



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

**Statement by Ambassador Peter Semneby, Head of the OSCE Mission to Croatia, to the  
OSCE Permanent Council, Vienna, 8 July 2004**

I. The latest *Status Report* of the OSCE Mission to Croatia (the 14<sup>th</sup>) has been distributed to all delegations prior to today's meeting. A draft version of the report was shared with the Government for comments. Wherever possible, the Government's comments have been taken into consideration. In the few cases where there is a difference in interpretation between the Mission and the Government, the Government's point of view has as a rule been acknowledged in the text.

The period after my last PC statement in December coincides with the first six months in office of the *new centre-right Government* led by Dr. Ivo Sanader. Efforts by the Government to fulfil the mandate of the Mission were particularly noticeable during the period, both in terms of policy statements and actions. The new Government committed itself to achieving greater progress on remaining post-conflict issues, in particular the reintegration of Serb refugees, minority rights, co-operation with the ICTY and regional co-operation. Given the similarities of the Mission's mandate and the political tasks of the EU accession agenda, the Mission has shared information and co-ordinated some activities with the EU, particularly the European Commission (EC), in order to ensure maximum impact.

The Government's added *attention to the Mission's mandate* is conditioned by three developments, which have contributed to a positive change of atmosphere and discourse within the country. *First*, the mandate issues were given added priority through Prime Minister Sanader's efforts to bring his party, which was also in power throughout the 1990s, into the political mainstream. *Second*, the results of the parliamentary elections in November 2003 prompted the HDZ, which became the largest party but without an absolute majority, to enter into formal agreements with parliamentarians representing national minorities. In particular, the agreement with the Serb parliamentarians contained extensive commitments to issues related to minority rights and refugee return. *Third*, the widely shared objective of European and Euro-Atlantic integration has raised the responsiveness to the political conditions for membership in the EU and NATO.

Immediately upon coming into office, the new Government expressed its willingness to *reconcile with the country's minorities*. The new Prime Minister has on several occasions called on Serb refugees to return to their homeland. During a visit in May with the OSCE Chairman-in-Office to one of the most problematic war-affected areas where refugee return is still seen by many as a threat, Prime Minister Sanader became the first Croatian Head of Government to visit the home of a Serb returnee and challenged the local authorities to look to the future and not to the past. Leading Serb representatives have expressed satisfaction with the Government's policy, including progress on property reconstruction assistance to refugees and property repossession that has taken place as a result of the agreement with the Serb parliamentarians. In most cases, the Government has now articulated appropriate

responses or put in place mechanisms to address outstanding issues within the Mission's mandate, but many of these approaches must still be tested and implemented.

The period has seen significant steps toward Croatia's *accession to the EU*. These efforts were given an important boost of support on 20 April as a result of the EC's positive *Opinion* on Croatia's EU membership application and the decision by the European Council on 18 June to grant Croatia the formal status of an EU candidate country with negotiations to start in early 2005. The Council stated that Croatia must maintain full co-operation with the ICTY, and do more to support minority rights, refugee return, judicial reform and regional co-operation, areas where the Mission is active in providing advice and assistance to the Government.

*Refugee return* remains a major issue for the Mission and a challenge for the Government. Approximately two thirds of the Serbs who fled the country during or immediately after the war remain in the neighbouring countries as refugees. Further efforts will have to be made in order to ensure that all refugees who would like to return have a realistic possibility to do so. This requires, in particular, access to adequate housing and a secure environment. Certain types of international assistance and advice, supported by monitoring at the field level, need to be continued by the international community in order to guarantee that the efforts are successful. A climate conducive to sustainable refugee returnee requires greater Government initiative to promote interethnic reconciliation and trust-building in many war-affected communities. The Mission will soon launch a public awareness campaign on reconciliation and return together with the Government, beginning with the presentation of a survey of attitudes on return.

The most significant obstacle to refugee return remains the issue of *housing to refugees who lived in socially owned flats* with occupancy/tenancy rights (OTR) and who wish to return to Croatia. Two different housing programmes for refugees in this category are now in place but have not yet been implemented. A publicity campaign is being launched with international support in neighbouring countries in order to inform refugees about the programmes and application procedures. The Mission and its international partners have focused on supporting a programme that will ensure that all refugees of this category who wish to return have access to housing, while the European Court of Human Rights is likely to decide soon whether OTR terminations were legally justified.

Efforts to ensure the *repossession of occupied private property* are being improved through the work of a new Government commission. Of approximately 3,500 properties that were occupied by temporary users at the beginning of 2004, about 2,300 remained occupied by June. Yet the legal regime on property repossession still favours the interests of the temporary occupants of private property over the rights of the owners. Further, many Serb property owners find that their repossessed properties have been looted and others are being forced by courts to pay temporary users for so-called "investments" in properties. Many business and agricultural properties remain occupied.

