



**Organization for Security and Co-operation in Europe
OSCE Mission to Croatia**

**News in brief
1 – 15 March 2005**

Government proposes controversial amendments to the Law on Local Elections

On 3 March, the Government approved a set of Draft Amendments to the Law on the Election of Members of Representative Bodies of Local and Regional Self-Government Units and forwarded them to the Parliament. This law regulates the elections to municipal, cities and county assemblies. Subsequently, the Parliament agreed with the Government's proposal to use a fast-track procedure for this law on the ground of urgency in light of the forthcoming local elections scheduled for 15 May.

The Draft Amendments follow several months after media exposed some shortcomings in the current legislation during the presidential elections in January, such as the management of voters' lists.

The most debated part of the Draft Amendments is the tight registration rules that are being proposed for voters and candidates. In particular the Draft Amendments introduce a tandem requirement of "having registered permanent residence and actually living in the area of the constituency of the representative body for which the elections are conducted."

On 4 March, Croatia's leading non-governmental election monitoring organisation, GONG, issued a press statement protesting the announced amendments, and asking who would investigate the criteria of "real residency" and how. The NGO also criticized the Draft Amendments for failing to solve key outstanding problems of the current electoral legislation such as the calculation of minority quotas in the assemblies, the representation of minorities on party slates, the update of voters' lists and the financing of election campaigns. Finally, GONG expressed its concern that the Government wanted to introduce the amendments in the fast-track procedure to prevent public and parliamentary discussion.

In a press release issued on 11 March, the HoM expressed concern that these changes could disenfranchise many voters who temporarily work or live away from their permanent residence. In particular, he argued that particularly vulnerable voter categories, such as refugees, returnees and minority voters, were likely to be disproportionately affected, since many were still not able to actually live where they have their registered permanent residence. Observing that the draft proposal does not specify how the authorities would check if citizens actually live where they have their permanent residence, he stated that the stringent residency requirements introduce possibilities for arbitrary administrative action and added that he would be particularly concerned if such controls were to be undertaken by door-to-door police checks.

The Mission underlined that any electoral reform should be based on a broad consensus among political and civil society actors following a full public debate. Pending such a discussion, the Mission suggested that the same registration rules as in the last local election be used.

The Mission called for a more comprehensive approach towards electoral reform already in the run-up to the Presidential election. The main points of its intervention at that time are still valid. While some positive developments in electoral legislation have taken place over the course of the last years, a substantial amount of work is still needed in several key areas, as outlined in a series of recommendations by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) following the monitoring of presidential and parliamentary elections in Croatia between 1997 and 2003. ODIHR recommended that reforms should focus on: the establishment of a permanent body to administer elections; update of voters' lists; organisation of out-of-country voting; clear election procedures for minorities at local elections and elections to Councils of National Minorities; regulation of campaign funding; fair access to media; and the domestic monitoring of elections.

The OSCE Mission has stated that it is ready to provide the Croatian authorities with all necessary assistance, in particular through opinions and recommendations from experts of ODIHR. The Head of Mission will appear at a hearing on amendments to electoral legislation in the Parliament's Committee on Human and Minority Rights on 16 March.

Constitutional Court Report to Parliament notes sharp increase in number of complaints and it recommends reform measures to reduce its backlog

The Constitutional Court (hereinafter the Court) informed the Parliament in its report of 24 February that the sharp increase in its caseload jeopardizes the Court's ability to serve as an effective domestic remedy for human rights violations. The Constitutional Court noted that the total number of cases received annually increased from 1,954 in 2000 to 5,170 in 2004, that is, approximately 2.6 times more. The Court identified three factors leading to the sharp rise in the number of complaints and recommended specific legislative reforms.

First, the Court identified the rise in the number of complaints alleging violations of the right to fair trial because of unreasonable delays in lower courts as the single biggest cause for the explosion in its caseload. In 2004, the Court decided more than 500 such complaints, but carried over nearly 1000 into 2005. The Court has served as a sole remedy for excessive length-of-proceedings complaints in lower courts since March 2002, when the Parliament amended the statute of the Court. The Parliament granted the Court the jurisdiction to find a violation, impose a deadline for decision, and award monetary damages, in response to negative judgments from the European Court of Human Rights.

The Court anticipated that length-of-proceedings complaints would grow given the continuing backlog problem in the Croatian judiciary, threatening its ability to issue decisions in a reasonable time, particularly as related to the constitutional review of laws and other regulations. Therefore, the Court recommends that the Parliament amend the Law on Courts to delegate to the lower courts its jurisdiction to determine unreasonable delays. In addition, the Court recommends corresponding amendments to the Constitutional Law on the Constitutional Court, to reflect that it would only have jurisdiction over such complaints after ordinary remedies had been exhausted. Amendments to the Law on Courts currently pending in Parliament do not include the proposals set forth by the Court.

Second, the Court identified the strict limits on access to Supreme Court review as a factor significantly contributing to its increasing caseload. Although the Supreme Court is constitutionally obligated to ensure the uniform application of the law by the lower courts, statutory limits on the types of cases that it can review severely infringe that constitutional obligation. In many cases, county courts may resolve the same legal question differently, but without the possibility of the Supreme Court addressing and resolving the dispute because the case falls outside its jurisdiction. With no other recourse, citizens increasingly turn to the Constitutional Court complaining about violations of the guarantee of equal treatment under

the law. The Court recommends that Parliament amend the Law on Civil Procedure to extend the Supreme Court jurisdiction to the review of such cases, allowing it to harmonize the decisions of the lower courts.

Finally, the third issue identified by the Court, that has precipitated a considerable number of claims, is the failure of Government bodies to pass regulations within the timeframe specified by Parliament when it enacted certain laws. The Court indicated that its practice is to reject such claims. However, it cautioned Parliament that the frequent failure of Government bodies to pass regulations with statutorily-specified deadlines violates basic norms of constitutionality and legality.

Editor-in-chief of regional weekly sentenced for libel

On 4 March, the Sibenik Municipal Court sentenced the Editor-in-chief of the Zadar weekly *Narodni List* to a suspended three-month prison sentence for libel. He was convicted because of false statements made in an unsigned article saying that the Municipal State's Attorney of Zadar had unjustifiably dismissed charges in a criminal case. The State's Attorney, in his private capacity, had sued the editor-in-chief of *Narodni List*, following his refusal to disclose the name of the author of the article. The Editor-in-Chief has stated that he will appeal the decision.

The amendments of the libel provisions in the Criminal Code, which became effective in October 2004, allow for a more liberal regime, but without fully decriminalizing libel as was recommended by international experts from the OSCE Mission, the European Commission and the Council of Europe. The main novelty of the amended provisions is the shift of the burden of proof away from the journalists. Since October 2004, four journalists have received suspended prison sentences for libel. In two other cases, the lawsuits did not succeed.