



**Organization for Security and Co-operation in Europe  
Office in Zagreb**

**Report of the Head of the OSCE Office in Zagreb  
Ambassador Jorge Fuentes to the OSCE Permanent Council**

**Covering both the last five-month period under the former mandate of  
the OSCE Mission to Croatia and the first two-month period  
under the current mandate of the OSCE Office in Zagreb**

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## OVERVIEW

Progress attained by Croatia in implementing policies and programmes linked to a number of mandate-related issues of the former Mission to Croatia was deemed sufficiently self-sustaining to permit the closure of the Mission at the end of 2007. Simultaneously, the Office in Zagreb was established to continue working toward sustainable and significant progress on the remaining open mandate questions related to the prosecution of war crimes and housing care.

This report thus serves a dual function. As the final report of the Mission, it summarizes the situation in relation to those issues over which OSCE activities in Croatia concluded at the end of 2007. As the first report of the Office, it summarizes the situation with regard to those issues with which the OSCE will continue to be active in Croatia in 2008.

In the area of Refugee Return and Integration, the Government provided assurances to close the remaining issues ensuing from the Sarajevo Declaration Process, the first being convalidation of working years in the formerly occupied areas. As for the second outstanding issue – fair settlement to former occupancy/tenancy right holders (OTR) unwilling to return to Croatia – the Government demonstrated a determination to find consensus with its partners in the Sarajevo Declaration Process, including a possible bilateral solution. The Government's resolution and assurances provided a sufficient guarantee for the Permanent Council to discontinue most aspects of the refugee return activities.

The Office now focuses on the Government's implementation of the housing care Programmes in terms of its meeting of established benchmarks and response to the needs of regional return. While the 2007 benchmark of 1,400 housing units has yet to be met fully in terms of physical allocation, the Government will have to produce firm, documented guarantees for the remaining 5,600 housing units to be allocated as planned before the end of 2009.

In the area of rule of law, several issues addressed by the Mission were deemed by the Permanent Council to have advanced sufficiently to be considered self-sustaining or subject to other monitoring processes and so no longer warrant Mission activities. The Government's proposed 2008 budget increases funding for two of Croatia's primary human rights institutions, the Ombudsman and the Constitutional Court. The Ministry of Justice announced its intention to submit a free legal aid law for civil cases to the Government by the end of March. Positive steps were also noted in implementation of the guarantee contained in the Constitutional Law on the Rights of National Minorities (CLNM) of proportional employment of national minorities in the public service.

War crimes proceedings – including monitoring as well as reform and capacity building activities – were the focus of the Mission's Rule of Law work in 2007. The Office will continue comprehensive monitoring, which guides its reform efforts through the Ministry of Justice Plenary as well as project activities targeting judicial training and assistance to NGOs intended to enhance monitoring and advocacy capacity. The Office will also continue to fulfill its reporting obligation to the ICTY Prosecution in relation to the Ademi-Norac trial.

In general, Croatia continued to improve its record toward balanced and fair war crimes prosecution. However, concerns remain, including the conduct of proceedings in individual cases as well as how the criminal justice system as a whole – police, prosecution, and courts – delivers war crimes accountability. Important to registering progress will be observable ‘ownership’ by State institutions of the need for reform combined with political will and concrete actions in support of reform in order to move toward the goal of achieving within a reasonable period an impartial and effective system of war crimes investigation, prosecution, and adjudication. Similarly, observable strengthening of civil society to monitor the war crimes accountability system and advocate for reforms will be a key indicator.

In mid-January 2008, the Parliament approved a new Government, led for a second term by Prime Minister Sanader, together with its Programme for the period 2008 to 2011. For the first time, a representative of the Independent Democratic Serbian Party (SDSS) is a member of the Government, having been appointed as one of the Deputy Prime Ministers. Very encouraging for mandate-related issues is also the fact that he was assigned the portfolio for Regional Development, Reconstruction and Return.

The successful conclusion of Croatia’s chairmanship of the South Eastern European Co-operation Process (SEECF), during which countries of the region agreed to assume the responsibilities of the Stability Pact for Southeast Europe and nominated a Croatian national as the first Secretary General of the successor Regional Co-operation Council, demonstrated a clear Croatian commitment and ability to set standards in a region seeking to join the Euro-Atlantic community. On 1 January 2008, Croatia began its two-year term as a non-permanent member of the UN Security Council. The election of Croatia represents the highest and clearest recognition possible of the reliability of Croatian democracy and its potential regional role.

