OSCE Chairman-in-Office (CiO) visits Croatia

The OSCE Chairman-in-Office (CiO) and Bulgarian Minister of Foreign Affairs, Dr. Solomon Passy, visited Croatia from 10 to 11 May. The CiO held a series of bilateral and multilateral talks with senior officials in Zagreb, including President Stjepan Mesic, the Minister for Foreign Affairs, Miomir Zuzul, and members of the Parliamentary Committee on Foreign Affairs and the Croatian Delegation to the OSCE Parliamentary Assembly. Discussions focused on the OSCE's mandate in Croatia and the country's ongoing progress towards greater Euro-Atlantic integration. The CiO also met with Mission staff at Mission Headquarters in Zagreb, where he discussed the future priorities of the OSCE in South-East Europe and co-operation with other international organizations.

The CiO undertook a field trip on the second day of the visit to villages in the Zadar area of southern Croatia, the same area visited by the OSCE Secretary General in March 2004. He was accompanied by Prime Minister Ivo Sanader and other senior Croatian officials. Representatives of national minorities, Members of Parliament and members of the diplomatic corps, such as the Head of the Delegation of the European Commission in Croatia, the Ambassador of the United States of America and the Chief of the UNHCR Office in Croatia, also participated in the trip. Since the end of the armed conflict, the return process and the repossession of occupied property in this area have been particularly difficult and it endures as one of the most problematic areas in Croatia in this respect. The Prime Minister and the CiO met with Croatian Serb returnees and Bosnian Croat settlers.

During the visit, the Prime Minister addressed a wide representation of international, national and local journalists, where he appealed to all, stating that "[w]e want a Croatia in which the wounds of war will heal … We want to go to Europe with all our citizens, regardless of their ethnicity". Prime Minister Sanader also praised the Mission during the visit, describing it as an important Government partner whose support and expert assistance were greatly appreciated.

New media law stalls efforts to privatize *Slobodna Dalmacija*

The Parliament adopted a new Law on Media on 30 April. The Law was one of a number of core pieces of media-related legislation that were assessed by three experts from the OSCE, the Council of Europe (CoE) and the European Commission (EC) at the request of the Government. The OSCE/CoE/EC experts will now analyse the text of the Law and send written comments to the Government in due course.

The adoption of the new Law on Media has immediately called into question the most recent attempts to privatize the State-owned newspaper *Slobodna Dalmacija*. *Slobodna Dalmacija*, which is based in Split, southern Croatia, is the third largest daily newspaper in Croatia, and has a dominating position in large parts of Dalmatia. On 23 December 2002, the Croatian Privatization Fund (HFP) published a pre-tender but no further action was taken until November 2003 when the HFP announced a new two-stage tender. The highest bid in the pre-tender phase, which closed in December 2003, came from the *Europa Press Holding* (*EPH*) media company which already publishes several Croatian weeklies and three daily newspapers. Three binding offers were submitted, with the highest one being made by the *EPH* which offered approximately €3.4 million for shares and approximately another €47 million as an investment into the daily.

In a parallel development, the Government forwarded to the Parliament on 15 April the new Law on Media. Most notably, it established an upper media ownership ceiling of 40 per cent

of the market share of the total number of all sold daily or weekly publications. The new Law was necessary after a recent Constitutional Court decision annulled the previous Law. The new anti-concentration provision raised the question as to whether the *EPH* could still purchase *Slobodna Dalmacija*. The relevant Deputy Prime Minister stated on 29 April that if the Government could not accept the *EPH*'s offer for *Slobodna Dalmacija* because of the new anti-concentration requirement, it would initiate a fresh tender for bids.

The HoM met later with the management, editors and journalists of *Slobodna Dalmacija* at their request. The interlocutors expressed concerns over the delays in the privatization and with the new Law on Media which in their view prevented the attractive *EPH* offer from being accepted. They stressed that *Slobodna Dalmacija* was in urgent need of modernization and financing or it risked collapse. The HoM stressed that the OSCE supported a quick, fair and transparent privatization of the daily that would not jeopardize the newspaper's work.

Appointment of Council for Electronic Media at odds with international recommendations

The Government appointed the members of a new Council for Electronic Media on 30 April on the basis of the current Law on Electronic Media. The Council is an oversight body for electronic broadcasting that is tasked to grant concessions to broadcasters and supervise the implementation of programme principles under which broadcasters obtain such concessions.

The manner of the Council's appointment pre-empted the implementation of expert recommendations on media-related legislation jointly produced by the OSCE, the Council of Europe (CoE) and the European Commission (EC). Expert recommendations address the need to provide transparency in the appointment procedure and secure the Council's political independence. The experts had advised the Government to first adopt a new Law on Electronic Media and appoint the Council under new procedures. The appointment, which became known in press reports on 4 May, has been criticized by several commentators for not being transparent.

The Ministry of Culture committed itself in April to preparing a new draft Law which is scheduled to be presented by 25 May. The draft will be reviewed by the OSCE/CoE/EC experts before the Government submits it to the Parliament. The new Law will need to include provisions governing the transition between the current Council and the new Council.

Mission raises issue of non-residential occupied property

The Mission recently submitted a non-exhaustive list of occupied business premises and agricultural land belonging to refugees for the attention of the President of the newly established Commission for the Return of Expellees and Refugees and the Repossession of Property. These properties were allocated after the armed conflict by the State to temporary users. Most of the properties concerned were initially residential premises but were transformed over the years by the occupants into profitable businesses. The overwhelming majority of the occupants have their own habitable properties and are settlers from parts of Croatia that were unaffected by the armed conflict; they do not as such fulfil the eligibility criteria for having to be provided with alternative housing by the State prior to vacating the occupied properties in question.

