



Organization for Security and Co-operation in Europe

OSCE Mission to Croatia

News in brief

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**Despite progress Sarajevo Declaration Task Force fails to agree on future Ministerial Declaration**

On 2 February members of the Inter-Governmental Task Force of the Sarajevo Declaration met in Dubrovnik to discuss the upcoming Ministerial Conference on the Sarajevo Process due to be held in Podgorica, most likely after the formation of new governments in Serbia and Bosnia and Herzegovina. This meeting followed consultations between Assistant Ministers/Refugee Commissioners from the four States held in Sarajevo on 22 November 2006.

In the presence of international community (IC) representatives from the OSCE, UNHCR and the European Commission, the Task Force discussed the format of the Ministerial Declaration to be adopted in Podgorica and ways to achieve agreement on the remaining open issues, specifically the convalidation of working years spent in areas formerly controlled by Serb forces, and a fair settlement for former occupancy-tenancy rights (OTR) holders unwilling to return to Croatia.

Discussions were open and constructive with unanimous recognition and agreement on the *acquis* achieved so far and the urgent need to find operative and pragmatic solutions to outstanding issues. Croatia demonstrated its willingness to move forward with the process by considering the possibility of extending the housing application deadline for former OTR holders from urban areas outside the Areas of Special State Concern. However, Croatian Government representatives stressed that the current Government will not consider any request for compensation for former OTR holders unwilling to return to Croatia, which in their view could prompt a secondary displacement of returnees.

However, despite a degree of rapprochement, the parties failed to agree on the written format of the operative mechanisms needed to ensure resolution of the two remaining open issues. While Croatia proposed that reference to these operative mechanisms is only referred to in the Ministerial Declaration to be adopted in Podgorica, Serbia insisted that the same reference be included in Croatia's Road Map, thereby reinforcing the Croatian Government's commitments in this regard.

Despite the efforts of IC representatives to facilitate a compromise, Croatia and Serbia failed to come to an agreement. The respective Ministers will hold consultations in the coming weeks in order to find a compromise acceptable to all parties.

### **ICTY convicts journalist for revealing identity of protected witnesses**

On 7 February the ICTY convicted free-lance journalist Domagoj Margetić of contempt of the Tribunal after he published a confidential list of 102 witnesses from the trial of Bosnian Croat General Tihomir Blaškić on his website in the summer of 2006. Many of those named were protected witnesses.

Mr. Margetić was found guilty of disclosing information in violation of Tribunal orders as well as interfering with witnesses. He was sentenced to three months imprisonment and fined €10,000. Three other Croatian journalists have been convicted and fined by the ICTY for publishing names of protected witnesses in violation of Tribunal orders. Mr. Margetić originally received the list of witness names from the ICTY during a prior contempt proceeding against him in May 2006, which was subsequently dropped. Contrary to claims by Mr. Margetić, the Trial Chamber found that the list had been classified as confidential from the outset of the Blaškić trial and remained so throughout the proceedings. Mr. Margetić received explicit notice in the spring of 2006 that the list was subject to non-disclosure orders, was marked as confidential and could not be used for any purpose other than proceedings at the ICTY.

On 1 August 2006, the ICTY ordered Mr. Margetić to cease and desist from further publication of the witnesses' names on his website which he had begun in July. He was arrested in early August and detained until mid September by Croatian authorities for failing to accept the injunction issued by the ICTY. In mid September, after 34 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 unnecessary since alternative measures existed to ascertain Mr. Margetić's whereabouts and prevent him from violating ICTY orders.

In its judgment, the Tribunal focused on Mr. Margetić's particularly egregious conduct in violating Trial Chamber orders and knowingly disclosing information on protected witnesses. The Trial Chamber found that his actions not only undermined confidence in the Tribunal by affecting future witness co-operation, but also recklessly exposed vulnerable witnesses to threats and intimidation.

When determining the sentence, the Trial Chamber considered as aggravating circumstances the fact that Mr. Margetić had published information with regard to a considerable number of protected witnesses as well as the significant personal and psychological consequences the disclosure had had on the lives of at least three of them.

### **ICTY 'Litmus Test' in Constitutional Court nomination hearing**

On 1 February Parliament's Committee for the Constitution, Rulebook and Political System (Committee) conducted a hearing with four candidates vying for a vacancy on the

Constitutional Court (CC). Based upon the Committee's recommendations, the Parliament will appoint a new judge to the Court as of 1 March.