The processes to join the EU and NATO and the willingness to become a regional model not only keeps Croatia on the right track of continued enhancement of democratic values but anchors Croatia to them without any possibility of going backwards. The fact that Croatia receives eleven million tourists a year also contributes to connect Croatia to European and Atlantic societies. However, recent media discussions about the possibility of slowing down EU membership negotiations due to Croatian delays in judicial reform, public administration reform and proclamation of the Ecological and Fisheries Protection Zone, threatens to weaken public support for EU and NATO membership that recently attained around 50 per cent.

When the Permanent Council decided to close the Mission, it was composed of 110 staff (16 international and 94 national staff), with a Headquarters in Zagreb and field offices in Zadar and Osijek. Progress in all areas of the mandate was deemed sufficient for the Mission to close field offices in Gospić, Pakrac, Sisak and Knin in the second half of 2007.

On 1 January 2008, the Office started to adapt itself to PC Decision no. 836 and its budgetary requirements. Participating States agreed to a total of 34 staff for the Office and the termination of the regional field deployment. Consequently, the number of staff was downsized during the first months of 2008, from 110 to 34. The two remaining field offices will close at the end of March, with re-deployment of field staff to Zagreb. Activities previously covered by the field offices will continue to be covered from Zagreb.

Office activities in relation to mandate issues were delayed in early 2008 due to delays in formation and re-organization, still on-going, of the new Government after the Parliamentary election. To resume activity as soon as possible with the new Government, the Head of Office met with the Prime Minister early in January and explained the priorities and envisaged activities. The Prime Minister offered complete availability of any governmental department for the Office. Beside the OSCE-chaired Plenary with the Ministry of Justice and attending the Plenary with the Ministry of Regional Development, Forestry and Water Management, 'Platform' meetings with the Ministry of Foreign Affairs will be called as required.

## **I. FROM RULE OF LAW TO PROSECUTION OF WAR CRIMES**

The Permanent Council judged that ongoing reforms related to several areas addressed by the Mission's Rule of Law activities had progressed sufficiently by the end of 2007 to be considered self-sustaining. These included the adequacy of State financing for Croatia's human rights institutions, steps toward establishment of a free legal aid system for civil cases, and implementation of the guarantee for proportional employment of national minorities in the public service.

War crimes proceedings – including monitoring, reform, and capacity building activities – were the focus of the Mission's Rule of Law activities in 2007. The Office's mandate for 2008 recognized this focus and the continuing need to address open questions and register additional progress toward a balanced and fair system for ensuring accountability for war crimes.

### **A. Rule of Law**

#### **Human Rights Protection and Access to Justice**

Given the importance of effective human rights remedies for all Croatians and in particular for the minority and refugee populations, the Mission provided financial assistance to the Constitutional Court and the human rights Ombudsman to augment the work of these institutions, in particular to facilitate field work of the Ombudsman. Consistent with a guarantee provided by the Prime Minister, the Government's proposed 2008 budget included additional funding for these institutions. The creation of an Ombudsman for disabled persons in 2007 increased to four the number of such institutions, increasing overhead and staffing requirements.

The Mission also emphasized the importance of transparency in Parliament's appointment during 2007 of nine of the Constitutional Court's (Court) thirteen judges. The Court continues to operate with ten judges and an interim President, with three vacancies yet to be filled, a deficit which negatively affects the Court's functioning.

The Mission funded legal aid throughout 2007, particularly to assist refugees and displaced persons with judicial disputes related to the return of housing and land as well as war-related deaths and injuries. In late 2007, the Government resumed efforts to develop a law

regulating free legal aid for civil cases, an earlier proposal having been withdrawn from Parliament at the request of civil society and in agreement with the Mission. The Ministry of Justice has indicated its intention to provide a draft law to the Government by the end of March and the coalition agreement between the Croatian Democratic Union and the SDSS (HDZ-SDSS Agreement) set a benchmark that the Ministry of Justice would adopt a draft law on Free Legal Aid by mid-2008. The resultant gap in legal aid funding in 2008 and possibly beyond may be filled by bilateral donors.

### **Minority Employment in the Judiciary and State and Local Administration**

To facilitate progress in the employment of national minorities at all levels of public service, the Mission co-organized with the Government three roundtables focusing on implementation of this aspect of the Constitutional Law on the Rights of National Minorities (CLNM). Each roundtable highlighted a public service sector – judiciary, State and local administration – and emphasized the need for concrete plans for implementation, means for assessing progress toward minority hiring goals, and explicitly linked employment to minority refugee return and the Sarajevo Declaration Process. It will be important to minority integration that steady progress is observed and effective measures are developed to facilitate realization of the CLNM's guarantee.

