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News in brief

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1. Ademi-Norac war crimes trial continues; inter-state co-operation facilitates ‘out of trial’ testimony via video link from witnesses in Serbia and Norway

The trial of Rahim Ademi and Mirko Norac on allegations of war crimes against Serb civilians and prisoners-of-war committed during the 1993 ‘Medak Pocket’ Operation continues. As of mid-February, the Zagreb County Court had conducted fifty-seven hearings during which nearly seventy witnesses had been heard, of which approximately eighty per cent were called by the prosecution and twenty per cent by the defense. In addition, several hundred documents and videos proposed by the prosecution had been presented. The trial will continue in late February with testimony from former United Nations peacekeepers from Canada, Denmark, Ireland, and Sweden. Notable among the developments since November 2007 has been the significantly improved participation of both endangered and non-endangered Serb witnesses for the prosecution, many of whom reside outside of Croatia. As of mid-February, approximately half of the endangered witnesses and nearly sixty per cent of non-endangered Serb witnesses who had been called have appeared to testify.

Video link technology has facilitated testimony by several categories of prosecution witnesses who were not physically present in the courtroom. Nearly one-third of all prosecution witnesses and the vast majority of Serb or ‘crime-base’ witnesses to date have testified in this manner. It is expected that testimony via video link will be employed for a considerable number of the remaining prosecution witnesses.

One use of video link, which continued in December and January, was for taking the testimony of five additional endangered witnesses who were in Croatia but testified from outside the courtroom with voice and face distortion intended to hide their identity. This ‘in-state’ testimony was transmitted directly into the public trial and the entire proceeding as well as all logistics was organized by the Zagreb County Court.

In early February, a second use of video link was made in order to facilitate testimony by seven witnesses who reside in Serbia and one who resides in Norway, some with endangered and others with non-endangered status. The Presiding Judge in the Zagreb County Court conducted the taking of the testimony, while a judge from the Belgrade and Norwegian court was present with the witness and provided assistance, consistent with procedures set out in the Second Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters. Endangered witnesses testified with face distortion to hide their identity. This group of witnesses, several of whom were captured by the Croatian armed forces, tried by the military court and later exchanged as prisoners of war, provided some of the most

graphic testimony to date about crimes during and after the Operation. Notably, this ‘inter-state’ testimony was given during an ‘out-of-trial’ hearing, which was closed to the public and media because under the applicable procedural law the witnesses were deemed ‘unavailable’ to the court. A summary of their testimony was read into evidence by the Presiding Judge at a later public hearing and thus officially made part of the trial record. Because the hearing was closed, the public and media had no opportunity to observe the cordial and professional co-operation between the Presiding Judge in Zagreb and his counterparts in Belgrade and Norway. Public insight into such inter-state judicial cooperation, particularly with States of the former Yugoslavia, could play an important confidence-building role for witnesses as well as for the judiciary and the public at large. The public was also unable to hear and see the testimony of these prosecution witnesses, diminishing as well that public aspect of the trial. Finally, the closed hearings also appeared to be misinterpreted by some media, which incorrectly believed that the closed sessions were a means of witness protection.

As reported previously, the release of identifying information about endangered witnesses continued to be observed. Of eight endangered witnesses who testified between December and February, the identities of half were indirectly revealed through volunteered statements or questioning, particularly about their relationship to named victims.

2. Constitutional Court prospectively invalidates Gender Equality Law; Parliament given six months to correct constitutional error in adoption

In early February, the Constitutional Court (Court) published its decision determining that the five-year old Gender Equality Law was unconstitutional due a technical error in its adoption by Parliament. Namely, the Court concluded that because the Gender Equality Law regulates a fundamental right protected by the Constitution, it is an ‘organic law’ which the Constitution mandates be adopted by a majority of all members of Parliament. When the Law was adopted in 2003, Parliament had 151 deputies. Hence, the Constitution required that it be adopted with 76 votes. Since the Law was adopted with 75 votes, it fell short of the constitutional requirement.

Noting the importance of gender equality and the fact that it had not reviewed the substance of the Law, the Court exercised its discretion to delay invalidation of the Law. The Court left the Law in force until mid-July 2008, providing Parliament approximately six months to remedy the constitutional flaw. In addition to prohibiting discrimination on the basis of gender in various aspects of life, the Law provides the legal basis for several gender equality institutions, including the Ombudsperson for Gender Equality and the Government Office for Gender Equality.

3. Conflicting State policies seen in ongoing judicial proceedings for termination of occupancy/tenancy rights and provision of housing care

Linked to implementation of the housing care programme for former occupancy-tenancy rights (OTR) holders, the Office continues to follow judicial proceedings in which State bodies seek to terminate the OTR rights of persons who are currently residing in their OTR flats. One such example is the Kereš family who left their apartment in Zadar in late 1991. They moved back into their flat in late 2001, after the temporary occupants voluntarily vacated, and have lived there ever since.

In late 2001, the Town of Zadar, which owns the flat, initiated a lawsuit to terminate the Kereš’ OTR, in response to Kereš’ request to purchase the flat. In early February 2008, the second trial in this case began in the Zadar Municipal Court, the prior judgment having been reversed on appeal. The issues to be decided on re-trial are whether the Kereš’ absence was

justified and whether they were entitled to the status of 'protected lessee' needed to be eligible for purchase. Simultaneous with the judicial proceeding, the Office for Displaced Persons and Refugees (ODPR) in late 2007, issued a 'consent' in response to the Kereš' application for housing care, which was submitted in mid-2005. ODPR has provided written notice that the Kereš family is eligible for housing care, but has not indicated when the housing will be provided. In this instance, it can be seen that the State is pursuing contradictory policies. On the one hand, the Town of Zadar seeks to terminate the Kereš' OTR rights and evict them from their current home, while on the other the ODPR has undertaken to provide them with new housing, but has yet to do so. The Office will continue to follow this and other similar cases of former OTR holders in Croatia's major cities outside the Areas of Special State Concern.