

## **President Mesic appoints Dr. Ivo Sanader as Prime Minister Designate; inaugural session of new Parliament scheduled for 22 December**

On 9 December President Stjepan Mesic appointed the President of the Croatian Democratic Union (HDZ), Dr. Ivo Sanader, as the Prime Minister Designate. The President stated that he expects Dr. Sanader and the HDZ to continue with the country's democratization efforts and strategic goals of EU and NATO membership. Parliamentary elections were held on 23 November in Croatia; the HDZ garnished the largest number of seats in the next Parliament, 66 of 152.

The Prime Minister Designate is allowed 30 days from his appointment to officially constitute the new Government, i.e., 8 January 2004. However, the inaugural session of the new Parliament is scheduled for 22 December and the HDZ President is expected at that time to present the new Government and its programme and propose a vote of confidence in the new cabinet. The HDZ President has already announced that the new Government will operate with a smaller cabinet and less ministries, from 18 to perhaps 13 or 14 ministries.

Written support for an HDZ-led government was reached with exactly half of the total number of Croatian parliamentarians, 76 of 152. In addition, the Croatian Peasants' Party (HSS) stated its nine parliamentarians will co-operate with the new Government while not participating in it, in particular during the first six months. Written or verbal agreements have also been reached with four of the eight minority representatives (Italian, Hungarian, Bosniak and German). Discussion with the three Serb parliamentarians of the Independent Serb Democratic Party (SDSS) remain ongoing, but media reports indicate that negotiations appear to be moving forward and the SDSS is also likely to announce its intention to co-operate with the HDZ in the same manner as the HSS. The SDSS has announced seven issues around which its co-operation with the new Government is to be defined, including property restitution and reconstruction for Serb refugees, redress for lost occupancy/tenancy rights, and full implementation of the Constitutional Law on the Rights of National Minorities that includes efforts to reach proportional representation of the Serb minority in the judiciary and state administration.

The right-wing Croatian Party of Rights (HSP) announced officially on 13 December that the party will not support an HDZ-led government and will remain in opposition.

## **2. *In absentia* war crime trials continue; delays in war crime procedures at trial and appellate level**

War crime trials conducted in the absence of the accused continued in November and December 2003, with the frequency of *in absentia* trials increasing in some jurisdictions, notably at Zadar County Court in southern Croatia. Out of a total of 32 Serbs convicted in war crime procedures since the beginning of the year, 27 Serbs were convicted *in absentia*. The Zadar County Court alone conducted five complete *in absentia* proceedings in 2003 against 14 Serbs and one Bosniak, who were each sentenced to between five and 20 years imprisonment. In early December, the Zadar County Court convicted four former Yugoslav National Army officers *in absentia* for having committed war crimes against the civilian population by ordering the shelling of Zadar in 1991, sentencing each of the defendants to approximately seven years imprisonment.

The Vukovar County Court in Eastern Slavonia re-started from the beginning in late November 2003 a war crime re-trial first started in February 2001, in which there had been no hearings for more than

two and one-half years. In this case, Ivanka Savic, a 76-year-old Serb woman was first indicted for genocide in 1993, pursuant to which she was detained from 1992 to 1993. After her release, she was tried, convicted, and sentenced to eight years imprisonment *in absentia* for having assisted in the commission of war crimes against the civilian population in Vukovar in October 1991. In 2000, Savic was re-arrested and detained for 10 months, during which time a re-trial was initiated in February 2001. Savic was released from detention in August 2001.

In late November 2003, the Supreme Court held a hearing on an appeal lodged by the prosecutor more than three years ago in July 2000 to an acquittal on a re-trial by the Osijek County Court of five Serbs in the so-called 'Sodolovci Group', a case that has continued for more than eight years. This case has been monitored by the Mission since the end of the mandate of the UN Transitional Authority in Eastern Slavonia (UNTAES) in 1998, during which time the initial *in absentia* verdict of conviction from 1995 was served on Serbs residing in the Danube Region. Since 1995, four of the defendants have been tried a total of three times, while one defendant has been tried four times, including the original *in absentia* conviction, and many have spent several years in detention. While the defendants have not been in detention since 1999, the delay in deciding the prosecution appeal leaves the acquitted defendants under the cloud of a possible new trial or incarceration.

