

ICTY Chief Prosecutor visits Croatia; discusses possible transfer of ICTY cases and supports Mission monitoring role

Carla Del Ponte, Chief Prosecutor of the International Criminal Tribunal for the former Yugoslavia (ICTY), visited Croatia on 3 and 4 June in advance of her presentation at the end of the month to the United Nations Security Council regarding implementation of the ICTY's Completion Strategy. Del Ponte met with Government and judicial officials, including the Prime Minister, the Minister of Justice, the Chief State Prosecutor, and the President and judges of the Zagreb County Court, one of the courts most likely to be given the responsibility for handling cases transferred from the ICTY to Croatia. The ICTY Prosecutor also met with members of the Croatian Bar Association to discuss the preparedness of the bar to provide an adequate defence to those who are tried before the Croatian courts for war crimes.

Del Ponte stated publicly that she was happy to visit a country that had fulfilled almost all its obligations to the ICTY. She indicated that since her last appearance before the UN Security Council there had been significant improvements in Croatia's co-operation, including swift and professional responses to the Chief Prosecutor's requests as well as the prompt surrender of indictees in April and May. She stated that the remaining open issue in terms of Croatia's co-operation was the surrender of former General Ante Gotovina, who remains at large since being indicted by the ICTY nearly three years ago. Del Ponte indicated that she was convinced the Government was doing all it could to locate and arrest Gotovina, stating that she expected the Government to continue to do its utmost, including obtaining information from third countries, until Gotovina "was in The Hague." She indicated that she had very good co-operation on the Gotovina issue with the office of the Chief State Prosecutor and would not set a deadline for his arrest since that was not realistic. She did indicate however that she expected Gotovina would be in ICTY custody by the end of 2004.

Del Ponte stated that while she is currently satisfied with the Government's level of co-operation, she is following the situation very carefully. The Chief Prosecutor observed that Croatia's actions demonstrated that positive incentives for co-operation with the ICTY do work. As previously announced, the Chief Prosecutor re-iterated her intention to request that the indictments against Mirko Norac and Rahim Ademi be transferred from the ICTY to Croatia for indictment and trial pursuant to domestic law. She stressed that this would be a "test case" for Croatia. She observed that the Tribunal had primacy in relation to domestic jurisdictions, and that the indictment could be taken back to the ICTY if the case were not proceeding properly. Del Ponte indicated that she looked to the OSCE Mission to provide monitoring of any such transferred cases since the ICTY lacked the resources to conduct its own monitoring. Del Ponte expressed her appreciation to the Mission for the information provided through its trial monitoring reports regarding domestic capacity, which was particularly relevant given the need to transfer cases pursuant to the Completion Strategy.

In advance of the Chief Prosecutor's visit, there was significant discussion in the media involving various legal experts over whether Croatian law was sufficiently compatible with the law and jurisprudence of the ICTY to sufficiently "translate" ICTY indictments and investigations into domestic proceedings.

Serb minority agrees to establish first national-level Co-ordination Body of Minority Councils; debate ensues on use of minority symbols

On 24 May, the Presidents of 14 out of 17 Serb Councils for National Minorities across Croatia signed an agreement to establish the first national-level Co-ordination Body. The Co-ordination Body will be established at a founding session at the end of June, and will consist

of up to 83 members elected by the participating Councils. The Serb minority is the first to establish such a Co-ordination Body, foreseen by the Constitutional Law on National Minorities (CLNM) as a means to further promote the interests of minorities. The agreement to found the Co-ordination Body was welcomed by the OSCE Head of Mission in an address at the founding session. He cited the development as a step forward in the implementation of the CLNM.

The CLNM authorizes national-level Co-ordination Bodies to pass decisions on the use of signs and symbols representative of national minorities, stipulating that any such symbols must be used alongside symbols representing the Republic of Croatia. This issue led to much public and media debate after President of the Serb People's Council and Vice-President of the Independent Democratic Serb Party, Milorad Pupovac, stated that the Body would seek to adopt symbols, including a flag and an anthem, to represent the Serb community. Press commentators described the move as "provocative", given that associations with the armed conflict were likely to arise from the display of such symbols. Prime Minister Ivo Sanader urged the Serb minority to be somewhat circumspect regarding the timing and display of such symbols, while recognising that this right was enshrined in the law. Serb leaders who initiated the agreement on the new Co-ordination Body have indicated that the media debate was unintentional and unfortunate, and that the adoption of symbols will be the subject of further discussion following the founding of the Co-ordination Body.

OSCE Head of Mission presents report on ECHR cases involving Croatia to parliamentary Committee; Committee adopts conclusions calling *inter alia* for a review of Constitutional Court's competences

On 2 June, the OSCE Head of Mission presented a Mission analysis of cases before the European Court of Human Rights (ECHR) involving Croatia to the parliamentary Committee on Human Rights and the Rights of National Minorities. Presentations were also given by Croatia's Agent to the ECHR and a judge from the Croatian Constitutional Court. In addition to the Committee's members, the session was attended by representatives from the Ministry of Foreign Affairs, the Ministry of Justice, the European Commission (EC) delegation, non-governmental organizations and the media.

The purpose of the Committee session was to raise awareness of this issue among both parliamentarians and citizens and to initiate a public debate on domestic reforms. The Committee adopted recommendations for follow-up measures that are consistent with the recommendations adopted recently by the Council of Europe's Committee of Ministers.

In his presentation, the Head of Mission observed that the report stemmed from the Mission's interest in supporting the further strengthening of effective human rights remedies within Croatia. He further noted that the Mission supports several projects together with the Constitutional Court and the Ombudsman to increase public awareness and access to these institutions. He also reiterated the importance of considering human rights at all stages of the legislative process and called on the Croatian authorities to further support domestic human rights institutions, in particular the Ombudsman institution. The Head of Mission noted that the main observations of the report are also echoed in the EC's opinion (*avis*) on Croatia's application for membership of the European Union.