During the hearing Committee members asked the candidates numerous questions related to fundamental rights on which the CC might be asked to rule in an individual case. The candidates' responses suggested that they have pre-judged human rights issues that might come before them if appointed to the CC. In addition, candidates also responded to several questions posed by independent Parliamentarian Slaven Letica related to the ICTY. Two of the four candidates – a former State Attorney and the Dean of Zagreb Law Faculty - indicated that if in a position to decide, they would not have turned over documents from the archives of former President Tudman to the ICTY. Two candidates – a former and current State Attorney - also indicated that they believed ICTY indictee Ante Gotovina was not guilty.

On 6 February the Committee recommended two candidates for Parliament's consideration. The two candidates include a current State Attorney and the Dean of Zagreb Law Faculty. The latter served as part of the Government's *amicus curiae* (friend of the court) team in the proceedings leading up to the ICTY referral under Rule 11 *bis* of the Ademi-Norac indictment. He also served as part of the *amicus curiae* team proposed by the Government to participate in the upcoming trial of Ante Gotovina, Mladen Markačić, and Ivan Čermak and the ongoing trial of Jadranko Prlić and five others. A challenge to the process used by the Parliament in 2002 to appoint a current CC judge has been pending with the CC for several years. The challenge was filed by the current Ombudsman, who served as a CC judge until 2002. The mandates of eight additional CC judges expire in 2007 with the result that 75 per cent of the 13-member CC will either be re-appointed or replaced this year.

### **Head of Government Office for Associations dismissed after claims of illegal security screening**

On 25 January the Government decided to discharge from duty the Head of the Government Office for Associations, Ms. Jadranka Cigelj, based on the Government finding that she had overstepped her authority and acted without the consent of the Government by ordering security checks on NGO members of the National Council for Civil Society Development (Council). The newly formed Council consists of 10 NGO members elected by the NGO community, 10 members from Government ministries involved with the civil sector, and three independent experts. The latter two groups are appointed directly by the Government.

Numerous NGOs protested against the vetting by the Security and Intelligence Agency (SOA), arguing that the checks were illegal, since Council members have no call to handle classified or national security documents but merely advise the Government on the future development of civil society. The background investigations were seen by many NGO representatives as having a 'chilling' effect on civil society in Croatia by placing their members under the surveillance of the security services.

Following their initial complaint, the NGO members pursued the matter with the Council for Civil Control over Security and Intelligence Agencies. A subsequent investigation

concluded that Ms. Cigelj had requested the SOA to conduct the security clearance and that it was carried out in accordance with the law, with one exception – one NGO activist was questioned over the phone, a practice inconsistent with internal SOA regulations.

Several of Croatia's most prominent NGOs, nonetheless maintain that the background checks were impermissible, as SOA acted in line with an internal regulation, invalidated by the new Law on the Security and Intelligence System adopted in August 2006 and failed to notify and secure consent from the persons under surveillance.

### **Continued delays in return of private property affect tourist destinations**

Extensive and insufficiently justified delays continue in the return of private property allocated during and after the 1991-1995 conflict by the Government for use by third persons. Recent ECHR judgments in *Radanović v. Croatia* and *Kunić v. Croatia* determined that lengthy delays violated the owner's right to property and that the remedies available for owners to repossess their property were ineffective. Such delays primarily affect property located in areas of Croatia most heavily affected by the conflict. However, property in popular tourist destinations on Croatia's coast and islands is also allocated and presents particular challenges to owners seeking to repossess given the significant value of the property to users.

For example, Bojan Miladinović, whose home is located in Bol on the island of Brač, has been seeking to regain possession of his property for approximately five and a half years. The State allocated the property in April 1997, several years after the conflict. In 2001, Miladinović initiated a court action for return of the property. However, after several years of unsuccessful litigation, he withdrew his court case as he was no longer able to afford the costs. In 2004, he submitted a repossession request to the Ministry of Sea, Tourism, Transport and Development, which in 2005 terminated the allocation and ordered the temporary user to vacate. Following the user's refusal to vacate the State Attorney initiated a court action for eviction in October 2005. This order remains pending before the Supetar Municipal Court, no decision having yet been rendered. In an earlier decision, the same court denied the owner's request for compensation for the years of use of his home by this third party. The case remains on appeal at the Split County Court.

### **Mission provides legal literature to courts and prosecutors in war-affected areas**

Over the years Mission field offices have observed that local courts and prosecutors throughout Croatia lack sufficient basic legal resource materials, particularly in the rural war-affected areas. Responding to this need, the Mission provided approximately €3,300 from the Rule of Law Project Fund in late January, to purchase legal resource materials requested by courts and prosecutors in Gospić, Otočac, Karlovac and Sisak.