

Defence Conflicts Cloud Operation Storm Case

Author: [Lisa Clifford](#)

Clashes on the Operation Storm defence benches cause further delays and present yet another obstacle to the tribunal's completion strategy.

The Hague tribunal's looming completion deadline looked less achievable than ever this week after further complications emerged in the case against three Croatian generals accused of crimes during Operation Storm.

Lawyers representing Ivan Cermak and Mladen Markac confirmed they would ask the court's registrar and pre-trial judges to investigate an alleged conflict of interest involving the lawyer for the third indictee, Ante Gotovina.

The start of the trial – which was supposed to begin on May 7 – was delayed last week after Cermak's lawyers Cedo Prodanovic and Jadranka Slokovic were removed from the case due to a suspected conflict of interest. Judges expressed concern that their other client, Croatian army general Rahim Ademi, could be summoned to testify as a witness.

This came after Markac's lawyer, the former Croatian justice minister Miroslav Separovic, was dismissed in March when judges ruled he had a personal interest in the case and was likely to be called as a witness.

In a further twist this week, Markac's remaining lawyer Goran Mikulicic claimed he had evidence that Greg Kehoe, a former Hague prosecutor who is now representing Gotovina, had investigated Operation Storm during his time on the prosecution benches.

The Croatian generals are charged with the murder, persecution and deportation of ethnic Serbs during Operation Storm – a Croatian military offensive launched in the summer of 1995 to retake the Serb-held Krajina region.

A spokesperson for the Office of the Prosecutor, OTP, this week said an internal review had been conducted into whether any conflict of interest exists over Kehoe's involvement in the case, but nothing was found in what is a standard procedure when a prosecutor switches to the defence.

"We would have raised an issue if there was one to be raised," said Olga Kavran.

Kehoe, who worked in the prosecutor's office from 1995-1999, where he won the conviction of Bosnian Croat general Tihomir Blaskic, also denied any conflict of interest.

He said the majority of his time as a prosecutor at the tribunal was spent on Blaskic, though he also worked on the case against Milan Martic, the former leader of the rebel Serb authorities in Croatia.

Nonetheless, the Operation Storm trial is now facing serious complications.

Cermak's lawyers have said they will appeal their dismissal, and Separovic has already appealed, saying Markac has full faith in him and would suffer substantial hardship if not allowed to choose his own lawyer.

Michael Karnavas, a defence lawyer at the tribunal and the president of the Association of Defence Counsel Practising Before the ICTY, said he has never heard of a case at the court with so many alleged conflicts of interests. However, it is to be expected, he said.

"It's not surprising given the type of cases heard before the tribunal, the accused involved and the close-knit community of lawyers that are called on to represent the accused, especially in complex cases where a certain amount of inside knowledge is an added edge given the steep learning curve for outsiders," said Karnavas.

He and other observers are critical, however, that the conflict issues are only now emerging, just weeks before this complex trial was due to begin.

"I find it difficult to imagine that no one anticipated these sorts of complications," said Karnavas. "The trial chamber should have acted more robustly from the beginning, though the general culture at the tribunal is to be much more relaxed, if not lackadaisical, when it comes to conflicts.

"In national jurisdictions such as the US, these sorts of issues are taken very seriously, and the courts are not shy of taking swift and strict action, generally erring on the side of caution by asking counsel to withdraw."

Ivo Josipovic, a law professor at the University of Zagreb, is also critical of how judges have handled the conflict of interest issue.

"The court was aware of the facts from the very beginning," he said. "They should have reacted much, much quicker. All the facts were on the table. It's a very unpleasant situation for the defence counsels and the accused."

The judges have ordered Separovic to assist any new lawyer appointed in his place but should he, Prodanovic, Slokovic and possibly Kehoe be forced to withdraw, Josipovic believes their replacements would need at least six months to prepare.

Prosecutors said last December that the trial would last 12-14 months, meaning it is now unlikely to be finished by 2008 as ordered by the United Nations under the completion strategy. Appeals must be finished by 2010.

One option would be to move the case to Croatia under tribunal rules allowing the transfer of certain cases to local courts, though both Josipovic and Karnavas doubt this will happen. "It's unlikely," said Josipovic.

But it's not just the Operation Storm trial preventing the tribunal from winding up on time.

The trial of Vojislav Seselj has also been delayed after the Serbian ultranationalist went on a hunger strike. Seselj, a close ally of the late Yugoslav president Slobadan Milosevic, is charged with the extermination, murder, persecution, deportation and forcible transfer of non-Serbs in Croatia and Bosnia from 1991-1995.

“It strikes me they are not going to finish by 2008,” said William Schabas, director of the Irish Centre for Human Rights at the National University of Ireland “Everyone is resigned to the fact they aren’t going to finish. The Security Council has known for some time that it’s unrealistic.”

He points out that trials are by their very nature unpredictable and that delays are essential to ensure that the rules and procedures of international law are properly followed.

Extending the court’s mandate would require the backing of all Security Council members. At a meeting in December, the US, the UK and France supported keeping the ICTY open until all suspects were tried. Human rights groups and victims have also called for an extension but China, Russia and Japan are all opposed.

Their argument is that even if the tribunal continues on, there is no guarantee that two of the most wanted indictees - Bosnian Serbs Ratko Mladic and Radovan Karadzic - would be brought to The Hague anytime soon.

Whatever the Security Council decides, Schabas says it’s important to keep the big picture in mind when thinking about the court’s future. The issue of indicted war crimes perpetrators will be facing the international community for years to come, and he says that of how to best allocate resources so that justice is met is one that won’t go away.

Lisa Clifford and Sara Goodman are IWPR reporters in The Hague.

Location: China
Stavropol
Russia
North Ossetia

Focus: International Criminal Tribunal for the former
Yugoslavia

Source URL: <https://iwpr.net/global-voices/defence-conflicts-cloud-operation-storm-case>