The HDZ-SDSS Agreement set a goal that by mid-2008, the Government with the participation of Serb representatives would draft an Employment Action Plan, including provisions for monitoring, deadlines, and sanctions related to implementation of the minority employment guarantee. It also contemplated the establishment of a Department of National Minorities within the Central State Administration Office (CSAO), responsible inter alia for oversight of minority employment in the State administration. Finally, it called for the adoption of a national plan for combating discrimination by mid-2008 and an Anti-Discrimination Law by the end of 2008.

The Government's Civil Service Employment Plan (Plan) for 2007 set a benchmark that 7.5 per cent of all new hires in the State administration at the national level would be national minorities. While the total number of hires in 2007 was considerably less than planned, according to the CSAO, minorities comprised approximately seven per cent of all hires in the State administration at the national level in 2007. The Plan set a target that 25 per cent of new hires in the State administration at the county level would be minorities. According to the CSAO, re-structuring and overall staff reductions resulted in a decrease in national minorities employed in State administration at the county level. At year's end, the percentage of minorities employed as civil servants in the State administration at the national level remained largely the same as in May 2007, with minorities comprising approximately three per cent (excluding Ministry of Interior). The 2008 Plan has yet to be issued as it is linked to adoption of the 2008 State budget.

The CSAO indicated that based on the 2001 census, approximately thirteen per cent of local self-governments are obligated to produce employment plans including targets for minority hires and most have done so. The Constitutional Court continues to consider a 2005 challenge, which presents the question whether the 2001 census or the voters list is the correct reference for determining in which local self government units minorities are entitled to elect representatives to governing bodies, a question linked to the determination of which local self governments must produce employment plans

Minority employment in the judiciary – including judges and state attorneys – has remained approximately the same since 2002. According to Ministry of Justice statistics, minorities constituted 4.0 per cent of judges and 4.2 per cent of states attorneys while Serbs comprised 2.2 per cent of judges and 2.6 per cent of states attorneys. Notably, three types of courts – commercial courts, high commercial court, and administrative court – reported no minorities. In 2007, the State Judicial Council adopted guidelines to clarify how the minority status of candidates would be factored into judicial appointment decisions. The State Attorneys’ Council has yet to adopt such guidelines. The Minister of Justice has committed to issuing an annual plan with minority hiring targets for the judiciary analogous to that used for the civil service. The proposed plan has still to appear.

In summary, ongoing reforms related to the adequacy of State financing for Croatia’s human rights institutions, establishment of a free legal aid system for civil cases, and implementation of the guarantee for proportional employment of national minorities in the public service were deemed sufficiently self-sustaining by the Permanent Council at the end of 2007 to permit the discontinuation of Mission activities in these areas.

## **B. Prosecution of War Crimes**

In the second half of 2007 and early 2008, Croatia remained very active in the prosecution of war crimes. As of March, the Mission was following more than 100 cases involving approximately 370 persons in investigations, 15 trial courts and the Supreme Court as well as extradition proceedings in third countries. Fifteen trials were ongoing. While the number of fully in absentia trials remains low, nearly half of all Serb accused were tried in absentia. Eighty-five per cent of accused in war crimes proceedings were Serbs, while Serbs constituted approximately two-thirds of those arrested, on trial, and convicted in 2007. Croatia continued to seek more than 1100 persons suspected of war crimes, approximately 400 of whom have been convicted in absentia, and has issued more than 600 international arrest warrants.

The Mission’s monitoring observations served as the basis for reform recommendations discussed during the Plenary with the Ministry of Justice, Chief State Attorney, and representatives of the Supreme Court. A limited number of reforms were agreed during the course of eighteen months of discussions. The observations also provided the basis for a judicial education project with the Judicial Academy. Finally, project assistance to NGOs was intended to facilitate development of civil society capacity for monitoring and reform activities related to war crimes proceedings.

### **Monitoring observations**

In general, Croatia continued to improve its record toward balanced and fair war crimes prosecution. However, concerns remain, including the conduct of proceedings in individual cases as well as how the criminal justice system as a whole – police, prosecution, and courts - delivers war crimes accountability.

