



Organization for Security and Co-operation in Europe

OSCE Mission to Croatia

News in brief

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Government decides to extend key deadlines for refugee return; other developments related to refugee return

The Government decided on 9 December to extend two deadlines of key importance for enabling refugees to return.

The application deadline for the Government housing programme for refugees who used to live in apartments with occupancy / tenancy rights (OTR) outside the so-called Areas of Special State Concern and who wish to return was extended from 31 December 2004 to 30 June 2005. These former residents of socially owned apartments are the largest remaining category of refugees and displaced persons without a housing option. Government housing programmes for this group are still largely unimplemented. The geographic area covered by this programme includes most of Croatia's urban centres, and its implementation would enable the urban refugee population to return, which would contribute to the reestablishment of a more vital and diverse Serb community.

The announcement of the six-month extension follows an agreement with the Serb Minority MPs in the Parliament. The International Community Principals had proposed to extend the deadline by nine months in their regular monthly meeting with the Minister of Maritime Affairs, Tourism, Transport and Development on 23 November.

Similarly, the Government decided to extend provisions that facilitate the return of refugees who were permanent residents but not citizens of Croatia when they fled. This category will continue to enjoy the possibility to regain the status of permanent resident foreigners without having to apply as first-time immigrants until 30 June 2005 through amendments to the 2003 Law on Foreigners. This provision is of key importance as long as major return-related programmes, such as the housing programme described above, have not been completed. The International Community Principals had addressed a letter to the Minister of the Interior on 4 November proposing the extension of the legal deadline.

Follow up of Prime Minister Sanader's visit to Belgrade; visa exemption for citizens of Serbia and Montenegro extended by 12 months

Prime Minister Sanader's visit to Belgrade on 15 November has been followed up through several visits at ministerial and technical level. The most high-profile event was the visit to Zagreb on 19 November by the Minister for Human Rights of the State Union of Serbia and Montenegro Rasim Ljaljic. A main purpose of this visit was to discuss the agreed transfer to Serbia and Montenegro of citizens of that country who are serving sentences in Croatian prisons.

The Government decided at its session on 9 December to extend by 12 months until the end of 2005 the possibility for citizens of Serbia and Montenegro to enter Croatia without a visa,

for tourist visits up to 90 days. The visa exemption was first introduced in mid-2003 and has since then been extended in six-month intervals. The Mission welcomed the visa exemption as an effective way of promoting contacts and reconciliation, and facilitating the return of refugees.

Increased political tension one month before the presidential elections, but political unity on EU accession

A series of issues recently raised political tensions not least because of an electoral context in which the presidential elections have become a confrontation between two blocs. The main opposition parties support the incumbent, President Mesic, while Deputy Prime Minister Jadranka Kosor is the candidate of the Government and the Croatian Democratic Union (HDZ).

The controversial conduct of the agents of the Counter-Intelligence Agency (POA) with a freelance reporter is an issue of contention. President Mesic maintains that the POA agents violated the human rights of the journalist and has signed a decision to dismiss the Head of POA, requesting the Prime Minister to countersign it. The Prime Minister has refused to do so, claiming that the agents were working within the limits of the law, and that the decision for dismissal is politically motivated.

The main opposition parties have shared the President's view that POA violated the human rights of the journalist and have requested a commission of enquiry. The Speaker of the Parliament (HDZ) rejected this proposal.

The demand by the opposition that the Parliament adopt a motion of no confidence against Foreign Minister Zuzul constitutes a second dispute and has ended up in a boycott of voting in the Parliament by the opposition parties. Minister Zuzul is accused of being in conflict of interest through his connection with a company whose debt was written off by the Government. The Government rejected the accusation which it considered politically motivated and without legal base, arguing that a report by the Chief State Prosecutor on the case did not contain any incriminating element.

The main opposition parties -SDP, HSS and HNS- tabled the motion on 8 November. The voting took place and the motion was rejected on 25 November with only MPs from the ruling HDZ and a few others present. The MPs from the main opposition parties - SDP, HSS and HNS and other liberal parties – had left the Parliament following a disagreement on the way of voting on the motion of no-confidence against the Foreign Minister.

Notwithstanding these tensions, the leaders of the opposition parties have given full backing to the Government in its support of Croatia's entry into the European Union two weeks before the European Council is expected to set the opening date for membership negotiations with Croatia. Following a meeting between Prime Minister Sanader and the leaders of the opposition on 9 December, the President of the Social Democratic Party, speaking on behalf of the other political parties' leaders, announced that parliamentary parties would write an open letter on Monday expressing their stance that they want a date for the entry talks to be set. This statement would be addressed to the European Parliament, the Commission, the EU member states, parties and their fractions.