The Supreme Court has not yet decided appeals lodged by Fikret Abdic and Zorana Banic following their convictions in more than nine months and more than one year, respectively. This is despite the obligation to render a decision within three months after receiving the appeal when defendants remain in detention.

### **3. Court orders homeowner to pay €30,000 to realize return of property**

Refugees and displaced persons, whose attempts to repossess their occupied homes have been frustrated by judicial delays, now face court-imposed financial burdens to compensate temporary users. Decisions such as these may place property repossession of the grasp of home owners in many cases.

In one notable example, the so-called case of the 'Sara Pizzeria', the Gospić County Court in south-central Croatia recently confirmed the order of the Korenica Municipal Court compelling a Serb homeowner to pay approximately €30,000 to the temporary user - a Croat settler from Istria - before physical repossession of his property can be realized. On 5 December, the Korenica Municipal Court ordered the owner to pay the sum within eight days or to have his house sold to pay the court-ordered debt. The court order is subject to execution on 23 December.

Jovan Rapajic's home was allocated to Stanica Nikolic in 1996 by the Government. Nikolic has operated a successful restaurant in the Government-allocated property since that time, located on one of the main tourist routes to the coast. The owner first requested repossession in 1998 and in July 2000 the Municipal Court first ordered the user to vacate the premises; that order was repeated in December 2001. However, more than two years later that court order remains unexecuted. In the meantime, the user's request for compensation has moved efficiently through the local courts. The owner has appealed to the Supreme Court against the order to provide compensation. However, the appeal does not prevent the immediate execution of the order, through sale of the owner's home or other means.

The Court ordered this compensation to the user despite the fact that the owner has been legally prohibited from claiming off-setting amounts of rent over seven years as a result of the Parliament's 1999 Authentic Interpretation of Article 14 of *Law on the Status of Expellees and Refugees*. The Court explicitly rejected the owner's request for rent since 1998.

The decision of the court in Gospic also does not address the Government's responsibility for compensating temporary users for their investments, leaving such obligations strictly upon owners. As a result, this latest ruling could potentially have a significant impact on other cases of property repossession whereby owners would face losing their homes as a result of orders to provide compensation *inter alia* through court-ordered sales of properties.

### **Freedom-of-the-media issues rise to the forefront following parliamentary elections**

The return of the Croatian Democratic Union (HDZ) to power has sparked a renewed debate on freedom-of-the-media issues in Croatia and highlighted the party's previous controversial relationship with the media. The former HDZ government was often criticized for its policies and activities *vis-à-vis* alleged interference in the work of the media, particularly that of the public broadcaster Croatian Radio-Television (HRT).

Accusations of bias by the HDZ and others towards HRT during the pre-election campaign have been rejected by the Croatian Journalists' Association (HND). The HND stated that the accusations were groundless and pointed to a Mission-funded report of the Croatian Helsinki Committee for Human Rights which confirmed that Croatian Television (HTV) journalists were professional in their pre-electoral coverage. Nevertheless, HND journalists working at HRT announced in the media that "the battle for HTV had begun". This followed an incident on a television talk show when the HDZ Spokesperson phoned in insisting that he be allowed to speak on air. The request was granted by HTV and subsequently criticized by some commentators and opposition leaders attending the programme as a political party putting pressure on HTV. The HDZ has vehemently denied ongoing press allegations that it intends to purge the media sector stating that it fully supported freedom of the media.

The HDZ has announced that the newly adopted Law on HRT needed to be changed. According to the HDZ, it was unacceptable that the HRT's Programme Council represented the power structure of the former Parliament, with six members appointed by the former coalition parties and five from the then-opposition parties including the HDZ. In contrast, OSCE and Council of Europe experts have expressed their reservations with this provision of the Law, in that the very system of nominations by political parties constituted a step backward compared to the previous system of nominations by civil society actors. It remains unclear in which manner the HDZ intends to review and possibly change the nomination procedure for the HRT Programme Council.

