

European media experts provide advice to Government

A group of three European media experts met from 26 to 27 February with Government officials, lawmakers and civil society representatives in order to advise on the reform of media-related legislation. The Government had requested expert advice in this field in order to secure full alignment with European standards. The OSCE Mission to Croatia assisted in the co-ordination of the visit of the experts together with the Council of Europe (CoE) and the European Commission (EC). A report with the experts' recommendations will be provided in the near future to the Government.

The experts reviewed a preliminary draft of the Law on Croatian Radio-Television (HRT) which the Government wishes to adopt by the end of March 2004. They welcomed the Government's willingness to further align the Law with accepted European standards but stated that the changes had to take into account the fact that the 2003 Law on HRT had started to be implemented and that the HRT Council was already functioning. In that context, they highlighted the need for stability at HRT in order to allow it to function in a new competitive environment.

The experts reiterated their concerns with the Law on Electronic Media which was adopted in July 2003. Concerns were noted with the nomination procedure for the members of the Council on Electronic Media, which were declared incompatible with the European standards, as well as with the lack of transposition of the European Convention on Transfrontier Television to which Croatia is a party.

Taking into consideration the general desire expressed by the Government to finalize the Law on Media by 30 April 2004, as well as the comments expressed by media organizations, the experts suggested that the drafters review the principles of Article 10 of the European Convention on Human Rights and the case law of the European Court on Human Rights in order to enable them to fully harmonize the Law on Media with accepted European standards. As for libel and the relevant provisions in the Criminal Code, the experts noted the "chilling effect" that these articles have on the daily work of media professionals, even if rarely applied. They advised the Government to remove those provisions that criminalize libel.

OSCE Mission and EC Delegation hold joint meeting with new Minister responsible for refugee-related issues

The Head of OSCE Mission to Croatia (HoM) and the Head of the Delegation (HoD) of the European Commission (EC) in Croatia held a joint meeting on 23 February with the new Minister for Maritime Affairs, Tourism, Transport, and Development. The Minister has taken on a very broad portfolio of issues previously covered by three former ministries, including refugee-related issues such as property repossession, reconstruction assistance as well as execution of the Government's housing programmes for former occupancy/tenancy rights holders.

The HoM and the HoD stressed the fact that the refugee return issue was key pillar of the OSCE's activities in Croatia and a core component of the political criteria for Croatia's accession to the EU. They welcomed the positive statements by Prime Minister Ivo Sanader and other members of the new Government in support of Serb refugee return. The Minister was urged to accelerate the process of private property restitution and the processing of remaining applications for housing reconstruction. They also stated that the Government's housing programme for former OTR holders who wish to return to Croatia should be implemented without delay.

The Minister stated that the new Government intends by April 2004 to initiate a public-awareness campaign on the housing programme for former OTR holders. He added that, in accordance with the Prime Minister's written agreement with the three Member of Parliament of the Independent Democratic Serb Party (SDSS), the deadline for the submission of applications for state-provided reconstruction assistance would be extended for six months from the time of an official Government decision. The Minister stated that the Government intended to resolve all outstanding issues related to refugee return by the end of 2005.

OSCE Mission to Croatia forges links with new parliamentary committees

Following parliamentary elections on 23 November 2003, the make-up of the parliamentary committees was agreed upon by the new government and parliamentary factions at the end of January 2004. The OSCE Mission to Croatia has been active since that time in establishing policy dialogue with parliamentary committees tasked to work on issues within the scope of the Mission's mandate. Of note has been the quality of dialogue that has been established to date with the new Parliament and the increased understanding of the OSCE's added-value in relation to other international organizations.

The HoM met on 5 February with the Chairperson of the Parliamentary Committee on Foreign Policy in order to introduce him to the work of the OSCE. The HoM highlighted those areas where increased Government attention and resources are required, including: return-related issues, implementation of the Constitutional Law on the Rights of National Minorities (CLNM), judicial training, freedom-of-the-media issues, and police reform issues. The HoM and the Deputy HoM later articulated the mechanisms of the OSCE and Mission's specific work in Croatia before the entire Parliamentary Committee on Foreign Affairs and officials from the Ministry of Foreign Affairs and the Office of the President of Croatia.

The HoM held similar meetings and presentations in February with Chairpersons of other relevant Parliamentary Committees. On 9 February the HoM met with the Chairperson of the Parliamentary Committee on European Integration, while on 11 February he met with the Chairperson and the Deputy Chairperson of the Parliamentary Committee on the Constitution, Standing Orders and the Political System. He met on 25 February with the Chairperson of the Parliamentary Committee for Human Rights and National Minorities.

Parliament adopts state budget for 2004

On 3 March the Parliament adopted the state budget for 2004, which totals approximately €1.1 billion. This budget represents an increase of approximately five per cent from 2003. Revenue projections are estimated at approximately €0.5 billion.

The judiciary is earmarked to receive approximately €250 million, an increase of approximately 16 per cent from 2003. However, in a press statement issued on 27 February, the Supreme Court objected to what it viewed as insufficient investment in the development of the judiciary, particularly the training of judges. The Supreme Court also objected to the general working conditions in Croatian courts, whose work they insisted was hampered by inadequate funding, leading to the current backlog of court cases.

The Government Office for National Minorities is set to receive approximately €281,000, which represents an increase of €1,000 in comparison to 2003. While additional funding for the Councils for National Minorities (CNMs), minority associations and representatives was primarily administered by this Office in 2003, this area of funding is to be administered in

2004 by the Expert Office of the national-level Council for National Minorities (CNM). The Expert Office of the national-level CNM is to receive approximately €3,2 million in total, of which approximately €2,9 million will be allocated to the CNMs, minority associations and representatives.