Continued discussion on the role of the secret services

The controversy over the conduct of the agents of the Counter-Intelligence Agency (POA) with the journalist Helena Puljiz has dominated the political scene in the past two weeks.

On 1 December, the Parliamentary Committee for Human Rights and the Rights of Minorities concluded that the human rights of the journalist as enshrined in the Constitution had been violated. The Committee did not specify how her human rights had been violated. The Committee also requested that the rulebook of the Counter-Intelligence Agency be harmonized with the Constitution and the law.

The Parliamentary Committee for Domestic Policy and National Security, which has a supervisory role of the intelligence agencies, had previously endorsed the conclusions of the Council for Civilian Supervision of Intelligence that the journalist had not endangered national security while eschewing to determine whether POA had violated the human rights of the journalist.

Several Croatian civil society organizations, including the Journalists' Association, stated on 5 December that this case should not be closed without appropriate punishment for the POA agents who interrogated the reporter as well as for the Head of POA. In addition, they demanded that the rulebook of POA be reviewed to determine its compliance with constitutional and legal guarantees for the protection of human rights.

President Mesic accused POA of having directed their activities against him, and demanded the resignation of the Head of the Agency. After a period of stalemate, it was reported that Prime Minister Sanader had agreed to countersign the dismissal of the Head of POA, as required by law, on 10 December. On 6 December, the Head of POA dismissed his deputy and one other senior officer. The Head of the Council for Civilian Supervision of Intelligence resigned on 7 December in protest against the Council's decision to renounce to any further investigation in the case.

In response to questions from media, the Mission has noted with concern that according to the Parliamentary Committee for Human Rights and the Rights of National Minorities, the Counter-Intelligence Agency (POA) had violated the human rights of the journalist, and further observed that the case also raises questions regarding the protection of media and journalistic freedom.

The case has prompted the opening of a positive public debate on how to reconcile the work of the secret services with an effective protection of fundamental human rights embedded in the Constitution. In addition, the active role of civil society organizations and the media in the case has sensitized the public to the role of civil society in safeguarding fundamental human rights and freedom of the media.

ICTY grants provisional release to Croatian Generals Cermak and Markac

The ICTY Appeals Chamber granted provisional release to Generals Ivan Cermak and Mladen Markac on 2 December, pending trial. Cermak and Markac had been in detention since their voluntary surrender to the ICTY in March, following an indictment that accused them together with fugitive General Ante Gotovina of crimes against humanity and violations of the law or customs of war against Serb civilians in 1995 during "Operation Storm". The Prime Minister as well as the Minister of Justice welcomed their release.

The Appeals Chamber found that the release was warranted given the agreement by Cermak and Markac to be interviewed by the Prosecutor after their surrender, a factor the Chamber found indicative of a general attitude of cooperation with the Tribunal and of their intention to appear for trial if released. The Appeals Chamber also found reliable the guarantees given by the Government to ensure their attendance at trial. Finally, the Chamber found that there was no evidence that if released Cermak and Markac would interfere with witnesses and victims.

Cermak and Markac returned to Croatia on 3 December, their liberty subject to a series of conditions, such as not leaving their residences in Croatia, surrendering their passports, reporting once a week to a local police station, refraining from all contacts with victims or potential witnesses, refraining from discussing their case with the media, and returning to ICTY custody when ordered. The Appeals Chamber also required the Government to take a number of measures, including ensuring the security of Cermak and Markac as well as their compliance with the conditions of release, monitoring and submitting a monthly report on their presence in Croatia, and immediately detaining Cermak or Markac should they breach any terms and conditions of their release.

ICTY orders Croatian weekly newspaper to cease publication of protected witness testimony subject to sanction for contempt of the Tribunal

On 2 December the ICTY issued an “Order for the immediate cessation of violations of protective measures for witnesses” concerning a Croatian weekly newspaper, Hrvatsko Slovo as well as its former editor-in-chief and present publisher. The Order follows the recent publication of the alleged transcripts of the testimony of a protected witness in the trial of Tihomir Blaskic who was convicted and sentenced by the ICTY to nine years imprisonment for crimes in Bosnia and Herzegovina. Hrvatsko Slovo had printed a first piece of the alleged transcripts in its 26 November edition, and it did a second piece on the 3 December edition. The newspaper planned a series of articles containing excerpts from the testimonies of the protected witness.

