



Organization for Security and Co-operation in Europe

Mission to Croatia

Headquarters

BACKGROUND REPORT: CROATIA'S HUMAN RIGHTS INSTITUTIONS AND THE RIGHT TO TRIAL IN A REASONABLE TIME

29 July 2005

Delays in judicial and administrative proceedings that rise to the level of fair trial violations continue to preoccupy Croatia's human rights institutions and have also been highlighted by the European Court of Human Rights (ECHR). Although a primary goal of judicial reform is to eliminate Croatia's large case backlog, judges, including judges of the Supreme Court, continue to exercise time-consuming non-judicial duties such as conducting elections¹. Some judges have estimated that they spend up to 20 per cent of their time on elections, thus negating gains made in decreasing the backlog². Resolution of the backlog problem is thus inextricably linked to election law reform.

The Constitutional Court (CC) continues to serve as the primary supervisor of delayed judicial proceedings³. In 2004, the CC decided approximately 550 cases complaining about unreasonable judicial delays, finding violations in more than half⁴. In the first five months of 2005, the CC continued at an even more accelerated pace, finding violations in cases with delays ranging up to 32 years⁵. The CC reported to Parliament in February 2005 that the sharp increase in the number of complaints received alleging constitutional violations due to court delays threatens its ability to serve as an effective domestic remedy⁶. The CC proposed several reforms to eliminate this burden⁷. However to date the Parliament has taken no action on the proposed reforms.

¹ In early July, the Government forwarded to Parliament a draft law that would establish a permanent state election commission responsible for the conduct of elections that would replace the current *ad hoc* system that relies on the judiciary.

² In the first four and one-half months of 2005, judges at the national and local level were involved in three rounds of elections, two for the presidential election in January and one for the local elections in May. The President of the Supreme Court as well as three judges serve on the *ad hoc* State Election Commission.

³ In the first five months of 2005, the Constitutional Court decided 288 cases alleging unreasonable judicial delays, finding violations and awarding damages in 62 per cent (180). Of a total of 505 decisions finding such violations, more than 90 per cent (456) were issued in the past one and one-half years with damages awarded in excess of €618,000.

⁴ Cases in which the CC found no undue delay have been the subject of settlements at the ECHR. See e.g., *Trivic v. Croatia, Miljus v. Croatia* (CC found no fair trial violation in cases that lasted approximately 11 and 12 years, respectively).

⁵ U-III A-2410/2004, dated 24 February 2005 (Official Gazette 37/05). The CC found that a 32-year delay by the Split courts in issuing a final decision violated the constitutional right to a trial within a reasonable time, ordered the Split County Court to issue a decision in three months and awarded damages.

⁶ U-X-835/2005 dated 24 February 2005 (Official Gazette 30/05). The CC noted that the number and length of proceedings complaints received annually increased from 64 in 2000 to 925 in 2004 (approximately 14 times more), accounting for nearly 20 per cent of all complaints received in 2004. In the first five months of 2005, the CC received 610 such complaints.

⁷ The CC recommended reform of its statute, the Constitutional Law on the Constitutional Court, as well as the Law on Courts to re-distribute the burden of resolving such complaints. The CC identified two other causes for

The seriousness of the delays in Croatia's highest courts was also highlighted by the ECHR in the first part of 2005. In four cases, the ECHR determined that delays of more than three years by the Supreme Court in issuing decisions in civil and criminal cases were excessive⁸. The ECHR similarly held that a delay of more than three years at the Constitutional Court constituted a violation of the right to a trial in a reasonable time⁹.

The severity of judicial delays was also noted by the Ombudsman, who despite having no jurisdiction over the judiciary, continued in 2004 to receive an increasing number of such complaints¹⁰. Concluding that the persistence of complaints suggests there is no effective domestic remedy for fair trial violations, the Ombudsman proposed that Parliament expand the institution's jurisdiction to include supervision of certain aspects of the work of the judiciary¹¹. The proposal provoked immediate negative reaction from the Croatian Association of Judges¹².

Excessive delays in administrative proceedings remain of particular concern. In late 2004, the ECHR referred to the Government for comment an application that alleges unreasonable delays in an administrative proceeding¹³. Delays in administrative bodies as well as at the Administrative Court were also highlighted by the Ombudsman, which institution has specific oversight of administrative bodies¹⁴. While the Ombudsman indicated that delays in excess of prescribed deadlines in issuing decisions were in part due to factors beyond the control of State officials¹⁵, he noted that the practice of administrative agencies also contributed to delays. In particular, he noted that cases frequently go back and forth multiple times between first and second instance administrative bodies. The Ombudsman also attributed delay to the insufficient use by the Administrative Court of its authority to decide cases on the merits when it finds that an administrative body has erred. The Court routinely sends such cases back to the administrative body for a new decision, significantly adding to the length of the proceeding¹⁶.

the increase in its caseload, strict limits on the jurisdiction of the Supreme Court (in particular high case value) and the failure of Government bodies to pass regulations within the timeframe specified by the Parliament when it adopts laws.

⁸ *Jelavic-Mitrovic v. Croatia, Gudeljevic v. Croatia, Debelic v. Croatia, Camasso v. Croatia.*

⁹ *Pitra v. Croatia.*

¹⁰ Of all complaints received by the Ombudsman in 2004, 12 per cent related to court delays. 2004 Ombudsman Annual Report, April 2005, page 9.

¹¹ 2004 Ombudsman Annual Report, April 2005, page 132. For purposes of designing a supervisory mechanism, the Ombudsman suggested that Parliament consult models from other European countries in which Ombudsman institutions have the authority to access court documents and issue warnings or intervene in court proceedings.

¹² The President of the Croatian Association of Judges was quoted in the media as stating that granting the Ombudsman supervisory powers in relation to the judiciary "would mean a domination of the legislative branch over the judiciary." *Vjesnik*, 18 April 2005, page 4.

¹³ *Bozic v. Croatia.* The application also contends that there is no effective domestic remedy for challenging delays in administrative proceedings given that the Constitutional Court's statute refers only to the Court's jurisdiction to review and remedy excessive length of *court* proceedings.

¹⁴ The Government's judicial reform plans do not include measures to address deficiencies that prevent the Administrative Court from providing certain fair trial guarantees. The Constitutional Court has determined that the Administrative Court does not provide full fair trial guarantees. U-I-745/1999, dated 8 November 2000 (Official Gazette 112/00).

¹⁵ Among such factors the Ombudsman included lack of funding and sharp increases over a short period of time in the number of cases.

¹⁶ 2004 Ombudsman Annual Report, April 2005, page 127.

Noting that the State lacks a mechanism for monitoring how administrative proceedings are handled, the Ombudsman proposed to Parliament several reform measures that could assist in addressing the problem of delays¹⁷. The Ombudsman also gave recommendations for reform of State administration, including the need to continue with decentralization, which would enable local units to resolve administrative matters more efficiently.

¹⁷ The Ombudsman recommended the establishment of registers in each ministry, as well as a central register in the Central State Office for Administration, to track administrative cases. The registers would serve as a database for regular reporting to the Parliament and the Government. 2004 Ombudsman Annual Report, April 2005, page 127.