

## **Doubts Raised Over Trial Transfer**

**Author:** [IWPR](#)  
[ICTY](#)

Prosecutors make clear they are not comfortable about sending war crimes case to Croatia.

Hague tribunal judges this week heard arguments in favour of transferring the war crimes trial of former generals Rahim Ademi and Mirko Norac to the Croatian courts.

The two have been indicted by Hague prosecutors in connection with crimes committed against Serb civilians in the September 1993 Medak Pocket operation.

Tribunal prosecutors have asked for the case to be transferred to a local war crimes court in Croatia as a part of the Hague court's completion strategy, which foresees that lower- and medium-ranking perpetrators will be sent for trial to local courts in a bid to ease the tribunal's workload and allow it to finish its work by 2010.

But during the hearing, the prosecutors made it clear that they were not comfortable with the prospect of sending the case to Croatia - and were doing it under pressure of deadlines and workload only.

The final decision will rest the judges, who are expected to rule on whether the country in question offers conditions for a fair and unbiased trial.

While no decision was issued at this time, the February 17 hearing could set a precedent for other such hearings in the future - there are at least eight more cases waiting for transfer to the countries of former Yugoslavia, and many more to follow.

The Hague tribunal prosecutor's office will supervise the trial if it is transferred to a local court - and it retains the power to recall the case if it is deemed to have been handled inappropriately.

The hearing confirmed the belief of many analysts that command responsibility - a concept developed by Hague prosecutors, which holds commanders responsible for crimes committed by their troops if sufficient measures were not taken to prevent such crimes, or to punish those responsible after the fact - will be the key factor in whether or not a trial will be transferred.

And during the debate, both defence and prosecution teams were asked to elaborate on other issues, such as the level of witness protection in Croatia, and the state of legal aid procedures there.

The accused were not present during the debate. Ademi has been released pending trial while Norac is serving a 12-year prison sentence in Croatia for the murder of Serb civilians in the town of Gospic during the war. They both pleaded not guilty to charges referring to the Medak pocket operation.

During the hearing, the two were represented by their lawyers Cedo Prodanovic and Zeljko Olujic respectively. Croatian government representative professor Zeljko Horvatic, justice ministry official Jaks Muljagic and professor Davor Krapac of the Zagreb law school - acting as amicus curiae or friend of the court - also took part in the hearing.

Norac and Ademi are accused on the basis of both personal and command responsibility for the crimes allegedly committed by their troops during the Medak pocket operation, which was at the time under control of rebel Serbs.

Prosecutors allege that 29 Serb civilians were killed in this action, while more than a hundred houses and apartment buildings were destroyed. The rest of the Serb population was expelled, and the wells in the area polluted with the aim of making life impossible.

The indictment states that, due to their senior military ranks, Ademi and Norac had the "power, authority and duty to prevent or sanction heavy violations of international humanitarian law committed during the Medak pocket operation" - and had not done so.

But the concept of command responsibility is not contained in the 1993 Croatian penal code, which is what would most likely be applied in a domestic trial, as it was in force at the time of the crimes.

Prosecutor Kenneth Scott warned that his office would use its power to return the case to The Hague, "if no basis was found for incriminating [the two on] the basis of command responsibility or if the issue was left wide open".

Scott went on to admit that it had been the "UN Security Council, not the prosecutor's office" that had asked for the transfer of the court's cases.

"This is difficult for the prosecution because [Norac/Ademi] is a case we want to process. However, we have neither the time nor the resources to do so," he said, warning that "some people" felt that this particular trial "is not the best opportunity for a transfer".

But Cedo Prodanovic, Norac's lawyer, tried to convince the chamber that Croatia's penal code allows for a direct implementation of international conventions if certain legislative situations are not defined by the local code - and that the case of command responsibility could be resolved that way.

These stipulations allowed for the recent trial of Dinko Sakic, a former commander of the Second World War era Jasenovac concentration camp, more than 55 years after that conflict had ended.

Croatian law professor Krapac, who acted as amicus curiae, added that creativity would be required to bring the Croat legislature into line with international law, and suggested that contacts between Croatia's state attorney and the Hague prosecutor's office could help bridge the legislative gaps.

The prosecutors conceded that even though they were concerned with some issues, there was still enough grounds to consider transferring the case to Croatia.

A number of changes have been made in the Croatian judicial system in the last years to bring it into line with international standards.

However, in a November 2004 letter to Hague tribunal president Theodore Meron, Croatia's OSCE mission head Peter Semneby warned that more training and the further development of witness protection measures had to follow - and he expressed his organisation's readiness to continue monitoring the local

judicial system.

The atmosphere appears to have changed within Croatia itself, from one of hostility towards war crimes proceedings into one more supportive of the idea – most likely as a result of the country's bid to join the European Union.

In 2003, when Norac was first charged with the murder of Serb civilians in Gospic, his trial was marked by a flood of protests. When the guilty verdict was confirmed by the country's supreme court a year later, the protests were more muted.

Hague tribunal chief prosecutor Carla Del Ponte described Norac's local trial as a test that Croatia had passed successfully.

But in spite of Croat prime minister Ivo Sanader's public backing of full cooperation with The Hague, relations remain tense. Zagreb's continued failure to arrest the fugitive indictee Ante Gotovina remains a sticking point, which stalled Croatia's planned European Union accession talks.

In such an atmosphere, the successful transfer of the Ademi/Norac case to the Croatian courts would be of utmost importance for the country's reputation.

Zagreb is also vying for the transfer of the trial of the so-called Vukovar Three – a trio of former Yugoslav army generals accused of responsibility for the deaths of more than 200 prisoners taken from hospital in Vukovar in 1991.

Croatian representatives in court this week did not try to hide the weight their government is attaching to this transfer.

The transfer of the Norac/Ademi case "would be a test project and a pilot trial", Horvatic said. "It is the intention of Croatia's government and judicial system to prove that they are capable of performing this task."

Goran Jungvirth is an IWPR contributor from Zagreb.

**Location:** Balkans  
Croatia

**Focus:** International Criminal Tribunal for the former  
Yugoslavia

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