The ICTY ordered the weekly newspaper to cease and to desist publication of the testimony of the witness concerned and other protected witnesses, and it requested the Croatian authorities to serve without delay the Order on the weekly as well as on the individuals. This was done on 3 December through the Zagreb County Court.

The Order considered that those responsible for publication of the transcripts were aware that the testimony was not intended to be publicly disclosed. Since the witness testified under ICTY protective measures, publication of the testimony could be considered contempt of the Tribunal, punishable by up to seven years imprisonment and a fine of up to 100,000 euros.

The ICTY also requested that the Croatian authorities provide the Tribunal with information regarding the identity of those responsible for the illegal disclosure of the transcripts. In response, the Chief State Prosecutor requested that the Police Directorate investigate how the transcripts were provided to the newspaper.

On 4 December, the former editor-in-chief of Hrvatsko Slovo responded to the Order by means of an open letter addressed to the ICTY President that was circulated to media outlets and submitted to the ICTY. In the letter, he expressed his contempt in profane language for the ICTY and the person of the ICTY President, and proclaimed his intention to defy the

Order by publishing the complete testimony of the protected witness in the 8 December edition of *Novo Hrvatsko Slovo*, his current political newspaper.

According to the amended Criminal Code that came into force on 1 October, it is a crime to reveal the identity of a protected witness, subject to a penalty of three months to three years imprisonment. It appears, however, that this provision applies only to persons granted protected witness status in the Croatian witness protection program. Therefore, consideration should be given to amending the law to include witnesses who provided protected testimony at the ICTY as well as in the courts of other states. Such protection would be important for the transfer of cases from the ICTY and in the context of inter-state judicial cooperation for purposes of domestic war crimes prosecution.

Croatian officials participate in the OSCE regional meeting on inter–state co-operation in war crimes proceedings

Inter-state cooperation has been identified as a key element for the successful transfer of cases from the ICTY to domestic jurisdictions under the ICTY Completion Strategy, most recently expressed by the ICTY periodic reports to the UN Security Council on 23 November. In this context, the OSCE organized a regional meeting on Inter-State co-operation in war crime proceedings in Palic in northern Serbia on 29-30 November, chaired by the Deputy Director of the OSCE Conflict Prevention Centre. Representatives of the ICTY from The Hague and its in-country liaison offices also participated. Croatia was represented by the Chief State Prosecutor and Deputy Prosecutor, three judges from the County Courts in Zagreb and Split, as well as the Head of the Department for International Legal Aid in the Ministry of Justice.

High Misdemeanour Court upholds conviction for public display of photos of Serb WWII leader; reactions to public display of Ustashe symbols

The High Misdemeanour Court in late November upheld the conviction of two university students from Serbia and Montenegro who photographed themselves on the main square in Zagreb holding portraits of Draza Mihajlovic, a World War II Chetnik leader blamed for the killing of hundreds of Croat civilians. According to the court record, the students' actions were motivated by Croatia's recent refusal to let a basketball player from Serbia and Montenegro who has a tattoo of Mihajlovic enter the country for a match. The Court reduced the sentence of the male student who was photographed from 15 to 10 days, while confirming the five-day sentence imposed on the female student who took the photographs. Both students left Croatia after serving their sentences and were banned from returning for six months.

The Court confirmed the trial court's determination that the students insulted others in an especially impertinent and rude manner thereby causing a disturbance in a public place. Key to the convictions was the testimony of two passers-by who stated that they found the pictures disturbing and offensive. An unidentified passer-by physically assaulted the male student.

Croatian media gave significant coverage to the event as well as to the reaction of the Prime Minister and officials in Serbia and Montenegro. As reported by media, the Prime Minister spoke with his counterpart from Serbia and Montenegro soon after the incident. The Foreign Ministry of Serbia and Montenegro was quoted as stating that Croatia responded "inappropriately and undemocratically" to the incident by criminally prosecuting the students.

A vehicle belonging to a swimming team from Serbia and Montenegro was burned in Zagreb following the incident, which some media interpreted as an expression of public outrage against the display of the portraits.

