



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

**News in brief**

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**Parliament to consider draft Free Legal Aid Law in September**

In mid-July, the Parliament began the process of reviewing a Government proposed draft law for the establishment of a system of free legal aid in civil cases. Indicating the need for such legislation, explanatory material accompanying the draft law noted that in previous years NGOs provided free legal aid to approximately 70,000 primarily low-income citizens annually, including returnees, in areas most directly affected by the war. The Croatian Bar Association provided *pro bono* assistance in approximately 300 cases, while courts provided assistance in over 400 cases. The proposed structure and funding requirements are based on Government estimates that approximately 60,000 requests for free legal services will be received annually.

The draft law describes the types of legal problems for which free legal services could be provided, income-eligibility criteria as well as the application and appeals process. It also indicates who can provide such services, establishes a legal services provider registry at the Ministry of Justice (MoJ), and specifies the types of services each kind of provider could offer. It also mandates that those who provide legal services in NGO settings should pass the State civil service exam. Only members of the Croatian Bar Association would be entitled to provide the full range of legal services, including in-court representation. NGOs registered with the MoJ and legal clinics affiliated with law faculties would be permitted to provide advice and assistance, in particular in relation to administrative proceedings. The explanatory materials indicate that services would be reimbursed at a percentage of the tariff established by the Croatian Bar Association.

According to the draft, establishing the structure for administering the free legal aid system would require all of 2008, including the employment and training of new civil servants at the county-level. The Central State Administration Office would be responsible for determining whether citizens satisfy eligibility criteria in terms of income and type of legal problem, while the MoJ would be responsible for deciding appeals in those cases where an applicant was deemed ineligible. The MoJ would also be responsible for issuing regulations as well as standardized forms. The Government proposes to allocate approximately €90,000 in 2008 for the 'start-up' phase.

Under the draft, some types of free legal services would be available to citizens starting in 2009. The draft law specifically delays the availability of legal services to obtain the enforcement of final court decisions until 2010 or when Croatia joins the European Union, whichever comes first. While the draft describes this as an administrative act, the case law of the European Court of Human Rights defines this enforcement as an integral part of a trial. The Government proposes to allocate €3.2 million in 2009 for legal services, although reimbursement would only be provided in December 2009, at the earliest. The

draft anticipates that the Government would determine in 2010 whether the Parliament should amend the law to provide for other types of free legal services.

A thorough examination of the proposed system, including an opportunity for civil society to comment, will also be important. Several of Croatia's leading NGOs have already asked the Government to retract the current draft claiming that it will leave thousands of economically disadvantaged citizens without access to legal protection, due to the difficulties NGOs will face trying to provide legal services.

The Mission continues to fund projects ensuring free legal assistance for refugees and displaced persons.

### **Extradition enables new trial for 1991 murder of Osijek Police Chief**

In mid-July, Australia extradited Antun Gudelj, an Australian national, to Croatia for purposes of standing trial for the summer 1991 murders of the then Osijek Police Chief, Josip Riehl-Kir, and two local Serb officials. Mr. Gudelj, who at the time of the killings was a police officer, is also suspected of the attempted murder of another local Serb official during the same incident. The killings occurred at a checkpoint as Mr. Riehl-Kir and his associates were returning to Osijek from negotiations intended to reduce tensions with Serbs in the nearby village of Tenja. Mr. Gudelj consented to the extradition and is awaiting re-trial in Osijek prison. The trial is anticipated to begin in September.

The proceedings in this case have been extensive and involved significant controversy in relation to the role of the State's highest courts. In 1994, Mr. Gudelj was convicted *in absentia* of three counts of murder and one count of attempted murder by the Osijek County Court. After he was extradited from Germany, the Supreme Court in 1997 granted Mr. Gudelj's request for amnesty. Upon release, Mr. Gudelj returned to Australia where he resided until mid-July. In 2001, four years after a challenge was lodged by Riehl-Kir's widow, the Constitutional Court determined that the Supreme Court had improperly amnestied Mr. Gudelj because the crime was not linked to the conflict, although it occurred during the conflict. Later in 2001, the Supreme Court rescinded the amnesty and ordered that Mr. Gudelj stand trial.

Subsequent to her successful challenge against the amnesty decision, Riehl-Kir's widow also sought to establish the State's civil responsibility for the killings committed by Mr. Gudelj while a police officer. In March 2007, the Zagreb County Court upheld a trial court judgment in favour of Riehl-Kir's widow and daughter, increasing the award for damages to approximately €63,000. The State's challenge to the judgment is currently pending before the Supreme Court.

Contrary to the outcome in the Riehl-Kir case and as indicated by a recent Supreme Court decision in the Meleusnic case, amnesty granted to some members of the Croatian armed forces in relation to killings of civilians remain in place and are deemed to bar both criminal prosecution of these individuals as well as civil damages actions against the State. In the Meleusnic case, the Supreme Court reasoned that because amnesty had been applied to those suspected of killing a Serb mother and daughter in their home, the statute of limitations for a civil action had expired.

