



Organization for Security and Co-operation in Europe

OSCE Mission to Croatia

News in brief

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Misunderstanding over Governments housing programme for former OTR holders

On 25 August, the Government adopted a conclusion on implementation of the housing care programme for former occupancy tenancy right (OTR) holders outside the Areas of Special State Concern (ASSC). The implementation plan foresees the construction of 3,600 apartments and the purchase of a further 400 apartments by 2011 in those urban areas where the majority of Croatian Serb OTR holders used to live, such as Zagreb, Osijek, Rijeka, Split and Karlovac.

Adopted by the previous Government in June 2003, the housing care programme dealing with areas outside the ASSC was designed to enable former OTR holders from the main urban centers of Croatia to apply for the lease or purchase of apartments under favorable conditions. Prior to the application deadline in September 2005, the Ministry for Maritime Affairs Tourism Transport and Development (MMATTD) received 4,425 applications from Croatian Serb refugees as well as those internally displaced. Half the applicants chose the option of a protected lease while the remaining applicants opted to purchase apartments under a general Government social housing programme adopted in 2001, providing for more favourable conditions than the market price.

The wording of the most recent Government Conclusion and subsequent statements made by the MMATTD, and later confirmed by Prime Minister Ivo Sanader, have led to certain misunderstandings regarding aspects of the housing care programme. In particular, the announcement that the current programme does not foresee the possibility of eventually purchasing or inheriting apartments prompted a strong reaction from Serbian minority representatives. Parliamentarian and Vice President of the Independent Democratic Serb Party (SDSS), Dr. Milorad Pupovac, called the programme “unsatisfactory” and as a Government coalition partner publicly announced a *démarche* with the Prime Minister. Mr. Veljko Džakula from the Serb umbrella organization, the Serb Democratic Forum (SDF), even characterised the programme as the “final solution” for Serbs in Croatia.

However, contrary to some claims, applicants have not been stripped of any previous rights contained in the original 2003 Conclusion establishing the housing care programme. Applicants who chose the purchase option still retain this possibility under the Government’s 2001 general social housing programme. Applicants who opted to lease an apartment will acquire the status of a protected lessee - the legal category replacing OTR in Croatian legislation – and will pay a monthly rent of €0.30 per square meter. However, protected lessees do not retain the right to eventually purchase an apartment, which expired in December 1995. In the case of a tenant’s death, the status of a protected lessee can be transferred to family members with the consent of the State as the owner of the apartment.

The Mission considers the plan to be well structured, both operationally and financially, particularly in regard to the construction of new apartments. The MMATTD has asked the Mission to provide input on a draft of the written instruction to be sent to regional ODPD offices in order to process the 4,425 housing care applications.

Revived controversy with Serbia over crimes committed during ‘Operation Storm’

On the eve of this year’s commemoration of ‘Operation Storm’, the Belgrade-based TV station B92 aired part of an amateur video recording from August 1995, allegedly showing members of a Croatian paramilitary unit and a unit of the Bosnian Army committing crimes against Serb soldiers and civilians in the northern Krajina region on the border of Croatia and Bosnia and Herzegovina. This revived a lingering controversy between Croatian and Serbian officials over the nature and the extent of crimes committed by Croatian forces during and after the August 1995 military operation in which Croatian forces regained control over the so-called ‘Serb Republic of Krajina’ (RSK).

A similar videotape emerged in mid 2005, showing six Bosniak males being killed by Serb paramilitaries in eastern Bosnia. Persons shown on the tape were subsequently prosecuted by both Croatia and Serbia.

Serbian Prime Minister Vojislav Koštunica was quoted in the Croatian media as saying that Operation Storm represented a "major and unpunished crime" and the persecution of hundreds of thousands of Serbs from Croatia should not be forgotten. Referring to the recent video broadcast, Serbian President Boris Tadić said that he expected Croatia to condemn such war crimes and the competent Croatian authorities to take appropriate measures.

Speaking at this year’s commemoration ceremony in Knin on 5 August, Prime Minister Sanader responded to such interpretations of Operation Storm by saying that "it was not Niš, but Vukovar and Dubrovnik that were destroyed in the Homeland War". He stressed however that this incident would not harm the normalization of relations between the two countries, adding that Croatia "offer[s] [its] hand to Serbia to move on". For the first time since the war, this year’s official ceremony was attended by a Croatian Serb representative, the newly-appointed deputy Mayor of Knin, who laid a wreath for Croatian soldiers who died in the conflict.

President Mesić, dismissing criticism that Croatia’s reaction to the alleged involvement of its military personnel in war crimes was mild, commended the recent co-operation between the State Prosecutor's offices in Croatia, Bosnia and Herzegovina and Serbia. In mid-August, State Prosecutors from the three countries met in Zagreb in order to exchange information, documents and other materials related to war crimes committed during and after Operation Storm, a step commended by ICTY Prosecutor del Ponte in her recent address to the OSCE Permanent Council.