Progress on *reconstruction assistance* is satisfactory. The firm majority of recipients are now Croatian Serbs. Approximately 5,200 claims for reconstruction, mainly from Croatian Serb refugees abroad, still remain to be processed. In addition, the previously closed application procedure has been reopened for six months as a result of the agreement with Serb parliamentarians. While reconstruction assistance is also provided for property destroyed by

terrorist acts in areas that remained under Government control during the armed conflict, it is difficult for such property owners to receive compensation.

There are further *administrative, bureaucratic and other obstacles* to refugee return which remain and need to be removed. These include the recognition of working years spent in the former so-called Republic of Serb Krajina for pensions and other benefits, as well as some problems in the implementation of new legal provisions designed to facilitate the re-establishment of permanent residence for refugees who have not been registered as Croatian citizens.

The OSCE Missions in Croatia, Bosnia and Herzegovina and Serbia and Montenegro continue, largely within the framework of their Joint Action Plan, to support joint *regional action* by the host Governments on refugee return. The Missions and their UNHCR and EC counterparts are planning to suggest to the three Governments that a Road Map be developed, including conditions for completing the refugee file within a limited time-frame.

Croatia's overall *minority rights regime* is framed within the Constitutional Law on the Rights of National Minorities (CLNM) and provides extensive protection for the national minorities. Implementation of the CLNM has so far primarily involved the introduction of minority representation at all levels of elected government and the election of advisory minority councils. Programmes to ensure adequate minority representation in the State administration and the judiciary remain to be initiated. The Mission is exploring, together with HCNM, what support it could provide for the development and implementation of such a programme. The Mission has recently supported training for elected minority representatives. The Government established a Commission in April to monitor implementation of the National Programme for Roma.

The first concrete efforts aimed at systemic *judicial reform* are now being undertaken. Reducing the case backlog of approximately 1.5 million cases remains a major task. Delays in judicial proceedings continue to pose a significant problem and infringe on substantive rights, while other aspects of the right to fair trial, particularly the right to an impartial tribunal, are not being addressed by the judicial reform plans. Croatia still has no free legal aid system in civil cases other than that provided through the Croatian Bar Association.

The Mission has recently recommended measures to improve the domestic *capability to adjudicate human rights complaints*, notably by strengthening the *Constitutional Court* and the *Administrative Court*. The recommendations are based on an in-depth Mission analysis of ECHR cases involving Croatia, which was presented at a parliamentary hearing. The report complements previous recommendations on strengthening the *Ombudsman* institution. The Constitutional Court is now deemed by ECHR to be a more effective domestic remedy for some fair trial questions, but the Court may as a result become overburdened with additional cases that would limit its ability to deal with substantive human rights questions. The need for compliance with recommendations of the Ombudsman has been stressed by the Parliament.

Croatia now maintains full *co-operation with the ICTY*. The ICTY Chief Prosecutor has, however, stated that Croatia still needs to locate and transfer fugitive General Ante Gotovina to The Hague. In the event that the Trial Chamber decides to transfer a case, it would set a precedent as the first ICTY indictment transferred to a national jurisdiction. [Public acceptance of even-handed prosecution of war crimes, including the prosecution of Croats at the ICTY, has increased, which was highlighted by the muted response to recent indictments.](#)

Nevertheless, a special parliamentary debate held on 2 July demonstrated that ICTY co-operation is still a highly charged political issue.

The Minister of Justice has demonstrated commitment to improving the conditions for domestic prosecution of war crimes by jointly presenting OSCE Mission reports on *domestic war-crime prosecutions*. The reports state that additional reforms and actions are needed in order to ensure a uniform standard of criminal responsibility and a single standard of justice for victims regardless of national origin. International legal assistance on war-crime cases between Croatia, Bosnia and Herzegovina, and Serbia and Montenegro will be of increasing importance. The Mission has provided advice on training programmes for judges and prosecutors on war-crime issues. It is continuing to monitor domestic war-crime trials and has replied affirmatively to a preliminary and informal request from the ICTY whether it would be in a position to monitor trials in cases transferred to the Croatian judiciary by the ICTY.

In preparation for presidential and local elections in 2004 and 2005, respectively, the Government needs to realize a series of pending *electoral reform* measures identified in international election observation reports on elections in Croatia in 2000, 2001 and 2003. The Mission is particularly concerned with the possibilities for voting and political participation among refugees outside the country. It is planning to support electoral reform together with the ODIHR and the Government, and will continue to support domestic election-related NGOs.

The new Government is implementing the previous Government's *police reform* programme. Community policing remains the most advanced police reform initiative. The Ministry of the Interior has agreed to the Mission's proposal to develop a Road Map for the development of a modern European police service. The Mission's police reform activities are also an integral part of its efforts to support refugee return, given the importance of the police in the rebuilding of communities affected by the war.