## **Recent ECHR judgments related to prison conditions and fair trial**

In July, the European Court of Human Rights (ECHR) issued judgments against Croatia involving various aspects of the right to a fair trial in civil and criminal proceedings as well as property interests abridged as a result of delayed court proceedings. The ECHR also continued to examine questions related to conditions in Croatia's prisons, in particular the adequacy of medical treatment provided to prisoners. In several of these cases, the Croatian Constitutional Court rejected the claims, which were subsequently the basis for the ECHR finding violations.

In *Testa v. Croatia*, the ECHR returned to the issue of conditions in Croatian prisons examined previously in cases such as *Cenbauer v. Croatia*, as well as the adequacy of medical treatment. The ECHR found that the State did not provide appropriate treatment for Ms. Testa, who suffered from hepatitis, and that given overcrowding and disrepair of the prison facility, she was detained in an "unsanitary and unsafe environment." Given this combination of factors, the ECHR concluded that the prison subjected Ms. Testa to inhuman and degrading treatment. The ECHR awarded €15,000 in damages.

In *Kovac v. Croatia*, the ECHR addressed the fair trial right of criminal defendants to confront witnesses against them. At issue was the criminal conviction of Mr. Kovac for sexual abuse, which was based solely on the testimony of the twelve year old mentally disabled victim given during the investigation. At no time during either the investigation or the trial did Mr. Kovac, who was unrepresented by counsel, hear the victim's statement incriminating him or have the opportunity to question her. The conviction was upheld by the Croatian Supreme Court and the Croatian Constitutional Court found the complaint inadmissible. The ECHR acknowledged that special procedures were permitted to protect the interests of victims of sexual offences, but noted that these interests must be balanced against the right of the accused to adequate and effective defense. The ECHR concluded that the competing interests were not appropriately balanced and that Mr. Kovac's right to fair trial had been violated.

In *Lukavica v. Croatia*, the ECHR addressed the procedural and substantive violations resulting from an unexecuted court decision. Specifically, it found that a local court's failure to enforce an in-court settlement requiring the return of property seized by the State resulted in violations of the right to a hearing in a reasonable time as well as the right to property. The case had its origins in a police seizure of Ms. Lukavica's car in 1994, which despite the 2004 in-court settlement has not yet been returned, although damages were paid. The fair trial complaint decided by the ECHR was rejected by the Croatian Constitutional Court. The ECHR awarded nearly €5,000 euros in damages and directed Croatia to provide comprehensive relief by returning the vehicle within three months.

## **First investigation for hate crime following incidents at 'Gay Pride' parade**

Conduct endangering participants in Zagreb's annual 'Gay Pride' parade held in early July has resulted in the Zagreb County Court initiating Croatia's first criminal investigation relying on a definition of hate crime added to the Criminal Code in 2005. An investigation is pending against one person suspected of planning to throw Molotov cocktails at parade participants as they passed through the main square in the Croatian

capital. As presented to the Court, the person is suspected of the crime of endangering life and property by dangerous acts or means, while the allegation of hate motivation on the basis of sexual orientation relies on a definition rather than a crime *per se*.

In addition, the police filed misdemeanour charges against fourteen persons, the majority of whom were minors, for disturbing public peace and order by shouting abuse at parade participants. Both during and after the parade, several participants were the subject of physical assaults, although the injuries sustained were minor. No charges were filed in relation to these assaults.

The Mission will continue to follow this case in order to gain a better understanding of the scope and application of the hate crime definition, which is of particular interest in relation to ethnically motivated violent acts. To date, the Mission has seen its ability to follow legal developments on this area limited by the impossibility to access court documents.

### **Government organizes roundtable discussion on public benefit organisations**

On 16 July, the Government Office for Associations organized a roundtable discussion on public benefit organizations in Zagreb as part of efforts to implement the *National Strategy for Civil Society Development*. More than 50 participants attended the discussion, among them representatives from several ministries and Government offices, NGOs and academia.

During the debate, experts reviewed European experience and best practice, while the ensuing discussion highlighted the main problems with the current legislation in Croatia. Contrary to the list of fundamental values enshrined in the Constitution, some laws exclude certain types of organisations, including human rights organizations, from being regarded as working for the public good. This prevents them from applying for Government funding or tax benefits, so increasing dependence on foreign donors. Other problems include the unequal treatment of different organizations dealing with the same type of activities or of organizations with differing legal status, such as associations and religious organizations.

In September, the Government Office for Associations, together with the National Council for Civil Society Development, will establish a working group made up of representatives from the relevant ministries, civil society and independent experts. The working group will decide whether a separate law is required to regulate public benefit organizations with the aim of having an effective system in place by the end of 2008.