In the second half of 2007, the Zagreb County Court, functioning as a special war crimes court, started two high-profile trials involving former senior members of the armed forces accused of committing war crimes against Serb civilians. These two proceedings represent significant milestones. However, given several unique features, these cases provide limited

insight into the overall situation of war crimes accountability in Croatia, the vast majority of which takes place in local court proceedings against low-ranking Serbs accused of war crimes against Croat civilians and subject to limited attention by the media and international community.

The trial of Rahim Ademi and Mirko Norac involves murders and property destruction near Gospić during and after the 1993 'Medak Pocket' Operation. The Ademi-Norac trial is a State obligation taken over from the ICTY and requires an unusual and previously untried interface between the Croatian and the ICTY systems. It is also the only case which could be withdrawn from Croatia and returned to the ICTY, if prior to verdict, the ICTY deemed the national proceedings to be inadequate. Given these high stakes, the proceeding may be more informative in terms of providing an example of what is possible rather than what is standard practice in Croatia.

The joined 'Sellotape' and 'Garage' trial against seven accused including Branimir Glavaš, who was re-elected to Parliament during the trial, involves torture and murders, which occurred in Osijek, one of Croatia's largest cities. The 'Sellotape' and 'Garage' trial is the first war crimes proceeding against a powerful political figure. Parliament's intervention in the trial in early 2008 by imposition of its judgment as to the appropriateness of Glavaš' detention demonstrated a disregard for the separation of powers between the judiciary and legislature. The President of the Supreme Court stated that the Parliament should have deferred to the judiciary, as it is the only appropriate body to decide issues of detention.

Also in the second half of 2007, the high-profile re-trial of Antun Gudelj for the 1991 murder of the Osijek police chief, Josip Riehl-Kir, and two local Serb officials began in the Osijek County Court, after a judicial saga stretching back to the early 1990s.

Despite these positive signs, the factor of national origin, while diminishing, continued to observably affect the system of war crimes accountability, including who and what crimes were prosecuted. Past ethnic bias has a present day effect through the continuation of large group cases against Serbs, with little individualized accountability, and for crimes for which Croats are not prosecuted, such as minor assaults or stealing food and money. Indicative of this problem, in late 2007, the Supreme Court invalidated the in absentia convictions of two Serbs because the offenses did not qualify as war crimes. Also illustrative, a local prosecutor dropped charges against two Serbs in late 2007 prior to the end of a fifteen-month trial. Past in absentia convictions and current in absentia proceedings also continue to disproportionately affect Serbs. During 2007 steps were taken to enhance judges' attention to the quality of defense provided by court-appointed attorneys. However, some inadequacies, particularly in relation to the representation provided to Serb accused, continued to be observed.

Articulation and uniform application of an objective threshold of the conduct considered sufficiently severe to constitute a war crime is needed. Otherwise, the system as a whole will likely continue to impose observably different standards of accountability apparently based on national origin. Assessment of all cases against an objective standard – and elimination of cases that do not meet it, even where there are final in absentia verdicts – would ensure even-handed proceedings domestically and provide additional safeguards to third countries, which are requested to extradite to Croatia.

Consolidation of an atmosphere supportive of even-handed national prosecution of war crimes has been complicated by several ICTY-related events. Widespread condemnation, frustration and disappointment by public officials following the verdict and sentencing against the 'Vukovar Three' related to the execution of more than 200 Croats at 'Ovčara' extended to questioning of the ICTY's overall objectivity and fairness and calls for the UN Security Council to re-examine the work of the ICTY as a whole. It also created pressure to return to in absentia prosecutions of Serbs and fueled opposition to prosecution of members of the Croatian armed forces. The Minister of the Interior's hunt with an ICTY indictee, which activity violated the conditions of the indictee's provisional release, undercut the credibility of the Government's guarantees to the ICTY related to provisional release supervision as well as the Ministry's conduct of national war crimes investigations. This event precipitated the Minister's resignation. While categorized by the Government as a humanitarian gesture, a visit in February by the Deputy Prime Minister to Croatian ICTY indictees detained in The Hague conveyed a mixed message

In contrast to the Ademi-Norac and 'Sellotape' and 'Garage' trials, the vast majority of cases continue to be investigated and tried in the community where the war crimes occurred, raising impartiality concerns for both the accused and victims. The Zagreb County Court is the only 'special court' currently conducting trials that were specifically referred by the Supreme Court in accordance with the provisions related to special war crimes courts. The three other 'special courts' continue to function primarily as local courts, trying cases involving crimes from their community.