Speaking on a recent HTV programme debate on freedom of the media in Croatia, the HoM praised HTV for including more stories on refugee return and property repossession in its news programmes. He said that while the print media scene in Croatia was pluralist there were potential problems related to political interference in the work of electronic media due to laws which did not allow sufficient safeguards from political interference. He added that direct political interference on the local level still existed.

## **High Courts deplore forcible interference with the implementation of court verdicts; underscore need for judicial reform and adherence to the rule of law**

During special sessions in early December, the Supreme Court and the Constitutional Court highlighted the need to continue with substantial reform of the Croatian judiciary.

The President of the Supreme Court together with the Presidents of the Administrative Court, High Commercial Court, High Misdemeanour Court, and all county courts issued a joint statement condemning acts seeking to prevent implementation of court decisions by force. The court Presidents underscored that any such interference with the administration of justice that encouraged violence constituted an attack against the legal system and undermined the legal security of citizens and their property. As previously reported, unexecuted court verdicts constitute a significant proportion of the overall case backlog, including verdicts ordering the repossession by refugees of their occupied property. Unsuccessful execution of final verdicts has also been the basis for the European Court of Human Rights to accept two cases against Croatia for review.

The newly elected President of the Constitutional Court underscored to the media his intention to keep the Court free of political influence from other branches of government. The President commented that the greatest threats to the work of the Court were inadequate premises and insufficient control of its own finances. Notably, the Constitutional Court is not included in the Government's judicial reform plan as it is not defined as part of the judiciary in the Constitution. The outgoing President indicated that in the past four years the Court had received approximately 4,000 complaints annually, making it one of the busiest Constitutional Courts, receiving approximately the same number of cases as the Federal Constitutional Court of Germany with a population twenty times larger than Croatia. The outgoing President indicated that the Court found constitutional violations in approximately four to five per cent of the cases reviewed. As of the end of November 2003, the Court registered some 500 new complaints concerning excessive length of proceedings, more than in the entire year of 2002. The Court has decided approximately 40 cases in which it found a violation of the right to trial within a reasonable time, ordered lower courts to issue a decision within a fixed deadline and awarded non-pecuniary damages to the complainants. Complaints concerning excessive delays constituted 13 per cent of all cases received and over 50 per cent of all constitutional violations found by the Constitutional Court to date in 2003.

## **Parliamentary error in adoption of judicial reform legislation interpreted by judiciary as grounds for massive dismissal of domestic violence cases**

The Parliament's failure to co-ordinate the repeal and enactment of legislation pursuant to the Government's judicial reform plan has resulted in recent months in the dismissal of large numbers of domestic violence cases. As reported, the High Misdemeanour Court in late October issued a legal opinion instructing Croatia's 114 misdemeanour courts to dismiss domestic violence cases that had been initiated under provisions of the *Family Law*, but not completed prior to their repeal as of 22 July 2003. The Court, relying on an eight-day gap between the repeal of the *Family Law* and the entry into force of the new *Law on the Protection against Domestic Violence* on 30 July 2003 found that the more lenient law must be applied in favour of defendants.

Initial information from the Mission's field staff indicates that misdemeanour courts have acted efficiently to remove these cases from their dockets in response to the instruction, with the likely result that hundreds if not thousands of such cases will be dismissed. For example, in the Sibenik and Knin

area of southern Croatia, local courts have dismissed 40 charges of domestic violence. In the Petrinja and Gvozd area of central Croatia, local courts dismissed approximately 50 such cases. Local police who are the initiators of such charges in the local courts expressed their serious concerns to the Mission about this outcome, with one police commander referring to the dismissals as “catastrophic and disappointing”. The Mission will continue to follow this issue at the local and central levels.