

OSCE Secretary General visits Croatia

OSCE Secretary General (SG) Ján Kubiš visited Croatia from 8 to 10 March 2004 on invitation of the Croatian Foreign Minister, Miomir Žužul. The SG attended a series of high-level meetings with senior officials in Zagreb, including President Stjepan Mesić and Prime Minister Ivo Sanader. In addition, the SG paid a field visit to Zadar and the surrounding area, accompanied by, amongst others, Development Minister Božidar Kalmeta, Foreign Minister Žužul and Serb minority MP Ratko Gajica. There he met with Serb returnees and Croatian settlers in order to become acquainted with prevailing refugee return issues.

In the main, the SG noted a much improved attitude in Croatia in terms of embracing the need for reform in Mission mandate areas, and the willingness to discuss all issues, including return, minority rights and co-operation with ICTY, openly and transparently. There was mutual recognition of the continuing importance of refugee return including the need for further efforts by both the Mission and the Government to encourage return. The SG highlighted the importance of ethnic reconciliation and the Mission's public awareness campaign, designed to encourage an improved climate for return. The importance of economic rehabilitation for the sustainability of return was also discussed. The SG mentioned that the OSCE could contribute to this objective by offering its good offices among other international institutions.

The SG observed, however, that practical and legal obstacles to return still remained and that housing was still not available to all refugees who would want to return. Implementation of the Constitutional Law on the Rights of National Minorities and the question of judicial reform were also discussed, and it was noted that both areas require continued work and attention, in which the Mission can offer its support. The SG noted the possible assistance of the Mission in providing expertise and support for providing the conditions for the even-handed treatment of war crimes in domestic courts including cases transferred from the ICTY.

Head of the Permanent Delegation of Slovenia to the OSCE visits Croatia

The Head of the Permanent Delegation of Slovenia to the OSCE, Ambassador Janez Lenarčič, visited Croatia from 14 to 16 March 2004 to familiarise himself with the activities of the Mission and current developments in Croatia ahead of the Slovenian OSCE chairmanship in 2005. In Zagreb, the Ambassador held a series of meetings with Government officials, minority representatives, members of the international community and members of Croatian civil society. He received a briefing at the Mission and additionally undertook a field trip to Karlovac and Korenica. Ambassador Lenarčič continued his tour of OSCE Missions by visiting Bosnia-Herzegovina.

Senior staff changes within the Croatian Police

After first senior staff changes in the Ministry of Interior (MoI), when the former Director General of Police, the Head of Legal and Personnel Department and the Head of Technical Department were relieved of duty, a number of new changes followed last week. The new Spokesperson of the MoI announced that the Head of Police Administration, the Intervention Police Commander and the Head of the Border Police were all replaced. In a statement to the newspaper, Minister Mlinarić said that the only criteria for appointing people for main positions within the police would be professionalism and competence. Further staff changes can be expected to take place on the regional level.

Gap in legal framework for return of private property results in owners having to pay to repossess their own homes

While there has been some progress in the return of occupied private property through court proceedings under the *Law on Areas of Special State Concern*, the Mission observes an increasing number of court orders compelling owners to pay government-installed occupants for “investments” made in the property, including investments made for business purposes. In a prominent example Jovan Rapajic was ordered by the Korenica municipal court to pay approximately € 30,000 to the occupant although Rapajic’s request for repossession of his home remains unexecuted before the same court for years and Rapajic was denied the right to obtain rent from the occupant. The judiciary’s handling of these counterclaims demonstrates a continuing gap in the legal framework applicable to the return of private property.

Courts in other parts of Croatia have issued similar orders. The Daruvar municipal court ordered the eviction of an occupant to whom a house was allocated in June 1996, obliging him to pay €670 in rent to the owner for three years of use subsequent to an eviction order. However, the court also compelled the owner to reimburse the occupant € 5,700 for investments, an amount based solely on the occupant’s calculation without any documentation. Because the owner is unable to afford the court-ordered debt he is likely to lose his property through court auction. In Pozega an owner was ordered to pay the occupant € 10,000 for investments and costs, whereas the owners’ counterclaim for rent from the occupant remains pending without decision at the same court.

The Mission will seek consultations with the Government for purposes of proposing the adoption of legal provisions that will ensure the fair treatment of owners in the return of government-allocated private property.