The Government's commitment to return all occupied private properties before the end of 2004 is laid out in the *Agreement on Co-operation between the future Government of the Republic of Croatia and the Representatives of the Serbian Independent Democratic Party in*

the Croatian Parliament. It includes all premises, such as those described above, which were allocated under the 1995 Law on Temporary Take-over and Administration of Specified Property, regardless of their residential nature or otherwise. The Government does not accept administrative responsibility over a number of these properties. As a result, many owners have been compelled to resort to protracted and expensive private lawsuits to realize evictions and regain possession.

In some cases, courts are now currently linking the repossession of these properties to the satisfaction of counterclaims for investment by the occupants. These claims have been filed against the owners for alterations to their properties which were not agreed upon, including the costs for the conversions into business premises. Conversely, an Authentic Interpretation by the Parliament of the Law on the Status of Expellees and Refugees forbids owners from requesting rent from occupants for the prolonged use of their properties. In cases where courts have already ruled in favour of rent payments to owners, the State was obliged by the Parliament to reimburse the occupants.

The Mission continues to advocate legislation that would prompt the authorities to return the aforementioned properties without further delay. Occupancy of non-residential properties belonging to refugees is already illegal since 1998. The Mission has forwarded to the Ministry of Justice a proposal for amendments to the current Law on Civil Procedure, which recommends the prohibition of counterclaims by temporary occupants against the legitimate owners for investment in private properties which were administered by the State.

Government compensates surviving members of murdered Serb family in 1991

A public debate on the State's responsibility for crimes committed during the armed conflict by Croatian military and police personnel has erupted after the Government decided on 29 April to settle a civil lawsuit and accept State responsibility for the 1991 abduction and murder by Croatian police officers of members of a Serb family from Zagreb. The responsible Deputy Prime Minister provided the payment of approximately €200,000 on behalf of the Government to two surviving children of the Zec family who now live in Bosnia and Herzegovina.

Those originally accused of the crimes confessed to the crimes but were acquitted in 1992 after the Zagreb County Court excluded their confessions from evidence because they were obtained by the investigative judge without the presence of legal counsel. The Government agreed to settle after the judge handling the follow-on civil lawsuit indicated that she would review the earlier criminal case, including the confessions, for purposes of establishing State responsibility for the murders.

The Government's settlement sparked a significant debate in the media as well as disclaimers of responsibility by prominent officials who held key positions at the time in question. Some commentators have suggested the total sum of damages to be sought by other victims of such acts and/or their surviving family members could reach as high as €10 million. The Government's decision to compensate the surviving members of the Zec family would support the argument that Serbs who left the cities during the armed conflict had bona fide reasons to fear for their security.

To date, 260 settlement requests for personal injury or death have been filed with the State Attorney. The Government's settlement of the Zec case raises the question of whether similar cases will also be settled or whether only high-profile cases will be the exceptions where the

State accepts responsibility. The Government also recently paid approximately €73,000 to settle a similar claim by the family of Milan Levar, a murdered ICTY informant. In contrast to Zec and Levar, the State has refused to accept responsibility for the murder of Nikola Kosic in 1992 by a military police officer who was convicted for this crime. The State Attorney argues the State is not responsible in this case since a written order for the murder was never issued and the police officer was off duty at the time of the killing.

Constitutional Court decides important fair trial aspect in response to ECHR judgments; doubts remain over Court's ability to serve as an effective remedy for full range of human rights questions

The Constitutional Court decided on 31 March that a local court's application of 1996 legislation suspending court proceedings seeking compensation from Croatia for damages caused by terrorist acts during the conflict caused excessive delays in proceedings and amounted to a violation of the right of access to court. The Constitutional Court found that the four-year inactivity of the court in these proceedings resulted in fair trial violations. It also explicitly held that the inactivity was not attributable to the local court but a consequence of the Parliament's intervention in 1996.

The Constitutional Court held that in light of post-conflict consequences there were no constitutional concerns against the suspension of these proceedings *per se*. Yet the prolonged suspension in the individual case kept the complainant "… in a state of uncertainty [in so far] if and when the stayed proceedings would continue", which amounted to fair trial violations. The Court's legal reasoning differed from that of the precedent of the European Court of Human Rights (ECHR) finding the Parliament's intervention violated the right of access to court. Although presented with multiple constitutional challenges to the legislation itself, the Constitutional Court dismissed the complaints in December 2003 as mooted by the adoption of new legislation in July 2003 while the complaints were pending.

The latest decision comes in apparent response to four negative judgments by the ECHR and its acceptance of approximately 40 similar cases for review. The ECHR may now reject these and other similar complaints accepted for review on the grounds that the Constitutional Court now serves as an effective domestic remedy both in the specific questions of length of proceedings and access to court.

Nevertheless, doubts remain as to the extent to which the Constitutional Court will serve as a domestic remedy for the entire range of human rights questions. A dissenting judge opined in this case that the Constitutional Court should have reversed and declared as unconstitutional the Parliament's 1996 legislation. While the outcome in this individual case may be appropriate, the Court's decision not to review the constitutionality of the 1996 legislation follows a pattern of non-review of other conflict-related legislation.