

### **Proposed changes to the Ministry of the Interior sparks debate on police reform**

The new Minister of the Interior, Marijan Mlinaric, recently announced that significant changes are being considered to the current organization and structure of the Ministry of the Interior and the Croatian Police. The Minister has suggested that the position of Director General of Police and a separate Police Directorate be abolished and that the Counter-Intelligence Agency (POA) would return under the authority of the Ministry. Many domestic and international police experts have assessed that the proposed changes could re-establish a centralized police chain of command *inter alia* by increasing the number of Assistant Ministers and giving them the Police Directorate's operational responsibility over police professionals in the field.

The outgoing Minister of the Interior, Sime Lucin, reacted sharply to the proposals of his successor, but predicted that the new Government would not secure adequate parliamentary support for the proposals. He stated in the media that the proposals showed a lack of understanding of modern police services and laws. Lucin stated that the police reform measures undertaken during the last four years by the outgoing Government closely resembled those implemented in most other European countries and had come about as a result of close co-operation with the OSCE and other actors. The Mission's Head of Mission stressed in a television interview the importance of maintaining full transparency in state institutions like the police service and the need for civilian and democratic control over police activities.

### **HDZ victory in regional elections in Eastern Slavonia**

On 18 January elections were held for the Osijek-Baranja county assembly in Eastern Slavonia. The Croatian Democratic Union (HDZ) maintained its showing from the recent parliamentary elections. The early elections in Osijek-Baranja took place as a result of an ongoing crisis within the assembly, which eventually led 26 councillors from the HDZ, the Croatian Party of Rights (HSP) and the Croatian Social Liberal Party (HSL) to resign in April 2003. The resignations prevented the assembly from working with the 50 per cent quorum that was required for it to hold sessions and pass decisions. The ruling coalition led by the Social Democratic Party (SDP) tried to substitute a renegade official of the Croatian Peasants' Party (HSS) with another HSS councillor but that move was ruled illegal by the Administrative Court and the assembly was dissolved in November 2003.

Voter turnout for the election was low at 36 per cent and results for most other parties also tended to mirror those from the recent parliamentary elections. Of 48 seats, the HDZ secured 21 seats, the right-wing HSP won eight, doubling its previous number of seats, and the Croatian Pensioners' Party (HSU) emerged for the first time and won four seats. The SDP won only six seats in coalition with three other parties. The Independent Democratic Serb Party (SDSS) won three seats.

The Osijek-Baranja region is particularly important from the point of view of interethnic relations since it has a large population of Serbs and other minorities. Following the peaceful establishment of Croatian sovereignty in the Danube Region of Eastern Slavonia, the rights of minorities in the county have been governed by the 1995 Erdut Agreement and the 1997 Letter of Intent signed by the Government of Croatia. According to these arrangements, the Serb minority is entitled to fill the post of Deputy County Prefect in both Osijek-Baranja and Vukovar-Srijem Counties. Coalition negotiations are now expected to take place including the nomination of an HDZ County Prefect. The elected assembly will only be in power until May 2005 when nation-wide local elections are scheduled to take place.

**Trial verdict reversals and war-crime arrests in December 2003 and January 2004**

The Supreme Court decided on appeals in two war-crime cases. Both decisions are consistent with a trend observed by the Mission, namely that the Supreme Court continues to invalidate a substantial percentage of trial court verdicts, ordering new trials on the basis of errors by the trial court. In 2002 the Supreme Court granted 18 of 19 appeals in war crime procedures, a reversal rate of 95 per cent; whereas in 2003 the Supreme Court granted 13 out of 22 such appeals for a reversal rate of nearly 60 per cent.

In the so-called 'Sodolovci' case the Supreme Court decided in December 2003 on an appeal by the prosecutor submitted in July 2000 against the Osijek County Court's acquittal of five Serbs of war-crime charges. The Supreme Court confirmed the acquittal of three defendants while it overruled the acquittal of two others for insufficiently established facts and ordered a re-trial. The ordered re-trial will be the fourth and fifth time, respectively, since 1995 that these two defendants have been tried by the Osijek County Court without having received a final decision. Although the defendants were released from detention as of 1999, the total length of the proceedings, and in particular the period of more than three years of inaction at the Supreme Court, raises fair trial concerns under both the Croatian Constitution and the European Convention on Human Rights.