Co-operation between Croatian and Montenegrin prosecutors on war crimes

In late July, the Chief State Attorneys of Croatia and Montenegro signed an Agreement establishing a mechanism, including timetables, for co-operation in the prosecution of citizens or residents of Montenegro suspected of committing war crimes in Croatia. The feasibility of such an agreement was discussed during a meeting earlier in July between the Presidents of Croatia and Montenegro.

The Agreement further notes that prosecutors should seek to end impunity for war crimes through the exchange of information and evidence. - In 2005, the Croatian Chief State Attorney signed a general framework memorandum with his counterparts in Bosnia and Herzegovina and Serbia to facilitate co-operation in relation to all serious criminal offenses

that have inter-state aspects. These memoranda have been used to facilitate co-operation in individual war crimes cases. The new agreement with Montenegro goes beyond individual cases and contemplates addressing all war crimes cases that involve the two states.

By late August, Croatia should provide information to Montenegro about all current war crimes cases that it alleges were committed in Croatia by persons who either reside in or are citizens of Montenegro. The Montenegrin State Attorney should, after review of this information, inform his Croatian counterpart whether Montenegro will undertake prosecution in any or all cases. Upon notification of Montenegro's intention to prosecute, the Croatian Chief State Attorney should within two months provide all relevant information and evidence. Montenegro should report periodically to Croatia about the status of any prosecution cases.

Former Generals Gotovina, Čermak and Markač to be tried jointly

In mid-July, the ICTY Trial Chamber granted the prosecution's request to try former Croatian Army Generals Ante Gotovina, Ivan Čermak and Mladen Markač together for war crimes against Serb civilians committed in 1995 during and after 'Operation Storm,' the military action in which Croatian forces regained control over the so-called 'Serb Republic of Krajina.' Čermak and Markač, who were originally indicted together, voluntarily surrendered to the Tribunal in March 2004 and have been in Croatia on provisional release since December 2004 [see Spot Report 'New ICTY Indictment against Two Former Croatian Army Generals,' 12 March 2004]. In contrast, Gotovina remains in detention in The Hague after his arrest and extradition from the Canary Islands, Spain in December 2005.

In granting a joint trial, the ICTY found that acts for which the three have been indicted are inter-related. It rejected the defendant's arguments that a joint trial would cause a conflict of interest between the accused and result in undue delay in the start of the trial against Markač and Čermak. Among other factors, the Trial Chamber found that a joint trial was supported by judicial economy with one trial rather than separate trials, decreased hardship for witnesses involved in each case and allowed more consistent evaluation of the evidence. However, in mid-August, the Trial Chamber granted all three the right to appeal against the joinder. In early September, the Government announced its intention to send letters to the ICTY requesting involvement in the proceedings as *amicus curiae*. No trial date has yet been set.

The joinder of these cases follows similar decisions joining other indictments.

New ICTY conviction and indictment for Croatian journalists

At the end of August, the ICTY convicted Josip Jović, former editor-in-chief of *Slobodna Dalmacija*, for contempt of the Tribunal after he published the identity and testimony of President Stjepan Mesić, a protected witness in the trial against Bosnian Croat General Tihomir Blaškić. He was fined €20,000 to be paid within 30 days of the judgment. The publication in several editions issued in late 2000 was contrary to ICTY orders, including a cease and desist order specifically directed at Jović. The verdict against Mr. Jović is the second ICTY contempt verdict this year against Croatian journalists for revealing the identity and testimony of protected witnesses.

In its judgment, the ICTY focused on Mr. Jović's deliberate defiance of its orders to cease and desist publication of information he knew to be protected. The Trial Chamber was particularly concerned that Mr. Jović's disregard affected the Tribunal's ability to safeguard

the evidence of a protected witness thus undermining confidence in the Tribunal. In early September, *Slobodna Dalmacija* announced that they would pay the fine of €20,000 imposed by the Tribunal if the judgment against Mr. Jović becomes final.

In June, the ICTY withdrew related contempt indictments against several other Croatian journalists, including Domagoj Margetić. However in July, only weeks after the ICTY dropped the prior contempt indictment, Mr. Margetić published the names of 102 protected witnesses from the Blaškić trial on his website. Mr. Margetić's website was subsequently closed after the ICTY contacted the website administrator. The ICTY also served an injunction against Mr. Margetić's publication of witnesses' names through the Croatian authorities who were obliged to act under Croatia's law on co-operation with the ICTY. Although Margetić appeared in response to a summons from the Zagreb County Court, he refused to accept the ICTY injunction. As a result, the Zagreb County Court ordered his arrest and detention, pending the arrival of an indictment from the ICTY. In early September, after 32 days of detention and speculation about his deteriorating health due to a hunger strike, Mr. Margetić was released by the Zagreb County Court. The Court found that continued imprisonment was not necessary since alternative measures to ascertain Mr. Margetić's whereabouts and prevent him from violating ICTY orders could be established.

