



Organization for Security and Co-operation in Europe

OSCE Mission to Croatia

News in brief

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The new government could be in place by Christmas / Croatia may have for first time a Minister from a Serb party

The art. 97 of the Croatian Constitution implies that the President of State, Stjepan Mesic, is not obliged to offer the opportunity to form a government to the representative of the party that obtained a relative majority in the election. His role remains slightly more flexible, and he has chosen to leave to the two major parties the opportunity to seek to form coalitions prior to the President giving an official mandate to one party or the other. However, most analysts in Croatia agree that the government mandate will be offered very soon to the HDZ.

The key to forming a coalition will be the decisions of the HSS-HSLS coalition which holds eight Parliamentary seats and the eight national minority deputies in the Sabor. HSS-HSLS leaders have been caucusing on how to approach coalition negotiations, and are expected to meet with HDZ leaders in a day or two. The three representatives of the Serbian minority have stated, through the vice-president of the Independent Democratic Serb Party (SDSS) Milorad Pupovac, that they will support the party that offers the best chance of forming a strong and stable government, being the HDZ or SDP. Mr. Pupovac also contended that in either instance the SDSS would insist on one or more ministerial posts in the government. Mr. Pupovac also commented that the 2003 post-electoral agreement the SDSS concluded with the previous HDZ led government has to be further implemented, which is being understood by the media as suggesting the SDSS may be inclined toward the HDZ. In any case, it is to be expected that whether the HDZ or SDP forms the government, there will be for the first time a Minister belonging to a Serb ethnicity party.

Concerning timelines for formation of a new government, the art. 73 of the Croatian Constitution states that “the first session of the Croatian Parliament shall be held not later than 20 days after the completion of the election”. The State Election Commission explains that the election will be repeated in three polling stations on 9 December and the deadline for complaints expires 48 hours later, i.e. on 11 December. Should there be no complaints then the first session of the Sabor must be held no later than 31 December. Because of the Christmas holiday period this would mean a government might conceivably be approved before Christmas but it could also lead to a decision only after the New Year.

Ademi-Norac war crimes trial continues, identifying information revealed on 'endangered witnesses'

The trial of Rahim Ademi and Mirko Norac on allegations of war crimes against Serb civilians committed during the September 1993 'Medak Pocket' Operation continued throughout late November in the Zagreb County Court. As of 27 November, forty-one hearings have been conducted during which 42 prosecution witnesses testified and several hundred documents proposed by the Prosecution have been summarized for the record. In November, the Presiding Judge also scheduled witnesses for the defense, taking advantages of openings in the trial schedule which resulted from the non-appearance of some prosecution witnesses.

As a result, the testimony of prosecution witnesses and presentation of prosecution documents alternated with the testimony of seven defense witnesses. The trial is scheduled to continue in mid-December.

Of 28 'endangered' prosecution witnesses scheduled between late October and late November, five (18 percent) appeared to testify in response to the first summons. These witnesses testified from outside the courtroom via video-link with their face and voice distorted. The testimony was transmitted into the courtroom open to the public. During the testimony, identifying information on four of these endangered witnesses was revealed through voluntary statements by the witnesses as well as in response to questions from the Presiding Judge as well as the parties. As a result, it became apparent that Endangered Witnesses Number 24 and 35 were the daughter and wife, respectively, of Stevan Vujinovic, while Endangered Witnesses Number 34 and 20 were the daughter and son, respectively, of Boja Pjevac. This identifying information was included in the minutes of the hearing and published in the national media. Reportedly, NGOs were involved in facilitating the testimony of several of the endangered witnesses.

Also in late November, four non-endangered Serb witnesses for the prosecution, who had previously failed to appear, provided their testimony. Although these witnesses did not have endangered status, two testified in a closed court session from which the public, including the Mission, was excluded. All of these witnesses reside outside Croatia and their appearance in court required assistance from Bosnia and Herzegovina and Serbia. Four other witnesses in this category who were scheduled to testify in late November failed to appear for the second time. As of the end of November, forty-five percent of the prosecution witnesses failed to appear.

Administrative Court overturns APN's refusal to release information related to purchase of Serb houses

In mid-November, the Administrative Court issued its ruling that the state Agency for Mediation in Transactions in Certain Real Estate (APN) erred when it denied an access to information request lodged by the head of an NGO in April 2005, which seeks documentation related to APN's dubious purchase through falsified powers of attorney of approximately two hundred homes from primarily Croatia Serb owners displaced in Serbia.