Croatia's human rights obligation to effectively investigate war crimes would appear to require greater use of investigators and courts from outside the area where crimes occurred, particularly crimes against Serb victims. In late 2007, the Supreme Court confirmed the State's civil responsibility for the war-time disappearance of a Serb civilian, Milan Skendžić, in police custody in the Gospić area. No one has been prosecuted and the investigation remains the responsibility of Gospić area authorities, although they were implicated in the disappearance. In late 2007, the Mission provided the State authorities with documentation of similar as of yet unexplained disappearances and deaths in the Gospić area. War-time amnesty of some members of the armed forces suspected of murdering Serb civilians continued to impede efforts to determine individual criminal accountability as well as the State's civil responsibility.

The ability of the Croatian judiciary (and that of the other States of the former Yugoslavia) to deliver impartial accountability for war crimes depends significantly on effective and institutionalized inter-state judicial co-operation. The Chief State Attorney, in partnership with his counterparts, continued to lead the way in inter-state co-operation. These national prosecutors are compiling parallel 'inventories' according to criteria developed with the ICTY Prosecution as part of their adoption of a shared systematic approach to the identification, investigation and prosecution of war crimes.

The transfer of evidence between national prosecutors is providing a means for establishing accountability for some war crimes where suspects reside outside Croatia, despite legal obstacles to the inter-state transfer of nationals and proceedings. Concrete results from co-operation with the Serbian prosecutor have been evident in the recent issuance in Belgrade of an indictment against multiple Serb accused for the deaths of nearly 70 Croat civilians in Lovas and a trial against several other Serb accused for the murders of Croat civilians in



Slunj. Prosecutorial co-operation has also resulted in an investigation in Montenegro of the torture and resultant death of Croat prisoners-of-war (POWs) at the 'Morinj' camp and an investigation in the Rijeka County Court of the abuse of civilians and POWs in Bosnia and Herzegovina.

Positive examples of co-operation between Croatian courts and the Special War Crimes Court in Belgrade have been noted in the Ademi-Norac trial as well as the Split County Court proceeding against Mitar Arambašić, primarily in relation to obtaining the testimony of witnesses, either in person or via video link. Unfortunately, these courts have determined that video link testimony from outside Croatia cannot be heard directly during the public trial, diminishing public awareness of and insight into both this co-operation and testimony.

Particular attention is warranted to procedures for the participation and testimony of witnesses. Courts retain responsibility for witness participation, while the availability to witnesses of legal information and support remains limited, provided by a staff of three at the Ministry of Justice and volunteers in several local courts. A Ministry of Justice – UNDP pilot project started in late 2007 is intended to enhance services in four courts and will hopefully lead to more comprehensive and widely available services. Frequent repeated trials, due at least in part to the use of in absentia trials, requires witnesses to testify multiple times, often to traumatic events. In January 2008, an endangered witness refused to testify in the third trial conducted by the Gospić County Court in the same case. Similarly, other witnesses, including in the Ademi-Norac trial, who have given multiple statements over the years implored the court not to call them again to testify.

Maintaining the confidentiality of testimony given during judicial investigations as well as the identity of 'endangered' witnesses during trial has been an issue. Identifying information has been revealed during the testimony of endangered witnesses who appeared anonymously via video link during the Ademi-Norac trial, primarily when a witness was a relative of a named victim. The identity of an endangered witness was also apparently revealed during the 'Sellotape' and 'Garage' trial. There is no indication that the security of these witnesses was in fact jeopardized. However, refinement of procedures to prevent the disclosure of identifying information would be warranted.

Repeat proceedings continued to be frequent, either due to delays during trial or reversals by the Supreme Court. A trial nearing completion after ten months was repeated in January 2008 due to the retirement of a judge. Several cases including one fully in absentia were tried for the third time. Some trials continued over several years, with more than a year between hearings, while some trials resulting in convictions were concluded in two to three hours. It appeared that the investigation continued during some trials, resulting in mid-trial revisions to the indictment. Several courts have had difficulty assigning three criminal judges to try war crimes cases, in some instances using civil judges and in others panels of professional and lay judges instead of the required three professional judges.

The Supreme Court has restricted the use of in absentia trials where it finds that a trial court has made insufficient efforts to bring the accused before the court, but has permitted in absentia trials due to the advanced age of the victim-witnesses. The need to preserve testimony of aging witnesses is real and crucial; consideration of alternative modes of preserving testimony in an admissible form would be warranted. Gravity of the offense

remains a common basis for extended investigative and trial detention of war crimes suspects, although the European Court of Human Rights has emphasized that as the length of detention increases additional justification is required.