In the case of Zorana Banic the Supreme Court in January overruled the guilty verdict from the Zadar County Court and remanded the case for re-trial, the third time that Banic will be tried on these charges and the second time after her extradition from Switzerland in November 2001. The Supreme Court found that the trial court insufficiently established the facts and instructed the court as to which facts it would have to determine in the new procedure. The Supreme Court decided the appeal after 13 months, although the Law on Criminal Procedure mandates that appeals of detained defendants be issued within three months after the Supreme Court receives an appeal. Banic will remain in detention awaiting her re-trial.

The Osijek County Court acquitted a Serb in late December 2003, who was accused of having committed war crimes against the civilian population together with 58 others. The defendant was extradited from Switzerland in October 2003 and remained in detention throughout the trial. As no witnesses incriminated the defendant regarding the offences charged in the indictment during five days of trial, the prosecutor sought to re-qualify the charges from war crimes to armed rebellion. The trial court rejected the prosecutors' motion and acquitted the defendant stressing that a re-qualification of the acts would be contrary to the agreement applicable to extradition from Switzerland to Croatia and the 1996 Law on General Amnesty.

In December 2003 and January 2004 the Mission followed three new arrests related to war-crime charges, all of which occurred at border crossings with Serbia and Montenegro. Two of the Serbs were arrested for having committed war crimes against prisoners of war. Despite a request from the prosecutor for continued detention, the investigating judge at the Bjelovar County Court released both suspects within days after the arrest. In mid-January another Serb was arrested based on an arrest warrant issued by the police administration in Sisak for having committed war crimes against the civilian population. The suspect was transferred to the county prison in Sisak for further proceedings.

### **European Court agrees to review whether Croatia's delay in returning occupied private property violates the European Convention**

On 8 January the European Court of Human Rights (ECHR) ruled to address an important mandate-related case on delays in the return of private property in Croatia. In the case of *Kostic v. Croatia* the ECHR decided to answer the question whether prolonged delays by the Government in the return of private property allocated for temporary housing needs of third persons without compensation to the owner violates the right of peaceful enjoyment of possessions guaranteed by the European Convention on Human Rights. The case involves a Serb homeowner whose home in Petrinja (central Croatia) was allocated for temporary use in 1997 by the Government to another family whose home in Petrinja was destroyed during the conflict. The owner obtained a final court order of eviction in late 1998 and paid the court fees for eviction in 1999. However the occupants refused to vacate the property since the Government had not yet reconstructed their home. The local court did not execute the eviction order since the occupants had no alternative accommodation. The owner regained possession of his home only in late 2001, after the Government completed its reconstruction of the occupant's home. Echoing earlier decisions, the ECHR found that the Constitutional Court was not an effective remedy as concerned the non-enforcement of the court decision for eviction for a prolonged period of time.

### **Constitutional Court upholds denial of Croatian citizenship to illiterate pre-war resident Roma woman**

In a notable decision on 17 December 2003, the Constitutional Court decided by a vote of 8 to 5 to confirm the Administrative Court's decision upholding the Ministry of the Interior's denial of Croatian citizenship by naturalization to an illiterate Roma woman who has lived in Croatia since 1987 with her common-law husband and three children, all of whom are Croatian citizens. This case is important for the Mission's work in that the Court's decision presents the possibility that certain categories of pre-war permanent residents will indefinitely remain ineligible for citizenship. Such a result suggests the need for re-examination of the provisions of the Law on Croatian Citizenship, particularly as applied to national minorities who resided in Croatia prior to the conflict and became foreigners at the time of independence.

The Court found that the Ministry's denial of naturalization did not violate the Constitution. More specifically, the Court found no constitutional error in the denial of citizenship to the applicant on two different legal bases applicable to non-Croat foreigners, including those persons who lived in Croatia prior to the conflict and who seek to be naturalized. First, the Court argued that the applicant failed the standard applicable to individual non-Croat applicants who must *inter alia* demonstrate familiarity with the Croatian language and script since the Ministry determined that she was illiterate. Second, the Court also argued that the applicant failed the standard applicable to foreigners married to a Croatian citizen because she was not formally married but had a common-law marriage.