Changes are being realized to legislation in support of *freedom of the media*, following advice provided jointly by the OSCE Mission, the Representative on Freedom of Media, the EC and the Council of Europe. International expert recommendations were incorporated into the new Law on Media, while those on other laws are still pending, in particular concerning the need to shield radio and television and the oversight body for electronic media from the possibility of direct political interference. The experts have noted the potential threat posed to journalists through the remaining criminal provisions on libel. Croatian media still lacks a self-regulatory system to effectively adjudicate complaints against the media. The Mission is planning to support the creation of such a body.

The situation regarding *media development* is generally satisfactory. Croatian television now generally fulfils its public service tasks on minority issues. Inflammatory reporting against returning refugees continues to be a problem in some local media. The Mission has intensified its work with media in those areas in order to ensure more balanced and accurate reporting. Media pluralism has increased through the privatization of the third national television channel. The planned privatization of two under-financed state-owned newspapers is still fraught with problems.

Croatian *civil society* remains in a transitional state with a slow tendency among NGOs to gradually focus on overarching societal issues. The Government is developing new support mechanisms for NGOs. A recent Government decision to significantly increase the tax

burden on some NGOs remains as a sensitive and unresolved issue. The Government is currently finalizing new provisions and legislation designed to improve the wider regulatory framework on financial and other support to civil society activities. The Mission is continuing to refocus its civil society activities in support of capacity-building rather than grass-roots initiatives.

**II.** As a result of the new Government's commitment to addressing most Mission mandate issues in combination with the vision and conditionality provided by Croatia's EU accession, the *outlook for fulfilment of the Mission's mandate* within a finite time is relatively favourable. Key Cabinet members, including the Prime Minister, have on several occasions, including the recent visits of the Secretary-General and the Chairman-in-Office, publicly expressed their appreciation of the Mission's role, and have highlighted the special role of the Mission on most important mandate issues, such as refugee return, minority rights, judicial reform, war- crime trial monitoring, police reform, reform of media legislation, and civil society development. Notably, the Mission also maintains close working relations with the Ministry of European Integration.

The Mission will increasingly concentrate on support for implementation of key legislation and programmes, and will, where appropriate, continue to monitor progress. These activities will continue to require *adequate resources*, in some areas possibly larger than those currently available to the Mission. While the objective should be to transfer responsibility for much of the Mission's work to Croatian civil society in the long run, the Mission's role within several mandate areas is unique and cannot be replicated by other organizations or actors, which do not have the extensive presence at the local level or the accumulated knowledge and expertise vested within the Mission. It is apparent that the Mission can continue to play a useful and in many cases essential role through 2005 and beyond. Nevertheless, it is possible that individual lines of activity can be concluded or substantially reduced by the end of 2005 if the Government remains committed to the substantive issues. In order to ensure satisfactory results in this key phase of the Mission's work, it is essential, however, to focus on tasks rather than letting the substance be guided by arbitrary time frames.

The new environment that the Mission now faces provides an opportunity to *review the Mission's activities*. Case-work and grass-roots activities are likely to become less important, whereas capacity-building, advice to central and regional authorities and public affairs work will require more attention. It is likely that the Mission will play a more important role in monitoring war-crime trials and supporting the ability of the Croatian judiciary to handle such trials, including cases that will be transferred from the ICTY. These changes have been reflected in the Mission's Programme Outline.

Against this background, it seems appropriate to streamline the Mission's *field structure*. This structure will be flatter than now, with fewer but larger field units concentrated to regional political centres in the country (tentatively six field units compared to the present ten). They should not be identical in structure, but will be staffed according to needs at the individual locations. This will also allow for a more flexible and efficient use of the Mission's human resources.

A rough and still tentative list of *tasks or benchmarks* for the Mission's future work would be as follows:

- ensure that all refugees who wish to return have access to adequate housing, including those who lived in socially owned flats;
- ensure the removal of all other administrative and bureaucratic obstacles to return;
- facilitate, together with the EC and the UNHCR, an understanding between the three Governments in Croatia, Bosnia and Herzegovina and Serbia and Montenegro on conditions for closing the refugee file;
- improve the atmosphere for refugee return in all parts of the country through public awareness efforts;
- ensure that the elected minority representatives at all levels have adequate conditions for carrying out their work;
- support the development and implementation of programmes for minority representation in the State administration, the judiciary, etc.;
- ensure that an adequate structure is in place for domestic handling and adjudication of human rights complaints, involving strengthening of the Constitutional Court, the Administrative Court and the Ombudsman;
- ensure, in conjunction with judicial reform plans, that disadvantaged categories such as minorities and refugees have access to adequate legal representation in courts;
- ensure, through monitoring and support, an even-handed domestic adjudication of war crimes;
- support the implementation of recommended electoral reform measures;
- contribute to the development of a Road Map on police reform;
- support the introduction of community policing, in particular in refugee return areas in order to ensure reconciliation and the sustainability of return;
- support the implementation of expert recommendations on key media legislation;
- support the development of a self-regulatory body for adjudication of complaints against the media; and
- support capacity-building in order to enable the civil society sector to eventually assume responsibility for key parts of the Mission's work.