### **Reform and capacity building activities**

Observations from the Mission's monitoring served as the basis for recommendations for reform discussed during its Plenary with the Minister of Justice, Chief State Attorney, and representatives of the Supreme Court in the second half of 2007. Topics included inter-state judicial cooperation; enhancing the integrity and confidentiality of investigations, including confidentiality of witness identity and testimony; ensuring adequate court-appointed defense; the need for renewed efforts to address some unprosecuted war crimes, including a mechanism for review of some questionable amnesty decisions; and a mechanism for reviewing final in absentia convictions. Outcomes of the Plenary included Croatia's ratification of a relevant Council of Europe convention and adoption of legislation facilitating the admissibility of video link testimony. At year's end, the Mission produced a written summary of the Plenary discussions conducted over 18 months, noting reforms adopted and open questions. This document will serve as the basis for resumed Plenary discussions in March 2008.

The Plenary served as a good forum for dialogue. However a limited number of reforms were agreed and the adopted reforms remained open in terms of implementation. Further, while acknowledging flaws in some past proceedings including in absentia convictions and inappropriate amnesty, the State interlocutors took the position that the State was unable to cure the highlighted deficiencies on its own initiative; particularly those contained in final court decisions, but could act only if requested by individuals negatively affected. Other proposed reforms were deemed unnecessary by the State partners.

While some reforms can be accomplished by Croatia alone, others depend on similar reforms by other states of the former Yugoslavia, particularly to enhance inter-state judicial cooperation. Given this regional aspect, the Mission in collaboration with other OSCE institutions and field presences facilitated in mid-2007 a fifth 'Palić process' meeting, which brought together judges from Bosnia and Herzegovina, Croatia, Montenegro, and Serbia. The active participation of four judges from the ICTY, including the Tribunal's President, contributed significantly to the dialogue. The Office will continue to work with other OSCE institutions and field presences through the 'Palic process' to build support among the political leadership to lower obstacles to inter-state judicial co-operation, including through the adoption of interim confidence-building measures.

In order to address issues observed during its monitoring as well as facilitate the development of alternative monitoring and advocacy capacity, the Mission provided project assistance for NGO activities and judicial education. In co-operation with the Judicial Academy, the Mission in late 2007 financed a seminar for judges and prosecutors, emphasizing fair trial issues such as the right to an adequate defense. The Mission's project support to develop NGO capacity for monitoring of war crimes proceedings also continued through year's end. The Office plans to continue these capacity building activities in 2008.

## **II. FROM REFUGEE RETURN AND INTEGRATION TO HOUSING CARE**

### **A. Refugee Return and Integration**

The Mission's activities related to Return and Integration agenda covered, inter alia, return of refugees and their re-integration; repossession and reconstruction of their properties; access to rights by refugees including access to housing; infrastructure development in return areas with emphasis on re-electrification; and co-operation on these topics on the regional level.

The OSCE discontinued its monitoring of most of the above issues at the end of 2007 following the Government's progress towards their resolution. Under its 2008 mandate, the OSCE Office focuses on access to housing with emphasis on the implementation of the Government's housing care programmes. In line with these changes, this chapter entitled "Refugee Return and Integration" covers issues followed by the former OSCE Mission to Croatia, while the "Housing Care" chapter deals with the present activities of the OSCE Office in Zagreb.

#### **Sarajevo Declaration Process**

The Mission continued to support efforts to successfully complete the Sarajevo Declaration Process (hereafter: the Process), a joint commitment by the four governments in the region to a regional solution for the displaced persons and refugees. Despite the progress previously achieved on the majority of issues dealt with under the Process, the political circumstances in the region did not allow for its full resolution in 2007. In contrast to the six issues on which a consensus was found within the Process – such as improved conditions concerning permanent residency/citizenship status for the Process' target group – two key issues remained outstanding. A mutually agreeable solution is therefore still to be identified on the topics of a comprehensive solution for former occupancy/tenancy rights (OTR) holders not willing to return to Croatia; and the convalidation of working years spent in formerly occupied areas.

On the latter issue, the Government accepted fully its responsibility over the issue and indicated it would settle it in co-operation with its Serb coalition partners as soon as possible following the 2007 parliamentary elections. As of the end of 2007, the modalities of such settlement or any specific decision by the Government in this regard were not known to the Mission.