The Government Agent to the ECHR commended the Mission's report and stated that the Government was committed to act in line with the recommendations therein, including the reform of the Administrative Court, and that the redefinition of the Constitutional Court's jurisdictional statute was of great importance. She also recalled the Constitutional Court had

discretion to align its practice with ECHR precedent. The Ministry of Foreign Affairs representative reiterated that in signing Protocol No. 14 to the Convention, Croatia committed itself to undertake domestic reforms to strengthen human rights protection.

As of late May 2004, the ECHR issued decisions in a total of 118 cases involving Croatia. Of the 19 resulting negative judgments, the majority relate to fair trial violations, such as the lack of access to court and the non-enforcement of final court verdicts. Repeated judgments by the ECHR on the same legal question suggest that no remedies have been put in place after the ECHR's first "pilot" judgments on several issues.

International partners meet with Minister for Maritime Affairs, Tourism, Traffic and Development, Bozidar Kalmeta, on return-related issues

On 1 June the HoM, the Head of the European Commission (EC) Delegation, the UNHCR representative and the US Ambassador met with Bozidar Kalmeta, Minister for Maritime Affairs, Tourism, Traffic and Development. The Minister was accompanied by the State Secretary for Development, Mr. Zdravko Livakovic, in addition to four Assistant Ministers responsible for refugee return, the reconstruction of residential houses and infrastructure, and regional development.

The Head of Mission recalled the decision of the previous Government on a housing programme for former residents of socially owned housing with occupancy/tenancy rights (OTR), who wish to return. He observed that this category represents the largest group of refugees and internally displaced persons (IDPs) who still do not have access to housing if they want to return. He expressed satisfaction with the conclusion of a Memorandum of Understanding between the Minister and UNHCR on 7 May, which provides the basis for co-operation on a Public Information Campaign in Serbia and Montenegro and Bosnia and Herzegovina, in addition to the collection of applications from those who were still displaced in these countries. The participants agreed to meet at the working level to consult on issues related to the Public Information Campaign, the collection of applications and the practical implementation of the aforementioned programmes, and to suggest measures for improvement of the programmes and their implementation. Minister Kalmeta expressed confidence that the programmes would be successfully implemented and referred to a budget of approx 3 million euros for 2004 and 2005 for the purchase of apartments outside Areas of Special State Concern, i.e. the main urban areas which remained under Government control during the armed conflict.

Other issues related to property repossession which were raised during the meeting included the need for measures to prevent looting of properties to be repossessed; assistance to those who are victims of such looting; the need to ensure that all those entitled by law to compensation from the state for continued use of their properties by temporary occupants actually receive such compensation; and concern over counterclaims filed by occupants against owners for "investments" made without the owners' consent while the owners' properties were under state administration.

The Government side expressed confidence that of 523 illegally occupied properties identified at the beginning of the year, the remaining 159 would be returned by the deadline set in December between the Prime Minister and parliamentary members representing the Serb minority. In addition, the bulk of the remaining 2,440 occupied residential properties allocated under a 1995 law (out of a total of more than 19,000 houses initially) would be returned to the owners by the 31 December deadline.

It was further concluded that the reconstruction efforts are progressing well, although some specific questions remain.

A further meeting between representatives of the international community and Minister Kalmeta will take place in July.

Government officially launches National Foundation for Civil Society Development

On 2 June the Deputy Prime Minister, Jadranka Kosor, inaugurated the National Foundation for Civil Society Development in Croatia. The event was attended by Government officials, representatives from the Mission, the diplomatic corps, NGOs from across Croatia and the national press. The Foundation is Croatia's first public, non-profit organization dedicated to facilitating improvements in Croatia's civil society infrastructure and its launch marks the passage from central management to institutional independence. The Law on the National Foundation was adopted by Parliament on 16 October 2003. The Foundation was given a mandate to provide expert advice, financial support and technical assistance to civil society programmes which promote the sustainability of the non-profit sector, intersectoral cooperation, civic initiatives, philanthropy, volunteerism and the improvement of democratic institutions.

Components of the EC CARDS Programme for 2002, 2003 and 2004 in the areas of democracy, human rights, service delivery and environmental protection will be implemented through the Foundation.

OSCE/CoE/EC expert completes analysis of the new Law on Media

Following the adoption of the new Law on Media by the Parliament on 30 April 2004, the law was forwarded to a European media expert for further comments. This is a continuation of earlier support for the Government's efforts to ensure full alignment of media-related legislation with European standards. In February 2004, at the Government's request, the Mission, the EC and the Council of Europe (CoE), organized a visit of European media experts to review four media-related pieces of legislation and provide written recommendations.

According to the recent comments, the majority of the previous expert recommendations on the Law on Media were adopted in the final draft, including state subsidy rules for the promotion of media pluralism, and provisions preventing media concentration. However, the media report expressed concern over two provisions in the new law, relating to the disclosure of journalists' sources and the circulation of newspapers by foreign publishers. These provisions will be discussed in further talks with the Government.

Round table on access to information concludes the law is not fully implemented

A round table was organized on 20 May by the Journalists' Club and Transparency International Croatia on the subject of access to information. Several participants noted that Government institutions and public officials were still not respecting the Law on Access to Information, adopted in October 2003. Transparency International Croatia criticized the Government for a lack of political will to implement the law, and noted the failure of institutions to follow the relevant provisions in the law. A group of 17 prominent NGOs called "The Public has the Right to Know" has drafted amendments to the Law and will launch a public awareness campaign on the issue.