



Organization for Security and Co-operation in Europe

OSCE Mission to Croatia

## News in brief

**29 November – 12 December 2006**

### **MP's hunger strike halts war crimes investigation and wins release**

On 2 December, the investigating judge of the Zagreb County Court ordered that independent parliamentarian Branimir Glavaš be released from detention on the grounds that his health had deteriorated due to a hunger strike. The judge also suspended the war crimes investigation against Glavaš, on the grounds that he was unable to follow court proceedings due to impaired mental faculties. Upon release, Glavaš was taken to Osijek hospital where he remains.

On 8 December, a three-judge panel of the Zagreb County Court reversed both decisions, finding that the investigative judge insufficiently explained Glavaš' medical condition and instructed the investigative judge to obtain a more detailed medical opinion on the basis of which he should determine with specificity whether Glavaš is physically or mentally incapacitated.

A similar request to suspend the investigation against Glavaš before the Osijek County Court in the 'Sellotape' case is pending. On 11 December, physicians appointed by the Court, who are also the physicians treating Glavaš, reported that Glavaš was mentally incapable of following court hearings for at least a month.

Glavaš' release and the suspension of the investigation has generated significant public reaction and legal and political commentary. Legal experts expressed concern that it sets a precedent for other accused to employ hunger strike tactics. Notably, on 7 December, the Osijek County Court announced that two other suspects in the 'Sellotape' case commenced a hunger strike to protest their detention, although they have since resumed eating. Other commentators noted that the decisions called into question the ability of the judiciary to equitably handle investigations of prominent persons, free of political influence. Glavaš' lawyers initiated obstruction of justice charges against a journalist from the Croatian daily Jutarnji List for comments critical of the investigative judge's decisions.

Under the applicable law, Glavaš' participation in the judicial investigation is optional. Legal experts suggested that it was relevant that Glavaš intentionally compromised his health and by so doing forfeited the right to be present during the investigation. Further, legal experts noted that the investigative judge by law could order Glavaš to submit to a medical examination and was not obligated to release him even though the investigation was suspended since the grounds for detention – seriousness of the offence - remained unchanged. Political commentators have also speculated that in order for the 'Garage' investigation to resume or for Glavaš to be detained again, Parliament will again have to lift his Parliamentary immunity.

Several commentators have drawn parallels between the near simultaneous hunger strikes by Glavaš and Vojislav Sešelj at the ICTY. These cases demonstrate that war crimes suspects who are well-financed, enjoy significant political support, and are willing to employ a wide

range of in-court and out-of-court tactics to oppose the proceedings against them, including ridicule of persons and institutions. This poses particular challenges to judicial institutions, which are charged with protecting the fair trial rights of the accused while at the same time being responsible for ensuring the effectiveness and integrity of the proceedings. In order to meet this challenge, judicial institutions need legal tools to support their authority.

### **Gotovina, Čermak and Markač request ICTY trial to start later than May 2007**

On 5 December the ICTY Trial Chamber proposed that the trial of former Croatian Generals Ante Gotovina, Mladen Markač and Ivan Čermak begin in May 2007. This date was opposed by attorneys for all three accused on the grounds that six months was insufficient time to prepare for the trial. They contended that the trial should be delayed until September 2007 or even spring 2008, arguing that an earlier start would prejudice the right to a fair trial for the accused. The prosecution indicated its readiness for trial in May or later, estimating that the trial would last 12 to 14 months.

Delaying a final decision on the start date, the presiding judge requested that all parties explain why they needed more time. He also asked the prosecutor to consider eliminating some elements of the indictment in order to facilitate an earlier start of the trial, thereby assisting the Tribunal in meeting the Completion Strategy goal of concluding all trials by the end of 2008.

The Croatian Government's appeal against the decision of the ICTY Trial Chamber denying its request to appear as *amicus curiae* or 'friend of the court' remains pending.

In late October the ICTY Appeals Chamber upheld the Trial Chamber's decision to try Gotovina, Čermak, and 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 voluntarily surrendered to the Tribunal in March 2004 soon after they were indicted and have been in Croatia on provisional release since December 2004. In contrast, Gotovina who was indicted in 2001 remains in detention in The Hague after his arrest and extradition from the Canary Islands, Spain in December 2005.

### **Constitutional Court celebrates 15th anniversary - new judges to be nominated**

On 7 December, the Constitutional Court (Court) celebrated its 15th anniversary. At the solemn ceremony marking the occasion, the President of the Court highlighted accomplishments as well as remaining challenges facing the Court. He noted that given its broad jurisdiction and limited access of the citizens to the Supreme Court, the Constitutional Court received annually a number of cases comparable to the number of cases of the Constitutional Court of Germany, although Croatia has a population of only 5.5 per cent of the population of Germany. He observed that over 15 years, the Court had found constitutional violations in only 4 per cent of cases.