The dissenting judges argued that the Court majority should have applied the interpretation of the Law on Croatian Citizenship where a Court panel held that the Constitution required that a more lenient standard apply to the acquisition of citizenship by citizens of the former Social Federal Republic of Yugoslavia than that applicable to other "foreigners". The dissenters also argued that the denial of citizenship in this case violated those provisions of the Constitution under which the family enjoys special protection of the State.

### **Update on freedom-of-the-media issues**

***Law on Access to Information assessed as being generally in line with Council of Europe*** recommendations. The Parliament adopted the Law on Access to Information on 15 October 2003. The Council of Europe (CoE) and the OSCE Representative on Freedom of the Media produced an assessment of the extent to which the Law complies with relevant CoE standards, namely the Recommendation of the Committee of Ministers on access to official documents. The Law complies with the Recommendation by stating that all information held by public authorities should be accessible to the public and that the right of access must be guaranteed to everyone without discrimination. In other aspects the Law goes even further than some principles proposed in the Recommendation, for example by obligating public authorities to publish information at their own initiative. The CoE experts recommended that authorities ensure that the public is properly informed about their rights, and that the public officials are properly trained on European access-to-information regulations. However, among others, the Law allows public authorities to restrict access to information without giving the reasons for refusing requests for information. The CoE experts recommend that the Law include a possibility of appeal to another administrative body in cases when a request for access to information has not been dealt with within a certain deadline.

***State Secretary for Culture proposes renewed adoption of Law on Media if invalidated by Constitutional Court.*** As previously reported, the Constitutional Court received a request to invalidate the adoption of the Law on Media in October 2003. The review request argues that since the Law concerns fundamental freedoms and the rights of citizens, it should have been adopted by a two-thirds parliamentary majority and not by a simple majority as was the case. At the beginning of January, the State Secretary in the Ministry of Culture announced that the Ministry would propose a renewed adoption in an urgent parliamentary procedure of an identical draft Law if the Constitutional Court rules in favour of the request. A joint OSCE/CoE review of the Law is currently being prepared. A review of an earlier draft suggests that it may be more restrictive on certain freedom-of-the-media issues than the previous law. The Mission recommends that OSCE/CoE expert advice be taken into account if the law is again submitted for adoption in the Parliament.

***Croatian Radio-Television (HRT) Programme Council adopts Statute.*** On 20 January 2004 the Croatian Radio-Television (HRT) Programme Council adopted the HRT Statute. The HRT Programme Council was finally constituted on 17 October following several months of delay due to political consultations on the Council's composition. Most of the ongoing debate had revolved around efforts to clarify the relationship between the HRT Programme Council and the HRT Directorate and HRT Director General. Council members were not satisfied with provisions of the Law on HRT and the Statute which authorize them to appoint the HRT Director General without being able to supervise his/her performance and seek a replacement if performance was found to be lacking. A previous expert analysis of the draft Law on HRT, commissioned by the OSCE Representative on Freedom of the Media, characterized the Law as a significant improvement but voiced reservation in one specific area, that is, the risk for political interference resulting from the procedures for selection of the Council which gave the central role to the parliamentary caucuses at the expense civil society representatives.

***Croatian Journalists' Association voices concern over Foreign Minister's intervention in media reporting.*** The Croatian Journalists' Association (HND) voiced its concern on 15 January over complaints made by of the Croatian Minister of Foreign Affairs Minister, Miomir Zuzul, who criticized media coverage of Prime Minister Ivo Sanader's recent meetings with EU officials in Brussels. The Minister accused a journalist from the Croatian news agency HINA of incorrectly reporting the discussions that the Prime Minister had with

high-ranking EU officials, further stated that the only accurate news given in Croatian media reports was the names of the people attending the visit while everything else was false. The HND said it was unacceptable for a government minister to try and control media reports claiming this represented an attack on the independence of journalists and the profession as a whole. HINA issued a statement on 20 January saying it considered the Minister's intervention to be unfounded and inappropriate in relation to HINA's status as a public service. After reviewing its reports on the meetings in Brussels, HINA stated that its editorial decisions were not influenced by the intervention of the Minister.