Regarding the comprehensive solution for former OTR holders, the Government demonstrated its good will to identify a feasible solution and reiterated its readiness to address the issue bilaterally, outside the Process. While several possible concepts were contemplated to assist integration of former OTR holders in their current place of residence, such as regional donor conference, or a financial contribution of a humanitarian character, none of them was accepted by Serbian representatives. In view of that, the participants of the Process' Task Force meeting in late 2007 concluded that no further progress on this and related issues was possible at the working level, and suggested the

negotiations to be referred to a higher political level. As of the end of 2007, the call for a ministerial meeting had not been successful, owing also to momentous political events in the respective countries.

On the technical side, the countries' activity plans – the Road Maps – were yet to be finalized at the end of 2007. The updates should specify concrete mechanisms to fully resolve the issues highlighted during the Process as addressing the needs of regional return – notably the housing care programmes for former OTR holders, the issue of unsolicited investments into occupied properties and repossession of occupied agricultural land.

### **Access to Housing**

In spring 2007 the Government affirmed its commitment to accelerate the pace of implementation of the two housing care programmes for former OTR holders willing to return to Croatia by setting a specific benchmark for provision of housing units both inside and outside Areas of Special State Concern (ASSC). In agreement with the Zagreb-based international community, the Government pledged to physically deliver (the “keys-in-hands” principle) 1,400 housing units by the end of 2007, of which 1,000 would be in war-affected areas and 400 in urban centres, respectively. The Government had noticeably intensified purchase of housing units and their allocation in the second half of 2007.

Government data updated as of January 2008 suggest that while the Ministry completed in 2007 the administrative processing of nearly all of the targeted 1,400 housing care applications, only sixty three percent (881 cases) of these applicants were physically provided housing by the end of 2007. This data includes cases where building material was delivered to a beneficiary under one of the housing care models. Provision of housing for the remaining cases, and construction of housing units from the building material delivered, is expected in 2008.

Outside the ASSC, the Ministry secured the majority of flats to be allocated through a purchase of flats, rather than through the earlier foreseen construction of new flats under the “Public-Private Partnership” model. By 31 December 2007, 400 flats had been purchased or constructed in 2006 and 2007. Around forty percent of those flats had not been, however, taken over by the responsible Ministry from the State real-estate agency (APN), effectively postponing their allocation to beneficiaries to 2008.

Out of 400 flats purchased, in almost ninety percent of cases (347 cases) the beneficiaries were issued consents for a specific address. In less than forty percent of these cases (158) did the beneficiaries move in. Part of these beneficiaries (34) moved in already in 2006, although their respective consent was issued in 2007 only. The condition of flats allocated under this programme is generally adequate; however, the programme's pace of implementation remains slow.

Inside the ASSC, the delays in repair of damaged buildings and in provision of building material for repair of family houses slowed down the pace of implementation, with almost thirty percent of 1,000 cases awaiting physical allocation of housing in 2008. The Government data indicates that physically less than seventy percent of cases have been solved, while additional eight percent can be considered as resolved, even though the delivery of building material in the majority of those cases has not been completed yet. The

Mission's field verification indicated that repair and upgrading of some substandard housing allocated under this programme would be required.

Among the completed cases inside the ASSC, the Mission's field verification activities established that a portion of beneficiaries declared themselves as non-minority returnees (Croats). A similar observation was noted by the UNHCR. While the housing care programme for inside the ASSC is indeed open to all former OTR holders regardless of ethnicity, the benefit for the Serb minority currently residing outside of Croatia should be taken into account when evaluating the programme's impact on the process of regional return.

In total, around 13,100 applications from the former OTR holders intending to return to Croatia have been filed for the two housing care programmes. Until the end of 2007, around 4,500 cases have been resolved through the physical allocation of housing, while almost 2,000 cases have been rejected or issued with negative consents. The Office estimates that almost 3,900 cases with positive decisions await physical resolution and around 2,800 cases are still pending decision on eligibility. The Government plans to complete the entire exercise of providing housing care to former OTR holders by the end of 2009. As of the end of 2007, there was no indication of the necessary appeals procedure which is to be established to ensure a fair administrative process when deciding on the applications.

### **Reconstruction**

Out of 195,000 destroyed housing units, by the end of 2007 the State has reconstructed 142,480 houses (including reconstruction of 55,000 houses of higher category of war damage, cash grants for 40,500 owners of houses with lower category of war damage, 42,800 loans and 4,180 other models of assistance) arriving to below 400 pending applications to be processed in the first half of 2008. More significant caseload represent 13,635 appeals of reconstruction decisions out of which some 9,700 cases affecting the scope of reconstruction assistance, while the rest of appeals relate to administrative disputes (not resulting in reconstruction assistance) or to cases that would certainly be rejected due to ineligibility. The Ministry continues to bypass the strict eligibility criteria of the Law on Reconstruction by transferring a part of the appealed negative decisions for reconstruction to the more flexible housing care programme providing State assistance in form of the building materials. The Government signaled plans at the end of 2007 to resolve seventy percent of appeals in 2008, leaving thirty percent for processing in 2009. The completion of organized reconstruction and payment of reconstruction grants should follow the same timeframe.