Domestic war crime proceedings in February and March 2004

During February and March 2004 the Mission continued to follow developments in domestic war crime cases including two new arrests, a new group indictment, a trial court guilty verdict and a reversal of a conviction by the Supreme Court. The Mission together with the Mission to Serbia and Montenegro also monitored witness testimony taken before a court in Serbia and Montenegro for use in a war crime trial pending in Croatia.

In March, two Serbs were arrested based on arrest warrants stemming from 1992 and 1996. One suspect was arrested at a border crossing between Croatia and Serbia and Montenegro when he entered for purposes of obtaining Croatian documents. The second Serb was arrested in Hungary based on an international arrest warrant issued following his *in absentia* conviction by the Osijek County Court in 1996 and was subsequently extradited to Croatia. Both defendants remain in detention. Also in March, the Osijek County Court convicted a Hungarian of committing *war crimes against the civilian population*, sentencing him to 7 years imprisonment. In late February, the Supreme Court quashed the guilty verdict of the Bjelovar County Court convicting a Serb to 3 years imprisonment for *war crimes against the civilian population* and remanded the case for re-trial. The Supreme Court found that the trial court incorrectly established the facts.

The Vukovar County Prosecutor on 9 March submitted an indictment against 10 Serbs to the Vukovar County Court accusing the suspects of having committed multiple war crimes. The indictment originally included nearly 200 defendants but charges against all but 10 have now been dropped. The abandoning of charges against almost 190 suspects indicates that the review initiated by the Chief State Prosecutor of old cases against Serb defendants is ongoing

and having the intended result of diminishing the number of cases pursued. However, the proceedings against several of the 10 accused are redundant given the fact that they have previously been indicted by the ICTY and are currently in custody in The Hague, namely Vojislav Seselj, Mile Mrksic, Veselin Sljivancanin, and Miroslav Radic. The trial before the ICTY of the latter three is expected to commence in late spring or early summer 2004.

In late February, Mission staff, together with staff from the Mission to Serbia and Montenegro, attended a court hearing in Sabac in Serbia and Montenegro. This hearing was scheduled for purposes of obtaining witness testimony through international legal assistance for use in the Paulin Dvor trial in Osijek County Court against two Croats for the killing of 19 Serb and Hungarian civilians. Similar testimony was taken from another witness by the court in Subotica, however the court determined that the proceeding was not open to the public. While the Croatian defence counsel attended the hearings, the prosecutor did not. This marked the first joint monitoring of a proceeding by the two Missions. Given that war crime procedures in the region will likely increasingly involve requests for international legal assistance particularly in light of the ICTY completion strategy, the Missions are continuing their cooperation and joint monitoring.

Second judgment holding that failure to execute eviction order violated right to home; new ECHR judgment on to right to fair trial

The European Court of Human Rights (ECHR) issued two negative judgments on 4 March 2004 bringing the total number of negative judgments involving Croatia to 19. Following the reasoning in its recent judgment in *Cvijetic v. Croatia*, the ECHR in *Pibernik v. Croatia* ruled that there had been a violation of the right to fair trial due to the lengthy delay in the enforcement of an eviction order. Further, the ECHR decided that the State's failure to implement the eviction for more than three years during which period the applicant was unable to live in her flat infringed her right to respect for her home. The ECHR reiterated its standpoint from *Cvijetic v. Croatia* that Croatia had failed to meet its duty to organize its judicial system so that courts can meet all fair-trial requirements, including enforcement proceedings, within a reasonable time. In *Muzenjak v. Croatia* the ECHR found a violation of the right to fair trial, ruling that civil proceedings instituted by the applicant in July 1993 and that ended in February 2002 lasted unreasonably long.

The Constitutional Court confirmed the obligation of the Parliament to hold public sessions

On 11 February 2004, the Constitutional Court invalidated *the 2001 Decision on the Manner of Work of the Parliament at the Sessions Closed for Public*, confirming the constitutional obligation of the Parliament to hold public sessions. The invalidated decision stipulated that the Parliament may decide to close to the public a session or a part of a session following the request of the Government or a majority of parliamentary representatives. The political party that lodged the complaint, the Croatian Christian Democratic Union (HKDU), claimed that the Decision contradicted the Constitution's guarantee that Parliament sessions must be public. The Constitutional Court forwarded the complaint to the Parliament in 2001, but the Parliament did not submit any response.