

Ongoing coalition negotiations on new government in Croatia

Parliamentary elections took place in Croatia on 23 November. The centre-right Croatian Democratic Union (HDZ) garnished the largest number of parliamentary seats and has subsequently initiated negotiations on the formation of a new coalition government. President Stjepan Mesic announced that he would likely name the HDZ President, Dr. Ivo Sanader, as the Prime Minister Designate following the publication of the official election results by the State Election Commission. The first session of the new Parliament must be held within 20 days after the election results are officially announced. Coalition negotiations to establish a new government are expected to last at least until that time.

At present, the HDZ seems to have the support for an HDZ-led government with a block of 76 seats in the 152-seat Parliament. Sixty-two HDZ Members of Parliament (MPs) will sit in the new Parliament while the HDZ will also nominate four diaspora representatives by way of securing almost 60 per cent of the total diaspora vote. The HDZ agreed to discuss a joint coalition with the centre-right Croatian Social Liberal Party (HSLs) and the Democratic Centre (DC), which together won three seats. The Croatian Pensioners Party (HSU) and the Croatian Democratic Peasants Party (HDSS), which secured three seats and one seat, respectively, have officially offered their support to an HDZ-led government. The HDZ has also received signed statements of support from three of the eight minority MPs, namely the Hungarian MP, the Bosniak MP, who also represents four other official national minorities, and the German MP who also represents 11 other minorities. The Italian MP announced that he would inform the HDZ of the Italian community's demands at a later date, while discussions with the three Serb MPs of the Independent Democratic Serb Party (SDSS) and the Czech-Slovak MP are expected to continue.

In order to try and establish a government with a clear parliamentary majority, the HDZ has focused on negotiations with the liberal-conservative Croatian Peasants Party (HSS), which won nine seats, and the right-wing Croatian Party of Rights, which secured eight seats. However, the HSS President recommended on 1 December that the HSS not participate in an HDZ-led government as a coalition partner. He would recommend instead that the HSS announce its verbal support for the HDZ to form either a majority or minority government. Media reports now suggest that the HDZ will reconsider its earlier discussions with the HSP. The HSP President subsequently announced that the HSP is likely to remain in opposition, and that the chances of restarting negotiations with the HDZ are minimal at this stage. The Ambassador of Italy, representing the EU Presidency and the EU Ambassadors in Zagreb, voiced concern over the possible participation of the HSP in the Government in a newspaper interview on 30 November.

Implementation of several provisions of judicial reform legislation halted by recent judicial opinions

The *Constitutional Court* on 27 November invalidated amendments to the *Criminal Code* that were to take effect on 1 December 2003 on the grounds that the Parliament adopted the legislation without the constitutionally required number of votes. The Court's decision came in response to requests for a constitutional review submitted by the President of the Croatian Helsinki Committee for Human Rights (HHO) and President of the Parliamentary Club of the Croatian Democratic Union (HDZ).

The invalidated amendments to the *Criminal Code* included provisions designed to harmonize the domestic law with the Statute of the International Criminal Court, including the prohibition of crimes against humanity, the creation of a new offence of subsequent

assistance to a perpetrator of war crimes, and a specification of command responsibility as a basis for criminal liability in war crime prosecutions. The amendments also increased the maximum sentence to life imprisonment for serious crimes, including war crimes. The now invalidated provisions also outlawed glorification of ex-fascist states or organizations, slavery and trafficking in human beings, and regulated certain aspects of organized crime. Finally, the invalidated provisions increased criminal sanctions for libel.

Under the Constitution, laws effecting human rights and fundamental freedoms must be adopted by a majority vote of all Members of Parliament (MPs), i.e., 76 out of 151 MPs. However, the *Criminal Code* was adopted with only 58 votes. As explained by the Constitutional Court, the *Criminal Code* affects human rights because it determines for what acts and under what conditions individuals can be deprived of their liberty. The Constitutional Court invalidated the *Law on Public Information* in 1995 on the same grounds. A similar request for review of the *Law on Media* adopted by the Parliament on 1 October and intended to replace the *Law on Public Information* was submitted by the HHO and media professionals and is pending before the Constitutional Court.