The Administrative Court rejected APN's reasons for denying the request, i.e., that the NGO had no legal interest in the information and the information was a business secret exempt from public disclosure. The Administrative Court found that, to the contrary, the NGO like any other citizen in Croatia had a legitimate legal interest in the information

and there was no basis for APN's view that its documents, including sales contracts, are protected from public disclosure as business secrets. The Administrative Court ordered APN to issue a new decision in line with its findings within the legal deadline.

This is the second decision by the Administrative Court in relation to this information request. In September 2006, the Administrative Court granted the NGO's appeal based on 'silence of administration,' given APN's failure to issue a written decision within the legal time limits. To date, more than two and one-half years after its information request was lodged, the NGO has not received the requested information and is now awaiting another decision by APN.

APN, established by Governmental decree to serve as an agent between property owners and potential buyers, is a public institution financed from the State budget and subject to the Law on Access to Information. As previously reported, for some years allegations of fraud in the sale of Serb-owned property through falsified powers of attorney have been reported. The Office for the Suppression of Corruption and Organized Crime (USKOK) has been investigating these allegations. To date, there have been no criminal proceedings. In a number of cases initiated by owners, courts have invalidated the fraudulent sales contracts. In 2006 and 2007, the Mission funded a legal aid project to provide assistance to such owners in order for them to regain possession of their properties which had been illegally sold through falsified powers of attorney.

Supreme Court again finds that war-time amnesty creates time bar to consideration of claims for State responsibility for Serb civilian murders by armed forces

The Supreme Court recently ruled that the Zagreb County Court properly refused to review a compensation claim against the State lodged by the family of Blaženka Slabak, a Serb woman killed by Croatian Army soldiers in her home in Novska, Western Slavonia in December 1991, because the claim was filed late. Similar to its decision in the Mileusnic case which involved the killing of two other Serb women by the same soldiers, the Supreme Court reasoned that no crime had been proven since the perpetrators had been amnestied by the Zagreb Military Court in late 1992. As a result, the Supreme Court determined that in order for the Slabak family to have their compensation claim considered, it had to be filed within the three year civil statute of limitations, i.e., by December 1994. Since the Slabak family submitted their compensation claim in 2003 under the 2003 Law on the Responsibility of the Republic of Croatia for Damages Caused by Military and Police, the Supreme Court found that the claim was barred due to the expiration of the statute of limitations.

The Supreme Court also recently reversed the Zagreb County Court's decision finding the State civilly responsible for the death of Nikola Kovic, a Serb civilian, who was killed by a police officer in early 1991 as well as the award of compensation to his surviving family. In contrast to the Slabak and Mileusnic cases, the Zagreb Military Court in 1993 convicted the police officer of killing Nikola Kovic and sentenced him to four and one-half years imprisonment. However, the police officer did not serve his prison sentence as he was pardoned by former President Tudjman. In the civil damages claim, the Supreme Court concluded that the lower court had not sufficiently established whether at the time of the killing the police officer was acting in an official or private capacity, upon the proper determination of which hinged the State's responsibility. The Supreme Court remanded the case for a new trial and decision.

Third *in absentia* trial highlights continuing concerns about some war crimes trials

In addition to high-profile war crimes proceedings, such as the Ademi-Norac trial, the Mission continues to follow a considerable number of proceedings conducted in large number of local courts. In mid-November, the Požega County Court convicted Predrag Gužvic for the abuse of a Croat civilian, imposing a sentence of seven years of imprisonment after an *in absentia* trial lasting less than two hours. The trial was the third in absentee trial against Gužvic since 1998. Although opposed by the State Attorney, in April, the Supreme Court endorsed the trial court's decision to proceed with an *in absentia* trial, finding that there were "especially serious reasons" for an *in absentia* proceeding. These reasons included that the accused had already been twice tried *in absentia*, the victim was of an advanced age (over 70), and fourteen years had elapsed since the crime. The Supreme Court further found there were no fair trial concerns given that if convicted *in absentia*, Gužvic upon apprehension by Croatian authorities could request a fourth trial to be conducted in his presence.

During the retrial, the victim was the sole witness, confirming his testimony in the prior two trials. The court-appointed defense attorney for the absent Gužvic left the trial to attend another hearing and was absent during the testimony of the victim-witness. Noting the defense attorney's absence in the minutes, the court added that "an assumption is made that the defense would not have any further evidentiary proposals." Although by law, war crimes trials must be conducted before a panel of three professional judges, the retrial was conducted by a panel composed of two professional and three lay judges.