Speaking at the ceremony, President Stjepan Mesić noted the delay caused by the 1991 to 1995 conflict to the development of democratic institutions essential for a State based on the rule of law.

In late November, Parliament began the process of nominating new judges to the Court. By the end of 2007, this process will result in the re-appointment or replacement of 75 per cent of the 13-member Court, the membership of which has not changed significantly since the death of former President Franjo Tuđman. The first of nine vacancies will arise on 1 March 2007. The upcoming changes in the Court's composition could mark an important turning point in regard to the Court's role as an effective domestic human rights remedy.

Consideration of possible reform to provide for the election of judges to staggered terms or by a 'cascade' method might help avoid any negative impact on institutional continuity and further insulate the appointment process from politicization.

As mandated by the Constitution, the nomination process is handled by Parliament's Committee for the Constitution, Rulebook, and Political System. Judges must be elected by a majority of all Parliament members. Notably, the appointments will take place during the period preceding the 2007 Parliamentary elections.

### **Refugees and IDP returns - Temporary Use of properties - Government adopts Conclusion on claims for unsolicited investments**

The problem of compensating temporary users for investments made to some 30 occupied private properties allocated by the State has been discussed by the international community and the Government for almost two years. While in some cases investments were necessary to repair damaged properties, in others investments were made in order to transform properties into business premises. Whatever the motivation, all investments were made without the consent of the owners. In four cases, local courts have ruled against owners, obliging them to compensate the temporary users. In at least three cases, owners who were unable to pay the court-ordered amounts have had the public auction of their properties scheduled. In one case, the Ministry of Maritime Affairs, Tourism, Transport and Development paid compensation to the temporary user so preventing the sale of the owner's property.

In order to prevent the possibility that owners would lose their repossessed properties, the Government passed a Conclusion on 7 December stipulating that the State would assume the obligation of compensating temporary users for the investments made. There are presently 24 ongoing court cases in need of resolution.

Rather than waiting for all legal remedies to be exhausted, a proactive approach on the part of the Government would result in extra-judicial settlements for temporary users who have begun legal proceedings in order to recoup the cost of unsolicited investments.

### **Improvements to the Law on Electronic Media necessary**

Amendments to the draft Law on Electronic Media were presented and discussed at the Ministry of Culture on 4 December by representatives of electronic media broadcasters, professional media associations, the Mission and the Delegation of the European Commission to Croatia.

The Mission welcomes these amendments as a positive step forward, but notes that some areas still need improvement. Provisions that were welcomed include the proposal to set up an independent agency for electronic media and the administrative strengthening of the Council for Electronic Media (Council), which will enable this oversight body to systematically monitor all electronic media in Croatia.

One of the Mission's main concerns is that provisions regulating the appointment of members of the Council remain largely unchanged. Recommendations made in 2004 by a group of experts from the OSCE, the European Commission and the Council of Europe suggesting that a more transparent and non-politicised appointment procedure for members of the Council were required, has not been taken into account. In addition, the Mission expressed reservations regarding the role of the Government in appointing the newly introduced post of Director of the Agency for Electronic Media and noted the need to be more specific in identifying the requirements and mandate of this important post as well as that of the Council.

The Mission also noted the lack of provisions ensuring transparency in the management of the fund for media pluralism, as well as the allocation of broadcasting licenses.

In his introductory address, the Minister of Culture indicated the Ministry's intention to send this Law into urgent parliamentary procedure in order to be adopted before the end of 2006. The Mission and other participants at the meeting agreed that it would be more appropriate to discuss the Law in two readings to allow all relevant stakeholders to comment on legislation that will regulate the work of 17 television and 136 radio concessionaires presently operating in Croatia.

Conclusions to the meeting included a revision to the adoption procedure, allowing for the Law to be adopted in two readings and a new round of discussions on the draft Law within one month incorporating the recommendations forwarded by the various participants.

## **MISSION ACTIVITIES**

### **Mission-sponsored roundtable in Parliament examines issue of the voter register**

On 11 December a roundtable discussion on the issue of voter registration lists was organized in Parliament by the Mission, the Central Office for State Administration (CSAO) and Croatia's leading electoral NGO, GONG.