The Parliament's adoption of the *Criminal Code* in July 2003 occurred during a period when a number of opposition parties, including the HDZ, refused to participate in a series of parliamentary voting procedures. Other laws that could be construed as affecting human rights, such as the *Law on Gender Equality*, the *Law on Protection against Domestic Violence*, amendments to the *Labour Law*, as well as three laws regulating the extent of Government liability for damages incurred by individuals related to the armed conflict and succession from the former Yugoslavia, were also adopted by less than a majority of all representatives and may thus be subject to a similar challenge.

The *High Misdemeanour Court* adopted a legal opinion on 24 October, instructing lower courts to dismiss all domestic violence cases that had been initiated under provisions of the *Family Law* that were repealed by the Parliament effective 22 July 2003. Although the Parliament adopted the *Law on the Protection against Domestic Violence* on the same date, which qualified domestic violence as a misdemeanour, that law did not come into force until 30 July. Hence, the failure of the Parliament to co-ordinate the repeal and enactment of new legislation on the same subject resulted in the technical de-criminalization of domestic violence for the intervening period of eight days. The High Misdemeanour Court, relying on this eight-day gap, determined that under the general legal principle the more lenient law must be applied in favour of defendants and hence all pending cases under the old law should be dismissed.

The *Supreme Court* issued instructions on 16 October to lower courts to resume more than 1,400 cases seeking compensation against the Government for war-time damages. The cases are to continue in the local courts under two laws adopted by the Parliament in July 2003, the *Law on the Responsibility for Damage Caused by Terrorist Acts and Public Demonstrations* and the *Law on the Responsibility of the Republic of Croatia for Damage Caused by Members of the Croatian Army and Police when acting in their Official Capacity during the Homeland War*.

These cases result from claims for compensation for damage caused by terrorist acts and by military and police during and after the armed conflict and have been stayed since 1996 and 1999, respectively. The resumption of proceedings in these cases resolves, at least technically, the lack of access to court violation that resulted from the Parliament's

suspension of these cases in 1996 and 1999 that has resulted in four negative judgements against Croatia by the European Court of Human Rights (ECHR), and 24 additional cases for review of the same question, including three accepted by the ECHR within recent weeks, *Kresovic v. Croatia*, *Jorgic v. Croatia*, and *Badovinac v. Croatia*. The Mission remains concerned with the aspects of the laws that were designed to retroactively limit the extent of the Government's liability for damages in ongoing cases, in particular the elimination of all claims for property damage resulting from terrorist acts and a new definition of 'war damages' for damages caused by the military and police.

Local courts across the country have resumed proceedings in several hundreds of these cases related to war-time damages, with courts in Eastern Slavonia, Western Slavonia and Zadar in southern Croatia having some of the largest numbers of cases. As a result of application of the new law, courts have already dismissed a number of claims for compensation for property damage resulting from terrorist acts because the law no longer permits such claims.

Update on repossession of occupied property through implementation of the Law on Areas of Special State Concern

The Mission continues to monitor the implementation of the *Law on Areas of Special State Concern* and the involvement of the judiciary for the repossession of private property. Mission field staff has observed that during autumn 2003 a significant increase was registered (more than 50 per cent, from 315 to 720 cases) in the number of cases transferred from the Ministry for Public Works, Reconstruction and Construction to local state attorney offices in order to initiate eviction/repossession proceedings in court.

Mission field reports suggest that temporary users of private property are increasingly likely to vacate the property upon receipt of warning letters from the local state attorneys or initiation of proceedings at municipal courts. This has particularly been the case in the area of Sisak in central Croatia, where more than 60 users left apartments due to impending court proceedings, and in Knin in southern Croatia. State attorneys have initiated proceedings in municipal courts in approximately 40 per cent of the transferred cases, with the largest number of cases pending at municipal courts in Benkovac and Obrovac in southern Croatia and Karlovac and Sisak in central Croatia. However, courts have to date issued few verdicts on eviction. Even fewer verdicts have been executed, and thus there has been no significant increase to date in the number of homes reposessed by owners through court procedures foreseen in the Law.