meeting' in Dubrovnik**

On 24 October, the HoM attended an international 'Tolerance Implementation Meeting' in Dubrovnik, a joint initiative of the Croatian Ministry for Foreign Affairs, the OSCE Chairman in Office and the OSCE/ODIHR. The Dubrovnik conference is a continuation of the Cordoba Conference on the fight against the Anti-semitism and other forms of discriminations, held in May 2005.

The conference was attended by the Croatian Minister of Education, officials from other OSCE participating States and civil society representatives. The meeting focused on the essential role youth education plays in the fight against xenophobia and intolerance.

In order to prevent that future generations forget the horrors of the holocaust and any repeat of such an event in the future, particular attention was paid to the necessity of education of youth.

As both a speaker and moderator at the meeting, the HoM presented the situation in relation to Croatia, taking the opportunity to inform participants about Mission projects relevant to the theme of tolerance and anti-discrimination. These included the 'Children Together' project, currently promoting co-existence and integrated minority education in Eastern Slavonia, the 2005 Public Awareness Campaign for the promotion of reconciliation and sustainable refugee return, numerous projects promoting the Community Policing concept in Croatia and 25 capacity-building projects helping to consolidate Croatia's 250 local councils of national minorities.

Despite being part of the meeting's title, it was generally agreed among participants that the word 'tolerance' could be replaced by more positive terms such as 'respect' or 'understanding.' The HoM was careful to stress that teaching respect and understanding for others is not just something for school children, but is the responsibility of political leaders, human rights institutions such as the Office of the Ombudsman, the courts, civil society and the media. He also elaborated on the importance of a comprehensive, non-discrimination legal framework.

The problems of tolerance were studied from many different perspectives: ODIHR, UNICEF and others, as well as from differing regional viewpoints – United States, Europe, Middle East – and also both from governmental and non-governmental standpoints.

## **Mission advocates for improved road infrastructure in areas of refugee return**

After comprehensive studies on the electricity and water supply situation, the Mission is completing its overview of infrastructure conditions in return areas by issuing a report on road conditions in return areas, due to be presented to the Ministry of Maritime Affairs, Tourism, Traffic and Development (MMATTD) at the beginning of November.

The report analyses road conditions in approximately 250 villages in seven counties in Croatia. The overall conclusion from the survey is that road conditions in return areas are unsatisfactory and have suffered from a lack of maintenance for years, in some cases over 15 years. With weak infrastructure conditions directly influencing the decision of refugees and internally displaced persons to return and remain, this factor may feed into a lower rate of sustainable return. Only in two counties – Vukovar-Sirmium and Split-Dalmatia – was the situation assessed as satisfactory.

Insufficient budgets on the local level were found to be one of the biggest obstacles to effective road maintenance in return areas. Sometimes a lack of political will was a significant factor, with poorly maintained infrastructure in returnee villages standing in stark contrast to nearby areas inhabited by domicile Croats or Bosnian Croats. Of note, was the fact that many returnee villages do not meet Government criteria for priority funding of road improvement and maintenance i.e. sufficient population, presence of agriculture and other production and adequate density of traffic. The potential for return is not taken into consideration when the State compiles road improvement and maintenance plans.

The Mission intends to encourage the MMATTD to focus more resources on the improvement of road conditions in areas of return. This could be managed through the Government's '2005-2008 Programme for the Construction and Maintenance of Public Roads' which states as one of its development goals, the harmonization of regional development and the demographic growth of underdeveloped areas.

## **HoM launches Local Democracy Academy**

At a press conference on 27 October, the HoM and Head of the Central State Office for Administration, State Secretary Antun Palarić, launched the Local Democracy Academy, in part supported by a Mission-sponsored project, 'ADUT - Programme of Education for Councillors Officials and Employees of Local Self Government.' The Academy will be responsible for the education and training of officials and employees in more than 500 local self-government units. Located in Zagreb, the Academy will be financed by the Government and local authorities together with international and domestic NGOs.

Presenting the Academy, State Secretary Palarić, said that it was the result of a joint project undertaken by the Government, the Union of City and Municipal Associations and the Croatian Community of Counties. He emphasised the Government's desire to have local self-governments staffed by knowledgeable and responsible people, which required the establishment of permanent institutions that can ensure an adequate system of education.

Praising the establishment of the Academy, the HoM stressed that the recently inaugurated institution will play an important role in the future life of democracy in the local institutions by training a large number of officials that should be both professional and neutral, working for the State and the people of Croatia independently of their political convictions. HoM also insisted that "co-operation between State institutions and civil society is essential for ensuring

the participation of citizens in the decision making process”, adding that to fulfil its role the Academy needed to “build on existing training programmes and co-operate with civil society organizations.”

The Academy will begin by preparing and developing a curriculum and educational materials necessary for the introduction of training courses for civil servants working in counties, towns and municipalities. Of the 16,000 officials due to be trained, the first batch are scheduled to begin training in mid-2007.

### **Mission-sponsored workshop for local crime prevention councils**

From 16 to 17 October, a Mission-sponsored workshop on local crime prevention councils was organised in the municipality of Nuštar in Eastern Slavonia in co-operation with Vukovar-Sirmium Police Administration. Participants included representatives of the police, local authorities and social welfare offices from Vukovar-Sirmium County.

Two experts from Sweden shared best practices in relation to community engagement by the police, assisting the workshop’s 22 participants generate ideas to further develop local crime prevention councils in Croatia. This was the third workshop of its kind to be held in Croatia aimed at encouraging community representatives to be more engaged with the police and more proactive in their efforts to solve local problems.