The roundtable, opened by Prime Minister Ivo Sanader, Parliament Speaker Vladimir Šeks, Secretary of State Antun Palarić and the HoM, gathered over 80 participants, including parliamentarians, academics, the media, civil society representatives and members of diplomatic missions. Representatives from the Government and State institutions included the Minister of Foreign Affairs and European Integration, the Minister of Interior and the President of the Supreme Court. Experts provided by OSCE/ODIHR, the EU and the Italian Ministry of Interior, also contributed to the debate.

The Prime Minister emphasized that the large presence of senior Government officials and civil servants at the roundtable demonstrated the Government's determination to tackle unresolved issues related to voters lists. He urged an open debate uncoloured by "daily politics", dedicated to finding the best possible way to compile and protect the voters list. He highlighted technological advances in the maintenance and management of voters lists, one element within the wider E-Croatia project, and praised the CSAO and other relevant offices for their efforts in seeking ways to improve the system. The Prime Minister concluded that a comprehensive and accurate voters list was the best way to stave off doubt regarding the legitimacy of future election results. While noting that a correct voters register based on a good legislation should form the basis of any democratic electoral process, the Speaker of Parliament was keen to underline that the democratic character of elections also depends on the responsible behaviour of all parties involved, including the relevant State bodies, voters, electoral commissions and the media.

CSAO State Secretary Palarić presented the draft Law on Voters Lists, noting that registers would continue to be decentralized and the voters list would remain a non-public document in line with the Law on the Protection of Personal Data. The Interior Minister announced that Draft Amendments to the Law on Temporary and Permanent Residence were currently being prepared, which would clarify the procedure for verifying actual residence in Croatia and for deleting from the voters list those who do not actually live in Croatia. He further indicated that the Amendments would exempt from the actual residence requirement persons temporarily working abroad, those who have requested and await the return of property in Croatia and those whose property in Croatia has been returned but is not habitable.

There was a general consensus among participants that while the draft Law on Voters' Lists provided a sound technical basis for regulating voters lists, additional amendments to the Law on Temporary and Permanent Residence were necessary before the accuracy of lists could be more securely guaranteed.

Concluding the debate, State Secretary Palarić emphasized that the roundtable - the last in a "trilogy" of electoral roundtables organized in co-operation with the Mission - would contribute in equal part to improving Croatia's electoral legislation and practice. In his concluding remarks, the HoM emphasized Croatia's wish to have legal security, control and transparency in relation to the voters list. Praising the quality and openness of the debate, he expressed his hope that 2007 would see the implementation of electoral legislation already adopted.

### **'Children Together' award ceremonies held in Eastern Slavonia**

Two award ceremonies in the eastern Croatian towns of Vukovar and Osijek marked the completion of 'Children Together,' a joint project organized by the Mission and the Ministry of Science, Education and Sports. Consisting of an art and literature competition among children in 30 ethnically mixed primary schools in Vukovar-Srijem and Osijek-Baranja Counties, the project aimed to bring 900 majority and minority children closer together through extra-curricular workshops.

Chaired by State Secretary for Education, Želimir Janjić and the HoM, the ceremonies gathered around 500 people, including pupils, parents, teachers, school principals, local and regional officials, senior minority representatives, two Assistant Education Ministers and representatives of the Ministry of Foreign Affairs and European Integration. The Belgian, Norwegian, Serbian and Spanish Ambassadors also attended the ceremonies along with representatives from the Russian and Czech Embassies.

Besides the awards ceremony itself, children involved in the project performed recitals, songs and dances combining different cultural traditions and helping to create a multi-cultural atmosphere of friendship and mutual understanding among the communities gathered at the two events. Contestants presented award winning essays and poems which had clear references to interaction and communication between all children irrespective of their ethnic or religious background, with one contestant poignantly stressing that "the time has come for adults to learn something from children."

Speaking at the award ceremonies, the HoM expressed his hope that the project had successfully contributed to the growing atmosphere of trust and friendship amongst the children of this formerly troubled region. State Secretary Janjić emphasised that 'Children Together' was just one of many projects supported by the Ministry which aimed to encourage children from minority and majority groups to develop friendly, tolerant relations and so enhance the coexistence of different communities. He expressed his hope that, just like Nikola Tesla, the world-renowned Croatian Serb inventor, minority pupils would soon be able to be equally proud of their Croatian and minority identity. Addressing those gathered the Norwegian Ambassador quoted one of the pupils awarded first prize in the category of literature, "It is not important how many groups we are divided into, to make this world a better place, we can only do it united."

While underlining the need to fully respect the right to specific education as recognized by the Constitutional Law on the Rights of National Minorities, the Mission has consistently promoted 'Children Together' as a project showcasing how this right can be exercised without resorting to segregation.