



Organization for Security and Co-operation in Europe

OSCE Mission to Croatia

News in brief

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OSCE Secretary General visits Croatia and attends SEECP conference

During his visit to Croatia on 1 and 2 March, OSCE Secretary General (SG) Marc Perrin de Brichambaut met with senior Croatian officials, ambassadors and members of the international community. He also participated in a ministerial meeting of members of the South East European Co-operation Process (SEECP) held in Zagreb.

The SG met, together with the Head of Mission, with Prime Minister Ivo Sanader, who praised the excellent relations between the OSCE and the Croatian authorities. He said this co-operation provided a good example for other countries in Southeast Europe. The Prime Minister gave assurances that his Government would continue with the accelerated pace of reform, placing particular emphasis on solving problems related to the return of refugees and war crimes prosecution. He stressed that advancing the process of reconciliation between Serbs and Croats was a moral and historical obligation for Croatia. The SG acknowledged that Croatia was an active OSCE participating State. While noting the considerable progress made by Croatia, the SG underlined that work still remained to be done especially in respect to refugee return and the handling of war crimes trials. The Prime Minister indicated his readiness to address the OSCE Permanent Council in Vienna in July.

In a subsequent meeting with the SG, the Minister of Foreign Affairs and European Integration, Kolinda Grabar-Kitarović, confirmed the Government's commitment to meeting the remaining requirements of the Mission's mandate, concentrating on implementation of the housing programme for former occupancy-tenancy right holders and judicial reform.

The SG also met with Milorad Pupovac, MP and Vice-President of the Independent Democratic Serb Party (SDSS), the Head of the ICTY's Liaison Office in Croatia, the Head of the Delegation of the European Commission to Croatia, the Apostolic Nuncio in Croatia and the Ambassadors of the United States, Spain, France, Italy, Norway, the Czech Republic and Hungary. The meetings provided an opportunity for the SG to review the situation regarding remaining mandate-related issues.

On 2 March, the SG attended the SEECP ministerial meeting, where regional co-operation, progress towards Euro-Atlantic integration and the future status of Kosovo were discussed. The SEECP - due to replace the Stability Pact for Southeast Europe as the leading body for regional co-operation - is currently made up of ten countries in the broader Southeast European region, including Turkey and Greece. It will be chaired by Croatia until May. As chairperson of the meeting, Minister Grabar-Kitarović invited the SG to attend the upcoming SEECP Summit that will take place in Zagreb on 11 May.

Parliament fails to fill Constitutional Court vacancy

In late February, the process of appointing the first of nine judges to the Constitutional Court (CC) ended when Parliament was unable to muster a sufficient number of votes for either of the two candidates. The process for filling this first vacancy began in November 2006 in view of the expiration of Judge Milan Vuković's mandate on 1 March this year. It included a nomination hearing in early February during which the candidates stated their views on several questions related to fundamental rights and the ICTY.

The process for filling Judge Vuković's seat will now start anew and is likely to take several months, during which time the CC will function with 12 instead of 13 members. The mandates of eight other CC judges expire on 1 December this year, nearly simultaneously with the anticipated date of the parliamentary elections. Given the CC's role in adjudicating election disputes, Parliament Speaker Vladimir Šeks has proposed that all nine vacancies should be filled in the early autumn prior to the elections. Both the timing of the nomination process and the number of seats to be filled has raised the concern that judges will be appointed or re-appointed as part of a political package rather than based on a thorough or transparent assessment of each candidate's qualifications.

The upcoming changes in the CC's composition could mark an important turning point in regard to its role as an effective domestic human rights remedy. The Mission believes that reforms providing for the election of CC judges to staggered terms, or by a 'cascade' method, would better ensure institutional continuity and further insulate the appointment process from politicization.

One of the last cases in which Judge Vuković participated before his mandate expired involved a constitutional complaint brought by independent parliamentarian Branimir Glavaš. At the time, Mr. Glavaš was challenging an order by the Zagreb County Court that he be detained due to the gravity of the war crimes for which he is under investigation. The CC majority determined that since Mr. Glavaš had been released from detention, it lacked jurisdiction to review the complaint. In a dissenting opinion, Judge Vuković argued that the CC should have found a constitutional violation because, he claimed, there were no legal grounds to detain Mr. Glavaš. He argued in a most unorthodox interpretation of international law that, Mr. Glavaš could not be properly investigated or detained "because war crimes could not be committed in a defensive war such as that waged by Croatia between 1991 and 1995".

War crimes investigation against MP completed

On 22 February, the Zagreb County Court concluded the investigation against independent parliamentarian Branimir Glavaš in the 'Garage case'. By the end of March at the latest, the Zagreb State Attorney will determine whether there is sufficient evidence to issue an indictment.

Despite the fact that by law a judicial investigation is a closed proceeding and the court issued a confidentiality order in late July 2006, the identity of witnesses testifying before the closed judicial investigation continue to be publicly disclosed. Just prior to the conclusion of the investigation, for example, a defense attorney mentioned a prosecution witness in the media using identifying information, namely that the witness was serving a thirteen-year prison sentence. A day later the name of the witness appeared in the media.

Constitutional Court dismisses Roma pupils segregation complaint

In February, the Constitutional Court (CC) rejected a complaint lodged by the parents of 15 Roma children, who contended that the creation of separate classes for Roma students in several elementary schools in the north-western county of Međimurje, was discriminatory and subjected the children to degrading treatment.

