

Dimitrij Rupel
President of the Council Ministers of the European Union

Brussels, 23 April 2008
Ref: B772

Dear Mr. Rupel,

Subject: Croatia Stabilisation and Association Council, 28 April 2008

In light of the upcoming Stabilisation and Association Council with Croatia, on 28 April 2008, Amnesty International would like to share its concerns about continued impunity for war crimes in Croatia. These concerns were expressed by Irene Khan, Amnesty International's Secretary General during her recent High Level Mission to Croatia.

Impunity and lack of domestic prosecutions for war crimes

Despite recent positive steps to pursue investigations and prosecutions more aggressively, international organizations monitoring proceedings in Croatia, including the Organization for Security and Co-operation in Europe (OSCE), have continued to raise concern about ethnic bias in the prosecution of war crimes committed during the 1991-95 war. This has resulted in the disparity in the number of investigations and prosecutions for crimes committed by Croatian Serb and Croatian forces.

The Croatian judiciary has not done enough to tackle impunity for violations committed by members of the Croatian Army and police forces against the "former enemy". Lack of sustained political will appears to remain a key factor in hampering prosecutions directly or, indirectly, by creating a climate not conducive to such prosecutions.

In addition, the lack of a clear strategy by prosecutorial and judicial organs to deal with the significant number of outstanding cases of war crimes is a further obstacle to effective investigations and prosecutions. In this regard, Amnesty International welcomes recent efforts by the Office of the Chief State Attorney of Croatia to create a comprehensive database mapping all cases of war crimes committed during the 1991-95 war as a first step to tackle impunity in a more systematic manner.

Witnesses in war crimes investigations and prosecutions

Successful war crimes prosecutions in Croatia have relied on the availability of witnesses willing to provide testimony. Witness protection legislation was adopted in 2003; a witness protection unit at the Ministry of Interior and a witness support unit at the Ministry of Justice were subsequently established. However, a 2007 UN Development Programme (UNDP) survey found that there remain gaps with regard to witness protection and support, including protection of the confidentiality of the witnesses' identities. There are reports of threats and intimidation of witnesses in war crimes proceedings having an impact on their willingness to testify and on the qualities of their testimonies.

Processing war crimes cases in the local community and transfer of cases

Obstacles to the investigation and prosecution of war crimes are especially significant where proceedings take place in the communities where the crimes took place. Four "special" county courts in the main cities of Osijek, Rijeka, Split and Zagreb have jurisdiction to process war crimes cases and have special investigating departments for war crimes. War crimes proceedings, upon a request by the Chief State Attorney, can be transferred from the County Court to one of the four "special" courts.

There is a wide consensus, including among local organizations and within the judiciary, for war crimes to be investigated – where needed – with the assistance of external teams of police investigators and to be processed by the four "special" courts. Nevertheless, the majority of war crimes cases continue to be

investigated and tried locally. The Chief State Attorney so far has made limited use of his discretion to ask for the transfer of war crimes proceedings to one of the four "special" courts. The capacity of the "special" courts, as well of prosecutorial and investigative organs, should be increased to equip them to deal with a significant backlog of war crimes cases.

The continued need for international monitoring and assistance

The OSCE presence in Croatia has been critical in monitoring war crimes proceedings and has assisted the Croatian authorities in addressing impunity. Amnesty International considers that a premature closure of the OSCE Office in Zagreb would leave a significant gap in monitoring mechanisms to consolidate progress in war crimes investigations and prosecutions. Although in recent years local NGOs have been progressively more active in monitoring war crimes trials they still lack the resources and capacity to conduct these activities in a comprehensive and effective manner.

Amnesty International welcomes the increasing attention from the EU to impunity for war crimes in Croatia. Croatia is the first country with serious problems related to past war crimes integrating into the EU and Amnesty International considers that closely monitoring progress in this area and setting specific benchmarks, is of crucial importance. This would set important precedents as well for countries such as Serbia and Bosnia and Herzegovina, which are considered as potential candidate countries.

The International Criminal Tribunal for the former Yugoslavia (Tribunal) should provide assistance with regard to cases and files transferred to countries of the former Yugoslavia, including Croatia. To this end, its Transition Team should have sufficient resources to work effectively with the national authorities prosecuting war crimes cases. International cooperation between countries of the former Yugoslavia should be encouraged, building on existing progress and extending cooperation from the national prosecutors' offices to court systems.

Amnesty International therefore calls on the EU to:

- ensure that Croatia's progress in addressing impunity for war crimes, with particular regard to crimes allegedly committed by the Croatian Army and police forces, is closely monitored in the context of pre-accession negotiations and that clear benchmarks and targets are defined against which to measure such progress;
- ensure that, in the context of programmes of assistance to Croatia, particular attention is devoted to reform of the judiciary, to the provision of witness/victim protection and support, and to the building of capacity of Croatian courts and legal practitioners, with a view to ensuring that they are equipped to deal with complex war crimes cases;
- ensure that assistance, including capacity building, is also provided with a view to enhance the capacity of local NGOs to collect information on war crimes, to monitor war crimes proceedings, and to conduct advocacy activities, to complement monitoring at the international level;
- ensure continued international monitoring in the areas of rule of law and war crimes investigations and prosecutions, including through an OSCE presence on the ground;
- promote cooperation between national offices of State Prosecutors, and between the judicial systems of countries of the former Yugoslavia, with a view to promoting efforts to combat impunity, including by facilitating the transfer of evidence and the delivery of witness statements.

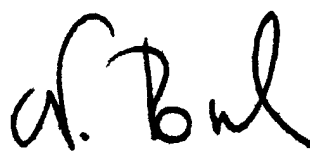
Amnesty International remains at your disposal to discuss this issue further.

Yours sincerely,



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