



Organization for Security and Co-operation in Europe
OSCE Mission to Croatia

News in brief
13 - 27 September 2005

ICTY refers Norac/Ademi indictment to Croatia

On 14 September, the Referral Bench of the International Criminal Tribunal for the former Yugoslavia (ICTY) transferred the indictment against Mirko Norac and Rahim Ademi to Croatia under Rule 11 *bis* of the ICTY Rules. Norac and Ademi are indicted for war crimes allegedly committed against Serb civilians and soldiers *hors de combat* during a 1993 operation by the Croatian military in the so-called “Medak Pocket” in south-western Croatia. They are alleged to be individually responsible as well as responsible as superiors (“command responsibility”) for acts of subordinates. Ademi voluntarily surrendered to the ICTY in 2001 and has been at liberty in Croatia since 2002. Norac is currently serving a 12-year prison sentence handed down by the Rijeka County Court for unrelated war crimes committed in the Gospic area.

The Referral Bench granted the transfer to Croatia after finding the crimes not so serious as to prevent referral; that differences between Croatian and ICTY law are not so substantial as to prevent referral; domestic law sufficiently appropriate; witness protection measures adequate and measures for availability of witnesses, including witnesses from abroad adequate – finding relies in part on the Mission Status Report of November 2004 on improved inter-state cooperation; appropriate measures in place to ensure fair trial, both for defendants as well as to ensure fairness toward Serb victims; death penalty will not be imposed; and monitoring mechanism in place with OSCE.

The Referral Bench ordered the ICTY Prosecutor to hand over the case to the Croatian Prosecutor within 30 days of its decision becoming final. In addition, the Referral Bench ordered the ICTY Prosecutor to submit a first report within six weeks after the transfer of the case to Croatia and to submit a report every three months after the trial commences.

Upon receipt of the case from the ICTY, the Croatian authorities are expected to assign it to the Zagreb County Court, one of the four “special war crimes courts” in Croatia. Before the trial can begin, the Croatian prosecutor must issue a Croatian indictment. It seems likely the trial will not start until at least early 2006.

Transfers of ICTY indictments to states constitute a significant component of the ICTY “Completion Strategy,” under which the ICTY should cease operations no later than 2010 and should focus on only the most senior accused, transferring lower and mid-level accused to states for trial. Norac/Ademi was the only case under consideration for formal transfer to Croatia under Rule 11 *bis*, although other cases are likely to be transferred by the ICTY Prosecutor to the Croatian Prosecutor for further investigation, indictment, and trial.

The statement by ICTY Chief Prosecutor that fugitive Gotovina is hiding in a monastery in Croatia provokes sharp reaction from the Croatian Catholic Church

The statement by the ICTY Chief Prosecutor Carla del Ponte in an interview to the Daily Telegraph on 20 September, that The Hague tribunal fugitive Ante Gotovina is being sheltered in a Franciscan monastery in Croatia, and could therefore be located by the Vatican hierarchy within a matter of days, has sparked off strong reactions among the Catholic

Church in Croatia. The Daily Telegraph reported about the disappointment of the ICTY Chief Prosecutor after she had met senior Holy See's officials to share her intelligence with and even appealed directly to Pope Benedict XVI.

While the head of the Vatican's press office, Joaquin Navarro-Valls, said the same day that the tribunal's Chief Prosecutor has not given any indications that could serve as a basis for her claim that the Catholic Church in Croatia is hiding Ante Gotovina, the Croatian Bishops' Conference (HBK) public relations office dismissed those accusations, stating that they were unacceptable and unusual for the institution the Chief Prosecutor represented.

Croatian Prime Minister Ivo Sanader said he did not know what ICTY Chief Prosecutor Carla del Ponte's claim was based on, adding that "the information we have obtained by implementing the Action Plan does not lead to the conclusion that Gotovina is in Croatia." In a similar statement, President Mesic said that all intelligence service reports confirmed that Gotovina was not in Croatia, adding "if there is any information, our services will check them thoroughly".

On 21 September, the ICTY Prosecution Spokesperson repeated the Chief Prosecutor's statement that the Vatican did not feel obliged to cooperate with the Tribunal. She explained that Del Ponte asked the Vatican to help locate Gotovina, as she also asked the Serbian Orthodox Church in the case of Radovan Karadzic and Ratko Mladic, because "help is expected from every institution, and there is no institution that cannot be asked to take a moral stance on justice and international law". She also said that "we keep receiving information that there is a support network among monasteries and Franciscans."

On 24 September, the Croatian conference of monastic heads said in a statement it was unacceptable of the Chief Prosecutor to publicly suspect the Franciscan community in Croatia without any evidence. "None of us know the whereabouts of General Ante Gotovina and it is our belief that he is not in Croatia," read the statement, adding that even if there were serious indications that Gotovina was hiding in a Franciscan monastery, neither the monks nor the Holy See should be contacted, because the religious duties of monastic communities do not include security issues, and because the Holy See's sovereignty and civil jurisdiction do not extend to other countries' territories. The monastic heads also condemned some European media for describing Gotovina as one of the main war criminals.

The intergovernmental Task Force on refugee return notes some progress but some outstanding issues still need to be addressed

In a second meeting on 14 September in Zagreb, the intergovernmental Task Force on refugee return took stock of the progress of the governments of Bosnia and Herzegovina, Croatia and Serbia and Montenegro in the drafting of the respective national Road Maps and the related Regional Operational Matrix on refugee return. In accordance with the January 2005 Sarajevo Declaration, the Task Force gathers the refugee commissioners or their equivalents of the three signatory countries and is expected to meet four times per year with an active participation of the OSCE, UNHCR and the European Commission.