Media attention to this case has highlighted similar use of the Law on Misdemeanours by the Ministry of the Interior against the display of Chetnik symbols. The Ministry of Interior was reported to have sanctioned individuals in at least seven such cases. In the most recent case, the Umag Misdemeanour Court fined an individual approximately 200 euros for disturbance of public peace and order for wearing a T-shirt with Chetnik insignia in a police station. The Mission issued a press statement indicating that hate speech and the promotion and glorification of ideologies used to spread ethnic discord should be prevented. However, the Mission observed that this must be done in a balanced manner so as not to encroach on the fundamental right to freedom of expression. The HoM observed that the use of general laws, such as misdemeanours laws, was vulnerable to misuse and arbitrary and viewpoint-based action.

Croatia has no criminal legislation specifically prohibiting expression involving content related to fascist or totalitarian ideologies. In 2003 the Constitutional Court invalidated on procedural grounds amendments to the Criminal Code that outlawed “glorification of fascist, Nazi and other totalitarian states and ideologies or promotion of racism and xenophobia”, which had been adopted by the Parliament. In late August, the Government instructed the Ministry of Justice to propose amendments to the Criminal Code to regulate this issue as part of its decision ordering the removal of a plaque erected to World War II Ustashe Government minister Mile Budak, notorious for anti-Serb propaganda.

The Government Spokesperson and the Speaker of the Parliament (HDZ) have condemned a recent public gathering in Zadar in which around 50 participants, including an HDZ member of the Zadar City Council, displayed symbols and carried photographs of persons associated with the Ustashe ideology and with fugitive General Ante Gotovina. The President of the Croatian Party of Rights (HSP) also condemned and distanced his party from the gathering, although he justified the participation of the President of the local branch of HSP in the gathering. Media report that the local branch of the Croatian Democratic Union has expelled the HDZ member who participated in the gathering. Zadar Police have pressed charges against seven of the demonstrators for displaying Ustashe insignia and uniforms.

Parliament appoints human rights Ombudsman

On 30 November the Parliament appointed Jurica Malcic, a former judge of the Constitutional Court, as the human rights Ombudsman. The three Deputies of the Ombudsman were also appointed. These appointments were made immediately prior to the expiration of the mandates of all deputies on 1 December. The post of Ombudsman had been vacant since the mandate of the prior officeholder expired in June. Two of three former Ombudsman’s deputies were re-appointed. The third deputy previously worked for a human rights NGO.

The new Ombudsman was a candidate agreed on between the ruling party and the opposition and did not emerge through the public application process that the responsible Parliamentary Committee had conducted. In mid-November, the committee had nominated one of the Deputies to assume the post of Ombudsman, but the Speaker of the Parliament did not seek a vote on the candidate as the Parliamentary opposition parties did not support the committee’s choice.

In interviews carried by national media, the Ombudsman has indicated his intention to place increased emphasis on the institution's constitutional role in the protection of human rights of citizens in proceedings conducted by the Ministry of Defence, the armed forces and the security services.

The Mission anticipates working with the Ombudsman to implement the recommendations in an expert report on strengthening the institution, which was commissioned by the Mission and ODIHR in 2003. The report recommends that the human rights mandate of the Ombudsman be strengthened through amended or new legislation, and that the current budget of the institution be increased to a more appropriate level.

Croatian Ministry of Finance fines leading election NGO.

The President of GONG, Croatia's leading election observation and support NGO, issued a press statement on 2 December announcing that GONG had been fined 31,000 kuna (approximately 4,000 Euros) by the Ministry of Finance for not keeping a book with the records of transactions with foreign countries, for exchanging foreign donations in local currency and depositing these funds in a local currency account instead of a foreign currency account, and for providing the banks with incorrect payment codes.

This occurs after the Foreign Exchange Directorate carried out a two-month inspection of GONG's foreign currency transactions from 2001 through 2004. In the press statement the President of GONG complained that the Foreign Exchange Directorate requested GONG to translate contracts with foreign donors into Croatian language and to have public notaries verify the contracts.

The President of GONG maintained that the NGO had not violated any legal regulation on foreign currency transactions, and announced GONG's intention to appeal the decision of the Ministry of Finance. She characterized the requests as "an act of state power abuse of civil society."

GONG is an election monitoring non-government organisation which acquired high visibility in the 1990's because of its get-out-to-vote activities. Most international organizations in Croatia supported its activities, including the Mission.

Together with other NGOs working on gender and environmental issues, GONG has strongly protested the Government's decision in spring to lift the value-added tax exemption for non-governmental organizations working on human rights while other NGOs continue to be exempted from V.A.T. The Ambassadors of the EU member states in Zagreb have recently voiced concern on this issue by means of a letter sent to the Croatian Government.