Approximately €270 million will be spent in 2004 on reconstruction and other refugee-related issues. Approximately €9 million was set aside for the overall reconstruction of homes, while approximately €6 million will be spent on various housing care options, including a relatively modest €4 million for the Government's housing programme for former occupancy/tenancy rights holders outside the Areas of Special State Concern.

Community policing activities will be supported with a budget of approximately €15,000. The Ombudsman's office will have its funding only slightly reduced, from approximately €24,000 to €86,000, while two new Ombudsman's institutions for children and for gender equality have been created; they each have their own budgets of approximately €95,000 and €63,000, respectively. The Constitutional Court had its budget increased from approximately €2,4 million to €2,7 million.

Community policing working visit to the UK

From 15 to 22 February, the Mission's Community Policing Adviser accompanied two senior Croatian police trainers to the United Kingdom (UK). The purpose of the visit was to enable the Croatian officers from the Police Academy in Zagreb to observe first hand the execution of community policing in a European country. The Mission organized the visit, which was hosted by the Chief Constable of the Sussex Police, while sponsorship was undertaken by both the British Embassy in Zagreb and the Mission.

The two Croatian officers selected for this latest visit to the UK are responsible for organizing courses on 'Professional Development' which includes the training of 'Contact Officers' (i.e. so-called 'beat' officers) within the framework of the Ministry of the Interior's 'Action Strategy' on community policing. The main focus of the recent visit to the UK was to gain a better understanding of community policing principles such as 'partnership' formation and various teaching and learning methods. Amongst others, the officers visited a regional Training Centre at Ashford, the New Scotland Yard Partnership Unit, and the Brighton and Hove Partnership Community Safety Team.

ECHR finds violations to right to fair trial and right to home; new admissibility decision related to treatment of prisoners in state prison

The European Court of Human Rights (ECHR) issued a judgment on 26 February in *Cvijetic v. Croatia* finding that the four-year post-accession failure to execute an eviction order violated both the right to fair trial as well as the right to home. The ECHR awarded €10,500 in pecuniary and non-pecuniary damages. *Cvijetic* is illustrative of numerous cases where owners remain unable to regain possession of their homes despite court orders, including those that were occupied with Government permission. The ECHR has already accepted two other cases for review that present the same issue, namely *Pibernik v. Croatia* on which a judgment will be issued on 4 March and *Kostic v. Croatia*.

An important message to be derived from the ECHR decisions is that the Croatian Constitutional Court fails to serve as an effective domestic remedy for some human rights violations. The ECHR in *Pibernik v. Croatia*, pointing to the lack of specificity in the Constitutional Court's jurisdictional statute, determined that applicants are not required to

seek a remedy from the Constitutional Court prior to the ECHR, because Croatia was unable to establish that the Constitutional Court would decide complaints alleging the failure to execute court decisions. Indeed, the Constitutional Court confirmed in 2003 that it in fact does not provide a remedy for this type of violation. Similarly, in *Cenbauer v. Croatia*, which the ECHR agreed to review on 5 February 2004, the ECHR found that there was no possibility to file a constitutional complaint challenging prison conditions because the Constitutional Court's jurisdictional statute only contemplated complaints against a decision.

The increasing number of cases accepted for review by the ECHR calls for examination by domestic authorities, including the Government, the Parliament, and the Constitutional Court itself. In addition to a review of the relevant substantive parts of legislation, such an examination should include review of the statute regulating the jurisdiction of the Constitutional Court to ensure that it exercises the full extent of jurisdiction under the European Convention on Human Rights.

Increase in *in absentia* trials and war-crimes convictions in Zadar

The Mission has monitored a noticeable increase in *in absentia* trials and convictions in Zadar, southern Croatia. On 17 February, the Zadar County Court convicted two Serbs, Dragor and Milan Opacic, *in absentia* for committing war crimes against civilians for the maltreatment of civilians in a village near Zadar in 1991. They were sentenced to six and five and a half years imprisonment, respectively. The one-day trial was conducted before a panel of three professional judges in accordance with the new Law on Implementation of the Statute of the International Criminal Court.

According to information available to the Mission, the Opacic trial was the sixth *in absentia* trial and conviction before the Zadar County Court in the past 12 months. Five *in absentia* trials conducted in 2003 resulted in convictions of 15 persons (14 Serbs and one Bosniak). In one of those cases, *Macakanja et al.*, the trial in 2003 was the second *in absentia* trial and conviction for four Serbs in the same case. These four defendants were convicted *in absentia* in 2000, but the Supreme Court later granted the *in absentia* appeal. The re-trial ordered by the Supreme Court resulted in a second *in absentia* conviction in May 2003 with sentences ranging from 15 to 20 years.

According to Mission information, there were 28 *in absentia* convictions in 2003 in all of Croatia involving 26 Serbs together with one Croat and one Bosniak, both of whom were tried together with the Serbs for crimes against Croats. All of these *in absentia* convictions were issued by three county courts: Zadar (15), Osijek (8) and Vukovar (5). Three-quarters of all convictions monitored by the Mission in 2003 (28 of 37) were *in absentia* and 84 per cent of all Serb convictions (26 of 31) were *in absentia*.

In absentia appeals to the Supreme Court continue on a regular basis in Croatia. On 24 February, the Supreme Court's held a hearing on a war-crimes case almost two years after the *in absentia* appeal was lodged by 12 Serbs (Iso Horvat *et al.*) convicted by the Osijek County Court and sentenced to between 13 to 15 years imprisonment. The continuing judicial practice throughout Croatia of trying war-crimes cases *in absentia* continues to burden trial courts as well as the court of appeals, a development that is contrary to prevailing judicial reform efforts aimed at reducing the backlog of cases and unnecessary litigation. It also serves to perpetuate notions of collective guilt instead of individual criminal responsibility.