Participants agreed to review their respective national Road Maps in close co-operation with the international community partners in order to include missing benchmarks and issues. They also noted the delays that the process has suffered and concluded that the process should be accelerated but not at the expense of sidelining substantial benchmarks which need to be necessarily fulfilled. The three governments should prepare the final versions of the respective Road Maps by the end of September. It is anticipated that a Ministerial Conference in the forthcoming months will endorse the drafts.

As for Croatia, the national Road Map presented at the meeting was the same document which was shared with the International Community Principals on 12 July and which was subsequently adopted by the Government on 14 July. This document has not incorporated the suggestions proposed by the three organizations by means of a letter on 22 July, addressing missing and incomplete benchmarks, including issues related to looted/devastated properties while under State administration; compensation claims for unsolicited investments filed in courts by occupants against owners; repossession of occupied non-residential properties; Government housing programmes for former occupancy/tenancy right holders; and validation of working years spent in the Serb-controlled areas during the conflict.

The Croatian Government representative justified the non-inclusion of the suggested benchmarks by the International Community partners in the letters of 27 May and 22 July in that the Road Map was adopted by the Government on the 14 July and every further change also needs to be approved in the same procedural format.

Threatened evictions of former holders of occupancy/tenancy rights contrary to Constitutional Court interpretation

Despite the lack of the legal prerequisites articulated by the Constitutional Court, lower court decisions have terminated occupancy/tenancy rights (OTRs) on the grounds of the participation in enemy activity by the OTR holder, without any previous criminal conviction, and are moving ahead in eviction proceedings. These court actions also indicate that Croatia, in particular the Ministry of Interior, continues to seek to evict persons who never left OTR flats in a manner contrary to established Constitutional Court interpretation.

In a series of decisions starting in 1999, the Constitutional Court ruled that terminations of occupancy/tenancy rights under Article 102a of the Law on Housing Relations on the ground of the OTR holder's participation in enemy activity could only comply with constitutional guarantees if the OTR holder had been subject of a prior criminal conviction.

In late August 2005, the Karlovac Municipal Court (Central Croatia) denied the request of Dragica and Dragomir Miljenovic to stop the eviction sought by the State. Their OTRs had been terminated in 1999. The 2005 court decision indicated that unconstitutionality is not a legal ground to stop an eviction. As found by the court, two members of the Miljenovic family resided in the apartment during the entire war period. Nevertheless, the occupancy/tenancy rights of the holder were terminated due to the fact that he spent some time in occupied territory. Croatian authorities never charged him for any acts related to war.

In mid-September, the Split Municipal Court scheduled the eviction of Stevan Babic and his family whose OTR was terminated in 1996. Again, as found by the court, family members never left the apartment, while Stevan Babic took care of his disabled father in occupied territory returning after the war. Again, he was never charged for criminal activities against the state. Numerous evictions have been attempted in both cases, but so far postponed due to interventions of non-governmental organizations, the international community or the poor health of the OTR holders. Complaints to the Constitutional Court have been pending in both cases since early 2004 and 2003, respectively.

The ICTY issues two more contempt indictments against Croatian journalists for revealing identity of protected witness and publishing protected witness testimony

Since April, the ICTY has indicted six Croatians – a publisher and four editors of newspapers as well as the former head of the Croatian secret service – for contempt of court for allegedly revealing the identity of a protected witness as well as the testimony of that witness in the ICTY prosecution of Tihomir Blaskic. Blaskic was convicted of war crimes in Bosnia and Herzegovina and was sentenced to nine years. These indictments have triggered a public

discussion about the need to reconcile journalistic freedom on the one hand and protective witness security as a requirement for successful war crimes prosecution on the other.

On 9 September, the ICTY issued its most recent contempt indictments. The first indictment against the editor of the Croatian daily *Slobodna Dalmacija* alleges that the newspaper, in November 2000, published the identity and testimony of a protected witness. In response, the Tribunal issued an order in December 2000 against *Slobodna Dalmacija* and another periodical *Globus* to cease and desist further publication of testimony of protected witnesses, indicating that violation of the order could expose the publishers to contempt charges. Notwithstanding the ICTY's order, *Slobodna Dalmacija* on multiple occasions in December 2000 published testimony of a protected witness. According to the indictment, the editor by continuing with the publication knowingly and wilfully interfered with the administration of justice in direct violation of the Tribunal's order. The editor failed to appear at the ICTY on 26 September for a scheduled hearing to enter his plea, indicating publicly and in a response to the Tribunal that he contests its jurisdiction and seeks to have the ICTY's jurisdiction determined by a Croatian court. Given the failure to appear in response to the ICTY's summons, it appears probable that the Tribunal will issue an order for the Croatian authorities to arrest the editor for purposes of compelling his appearance in the Hague on the contempt charge.

The second indictment against the current editor of the Croatian weekly *Hrvatsko Slovo* alleges that the newspaper similarly published the identity and testimony of a protected witness in November 2004. Although the Tribunal issued a "cease and desist" order against *Hrvatsko Slovo* in December 2004, the newspaper continued publication of the protected testimony and repeatedly identified the protected witnesses in several editions. The editor is therefore alleged to have knowingly and wilfully interfered with the administration of justice. The editor entered a plea of not guilty at a scheduled appearance before the ICTY on 26 September.

Similar indictments were issued in late April 2005 against the publisher and former editor of *Hrvatsko Slovo* as well as the former head of the Croatian secret service and the editor of a third newspaper *Hrvatski List*. All four entered not guilty pleas in mid-June and a hearing is set for October.

The new indictees and the trade union of *Slobodna Dalmacija* have repeatedly protested that the charges represented undue pressure on media freedom. Some media argue that the testimony was published in the public interest and the charges represent pressure on media freedom and the public's right to full and objective information. Other media recognised that publication of the identity of the ICTY protected witness exceeds the boundaries of responsible journalism.