Upholding the findings of the lower courts, the CC found that while the Roma students were segregated into separate classes, this was in accordance with accepted and legitimate educational principles aimed at adjusting the elementary school curriculum to the abilities of pupils who lack the requisite Croatian language and social skills. The CC concluded that in this instance the ethnic or racial origin of the students was not the motivating factor that led the authorities to create separate classes. However, relying on both constitutional principles and the case law of the European Court of Human Rights (ECHR), the CC cautioned that if the students remained in these segregated classes in higher grades without sufficient justification, by which time it was presumed they should have learned Croatian, this might violate the Constitution. A similar complaint lodged on behalf of the students remains pending at the ECHR.

New civil service employment plan includes national minority targets

In late February, the Central State Administration Office (CSAO) issued its annual plan for the employment of civil servants, which for the first time specifically refers to national minorities. The 2007 Plan, which covers ministries, other State bodies and State administration offices in 21 counties, indicates that of Croatia's 25,000 civil servants, approximately 1,800 - or less than seven per cent - are national minorities. The vast majority of these are employed by ministries. However, since statistics depend upon employees declaring their national minority status it remains unclear to what extent this accurately reflects the total number of national minority members employed in the civil service. According to the 2001 census, all national minorities combined constitute approximately 7.5 per cent of Croatia's population. According to the Plan, several Ministries – such as the Ministries of Defense, Culture, and Agriculture - currently employ few or no persons belonging to national minorities and include no goals for national minority recruitment in 2007.

The Plan provides for the recruitment of more than 4000 new civil servants for permanent or trainee positions in 2007, including a goal to hire 290 - or 7.2 per cent - national minority members. Approximately 240 of these new employees are to be employed by ministries or other State bodies and approximately 50 are to be hired in State administration offices in 12 counties. Because the Plan aggregates the statistics related to national minorities, it remains unclear to what extent specific national minorities are represented in the civil service as a whole or in certain regions of the country. It remains to be seen how the Plan's goals for national minority recruitment will be implemented in practice and according to which criteria. In co-operation with the CSAO, the Mission plans to hold a roundtable in the first half of 2007 to discuss the Plan and the employment of national minorities in the State administration. The roundtable will be opened by Prime Minister Ivo Sanader.

The Plan should contribute to implementation of the 2002 Constitutional Law on the Rights of National Minorities (CLNM), which requires appropriate levels of national minority employment in the State and local administration as well as the judiciary. Highlighting its importance for the integration of refugees, this requirement is included in the Road Map on

the implementation of the Sarajevo Declaration. The Mission plans further activities related to implementation of this CLNM requirement related to employment in the judiciary and local self-government.

ICRC issues book of 2,144 missing persons from Croatia

In late February, the International Committee of the Red Cross (ICRC) in co-operation with the Government presented ICRC's *Book of Missing Persons from Croatia*. The *Book* should hopefully facilitate consensus about the remaining numbers of persons missing from Croatia, ending disputes about different numbers and lists, which were often related to the ethnicity of those missing. The *Book* contains information on 2,144 persons reported missing to the ICRC by their families between October 1991 and November 1995, whose fate remains to be determined. The *Book* includes the names of missing persons, their date of birth and the date and place of their disappearance. The ICRC has issued similar books of the missing for Bosnia and Herzegovina and Kosovo.

Consistent with ICRC methodology, the *Book* includes all who went missing in Croatia, regardless of their national origin, ethnicity, citizenship or affiliation with one of the warring parties. While noting that resolving the fate of missing persons is primarily the responsibility of national authorities, ICRC produced the *Book* as a tool to assist in clarifying the fate of all those still missing. According to ICRC, the purpose of such a document is two-fold. First, it is meant to encourage anyone with information about missing persons included in the list to provide that information. Second, it can also encourage the relatives of any persons missing from the conflict whose name is not included to approach the relevant authorities or organization.

With ICRC's departure from Croatia at the end of 2006, the Croatian Red Cross assumed responsibility for all follow-up activities regarding missing persons. Persons with information or questions can contact ICRC, the Croatian Red Cross, other national Red Cross Chapters or the Department for Detained and Missing Persons within the Ministry for Family, War Veterans' Affairs and Inter-generational Solidarity.

Mission/UNHCR retreat encourages uniform application of Law on Foreigners

On 27 and 28 February, the Mission, in co-operation with the Office of the United Nations High Commissioner for Refugees in Croatia, organized a two-day meeting in the coastal town of Opatija to encourage uniform implementation of the Law on Foreigners. This should assist nearly 2000 pre-1991 habitual residents of Croatia to obtain Croatian citizenship for the first time. Senior officials from the Ministry of Interior and the Ministry for Maritime Affairs, Tourism, Traffic and Development attended the meeting along with representatives from the Croatian Institute for Health Insurance and 35 police officials directly responsible for implementing relevant provisions of the Law on Foreigners.

A significant number of former habitual residents, who failed to acquire Croatian citizenship when Croatia became independent in 1991, have subsequently been unable to regulate their status on returning to Croatia. This is in part due to the complexity of legislation regulating citizenship in the former Yugoslavia and complications stemming from the context of State succession.

Since 2000, the Government has attempted to address this problem through adoption of various temporary measures, which allow this specific category of refugees and migrants to gain citizenship under more favourable conditions than those applied to ‘ordinary foreigners’.

The last of these measures, adopted by the Ministry of Interior in consultation with the Mission in August 2006, allows former habitual residents to regularize their status on humanitarian grounds. No deadline has been attached to this process. The legal contours of this latest provision and the specificities of former habitual residents were explored during the retreat using presentations and case studies. Consequently, the target group should be clear to the relevant State officials.

Provided that the mechanism is implemented uniformly and with the necessary safeguards, this new measure should allow for the permanent resolution of this issue and the eradication of *de facto* statelessness for some 2000 people with genuine and authentic links to Croatia.