Glavaš case highlights problems with conduct of domestic war crimes investigations

In mid-July, the Zagreb Special War Crimes Court began its investigation into allegations that independent parliamentarian Branimir Glavaš, together with another accused, committed war crimes against Serb civilians in the Eastern Slavonian town of Osijek in 1991. Given concerns about witness intimidation and the impartiality of the local judiciary, the President of the Supreme Court had transferred the Glavaš case from Osijek in May, upon the request of the Chief State Attorney.

The judicial investigation is not a public proceeding. However, until prohibited to do so by a court order issued in late July, Mr. Glavaš disseminated court documents, testimonies and evidence related to the case, both to the media and via his personal website. Several persons named in these court documents reported to the police that they had subsequently been subject to harassment and pressure.

Despite the court order stipulating that information from the court proceeding be kept confidential, Mr. Glavaš has continued to make derogatory comments to the press regarding witnesses who have or are expected to testify against him, calling into question their veracity and mental health. According to media reports, several witnesses, including the Head of the Government Office for Missing and Detained Persons, altered their original statements given to the police when testifying before the investigative judge. In early August, recently awarded journalist Drago Hedl, who has reported extensively on war crimes in Osijek, announced that he would not testify at the investigation, due to the undignified conduct of proceedings to date. Mr. Hedl also claims to have been the victim of regular harassment, including death threats.

To date, Zagreb County Court has rejected two requests by the State Attorney to detain Glavaš during the investigation, finding no apparent link between possible witness intimidation and the accused. The Court has also rejected a request to close down the website of Mr. Glavaš. The investigation resumed in early September.

The Glavaš case demonstrates the need for clear rules about the confidentiality of investigative proceedings and adequate and enforceable safeguards for witnesses who co-

operate with judicial authorities. Although unable to directly monitor the closed proceedings, the Mission, together with the European Commission Delegation to Croatia and the ICTY, will continue to work with the Croatian authorities, to identify possible solutions to problems related to the prosecution of war crimes.

The State of Croatia found liable for compensation of the damage caused by murders committed by Serb occupation forces

In early August, a Municipal Court in Drniš, south central Croatia, ordered the State to pay €390,000 to surviving family members of an elderly Croat couple murdered in 1993 by the Yugoslav People's Army and Serb paramilitary forces occupying the Drniš area. The court determined that the murders constituted 'terrorist acts' for which the State is liable under the 2003 Law on Compensating Damage Caused by Terrorist Acts and Public Demonstrations. Acknowledging that Croatia had no effective control over the Drniš area when the murders occurred, the Court nonetheless found the State liable as a gesture of solidarity towards the victim's relatives and because of the "need to provide just and swift compensation" to victims of the 1991-95 conflict in Croatia.

Previously, the 2003 law has been the basis for several judgments in favor of Serbs who sought compensation for the death of relatives resulting from terrorist acts that occurred in areas of Croatia under Government control. For example, in 2004 the Municipal Court in Otočac, south central Croatia, found the State liable for the death in 1999 of a Serb in the vicinity of Otočac caused by a planted grenade. The State was ordered to pay approximately €46,000 to the surviving family members. Such Court awards to Serbs have been criticized by some nationalist political figures.

The decision by the Drniš Court is the first of its kind and stands in contrast to the approach of the Zadar Municipal Court, which rejected similar claims on the grounds that the State could not be held responsible for damages that occurred in areas that were beyond its control during the conflict. If upheld on appeal, the Drniš Court's decision could have far-reaching financial implications, implying that any destruction, injury or death committed by enemy forces during the 1991-1995 conflict constitutes 'terrorist acts' for which Croatia is financially responsible.

ECHR to review claim of ineffective investigation into racially motivated attack

In late July, the European Court of Human Rights (ECHR) published its decision in *Šečić v. Croatia* agreeing to decide whether Croatia adequately investigated a racially motivated attack against a Roma. Although a criminal investigation in Croatia was started soon after the attack in 1999, to date, no criminal charges have been brought. In late 2002, the Constitutional Court indicated that it lacked jurisdiction to consider such a complaint of prosecutorial inaction, since no formal decision had been issued. The ECHR will review Mr. Šečić's contention that Croatia did not fulfill its positive obligation to effectively investigate his ill-treatment as well as the further argument that Croatia's failure to adequately investigate racially motivated violence constitutes discrimination. Finally, the ECHR will review his complaint that he lacked any effective domestic remedies to challenge these alleged violations. A decision is anticipated in 2007.