

Croatia to Try Hague Cases

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Judges agree first-ever war crimes trial transfer to Zagreb.

In a landmark decision this week, judges at The Hague agreed to transfer the case of two former Croatian generals to a local court in Zagreb.

This is the first case to be referred to Croatia by the tribunal, which is under pressure to fulfil a pledge to the UN Security Council to complete trials and appeals in The Hague by 2010.

Part of the tribunal's completion strategy foresees that lower- and medium- ranking cases will be sent back to local courts for trial, under the tribunal's own rule, known as 11bis.

The two former generals, Rahim Ademi and Mirko Norac, have been indicted for their alleged roles in an operation to drive the Serb population out of the so-called Medak Pocket – a small area in Krajina, southwest Croatia, in September 1993.

They both face two counts of crimes against humanity and three counts of war crimes for the alleged murders of 29 Serb civilians and five captured or wounded Serb soldiers during this operation.

The indictment alleges that the area of the Medak Pocket, where about 400 Serbs had been living, was made uninhabitable as a result of the operation: 164 homes were completely destroyed, along with barns and other outbuildings; wells were poisoned when oil and dead bodies were thrown into them.

In order to allow a possible transfer, the judges heard arguments from prosecution, defence, the Croatian government and legal experts on a number of issues at a hearing in February this year.

The accused face charges in relation to their own actions and as superior officers because they are alleged to have had command responsibility. This concept has been developed by prosecutors at The Hague, so that commanders are held responsible for crimes committed by their troops, if they failed to take measures to prevent the crimes or failed to investigate and punish the crimes after the fact.

The Croatian 1993 penal code, under which the trial may be heard, does not contain the concept of command responsibility. The absence of such a provision was a key consideration in discussions over whether the transfer should be permitted.

The judges concluded in their deliberations that “the case against the accused would have lost most of its significance and weight” if it were not possible to prosecute all the alleged crimes.

The Zagreb government, the defence and Croatian legal experts - acting as *amicus curiae*, or friends of the court - argued at the February hearing that there were a variety of legal means available to try the accused for command responsibility, including “creativity” in interpretation of the legal code or the use of certain provisions in international law, which would also be applicable in Croatia.

The prosecution made an additional submission in March to support the potential application of provisions of international law to the events in the Medak Pocket, arguing that the armed conflict at the time was “international in character”.

But the judges pointed out that, although that may be the case, the indictment itself makes no mention of an alleged international armed conflict at the time.

Other issues the judges considered included the gravity of the case, whether the accused would receive a fair trial and whether there was a “sufficient” witness protection system in place.

The prosecution had made it clear in February that it considered the crimes concerned “of considerable gravity”, and that it was only in the context of the court’s completion strategy - because “we have neither the time nor the resources” to process it - that they were requesting a transfer to a local court.

In making their decision, the judges insisted that an “adequate system of monitoring” the trial should be in place.

The accused, who have both pleaded not guilty to the charges relating to the Medak Pocket operation, are already both in Croatia. Ademi was released pending trial, while Norac is serving a twelve-year sentence for the murder of Serb civilians in the town of Gospic during the war.

Seven more possible transfer cases to the countries of the former Yugoslavia are still outstanding.

But the Norac/Ademi case was the only one set for Croatia, following the prosecution’s withdrawal of its application to transfer the so-called Vukovar Three - a trio of former Yugoslav army officers accused of responsibility for the deaths of more than 200 prisoners taken from a hospital in Vukovar in 1991.

The prosecution withdrew that application after the issue stirred up nationalist passions in both Croatia and Serbia.

Other trials may go to war crimes courts in Bosnia or Serbia. And defence counsels in some cases are arguing for their clients to be tried in either Serbia or Croatia. So far, only one other prosecution application - that of Radovan Stankovic - has been confirmed by the Hague appeals chamber for transfer to Sarajevo.

Croatian government representatives placed considerable weight on the successful transfer of the Norac/Ademi case, seeing it as a test case, which could potentially prove that Croatia’s government and judicial system was capable of handling the political and judicial issues involved.

Zagreb’s accession talks with the European Union continue to be stalled over its failure to arrest another Hague indictee - the fugitive general Ante Gotovina.

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