### **Re-electrification of return areas**

By the end of 2007, the Ministry for Maritime Affairs, Tourism, Transport and Development (Ministry) ensured that more than two thirds of 300 villages or hamlets originally identified in co-operation with the Mission in 2004 to either receive electricity or get included in one of the rehabilitation and reconstruction programmes were indeed provided with a solution. The annual budget for reconstruction of electricity net in the war-affected areas was increased dramatically over the past three years, reaching around ten-times its original amount in 2007 (15 million EUR). Based on the estimated total budget necessary for completion of re-electrification of all war affected areas (between 48 - 55 million EUR) and the pace of implementation (16 million HRK annually), it is expected

that the re-electrification process of all war affected areas, including the minority villages, might be finalised in 2010.

### **Remaining judicial aspects of return**

At the end of 2007, the State Attorney was engaged in approximately 50 court actions related to the return of private homes allocated by the Government, repossession of which depended upon the completion of long-lasting judicial proceedings. In approximately 10 cases the State Attorney lacked sufficient information from the Ministry to initiate a repossession proceeding, while the return of approximately 10 homes remained at the initial administrative stage at the Ministry. In addition, a limited number of court actions initiated by owners for private property, including homes, business premises and agricultural land, remained pending. The Ministry's commitment to pay users for court-awarded claims for their investments in private homes remained to be fulfilled, with some owners in jeopardy of losing their property by judicial sale.

At the end of 2007, the Ministry confirmed that it would compensate a limited number of users of agricultural land if they vacated the property, while return of the land was to be resolved by the judiciary. However, no compensation agreements had been concluded with users and no final court decisions have resulted in the return of land. Bilateral donors have been sought to continue the Mission's legal aid project to fund court proceedings intended to assist with the return of the land.

As of March 2008, a decision was imminent from the Constitutional Court on the question whether, consistent with the right to property, the State could compensate conflict-related property damage resulting from 'terrorist acts' through reconstruction instead of money.

Finally and linked to housing care, a limited number of judicial proceedings initiated by State bodies or companies continued to seek termination of the occupancy/tenancy (OTR) rights of persons who lived continuously in their flats or were said to have participated in enemy activity. Cases that might clarify legal issues related to the judicial termination of OTR remained pending at the European Court of Human Rights (ECHR).

## **B. Housing Care**

With the cabinet reshuffle of the new Government at the year's beginning, the Ministry for Maritime Affairs, Tourism, Transport and Development, the so far counterpart of the Mission on return related issues, was dissolved and divided into several new ministries. The former Department for Reconstruction of Family Houses and the Department for Refugees, Returnees and Displaced Persons (ODPR) now operate within the new Ministry for Regional Development, Forestry and Water Management under the responsibility of former Assistant Ministers, who have been elevated to the positions of State Secretaries. The exact division of responsibilities among the State Secretaries and the internal organisation of the Ministry, including its regional offices, was not formalised at the time of issuing this report.

The new Deputy Prime Minister in charge of regional development and (inter alia) refugee return has assumed a coordinating role between the relevant ministries. One of the first steps taken in his new capacity was the establishment of an Advisory Committee consisting

of experts, private entrepreneurs and human rights/civil society activists with skills that would contribute to the regional development strategy. The Committee is to meet and consult regularly with the State Secretaries responsible for the different parts of the regional development portfolio. An initial meeting was held between the Deputy Prime Minister and the Zagreb-based heads of the OSCE Office, EC Delegation, UNHCR and US Embassy at the end of February. Consecutive meetings are foreseen to take place on a regular basis once the working structure on the Croatian side is fully established.

### **Access to Housing**

The Office in Zagreb has taken over the monitoring activities on the progress in implementation of the Government's two housing care programmes, both inside and outside the ASSC. It takes advantage of the expertise accumulated on the topic under the previous OSCE mandate, and follows on the issue in the regional context, where the Government's programmes present the primary tool to cater for needs of Croatian Serbs within the frame of regional return and reconciliation, including the Sarajevo Declaration Process.

The implementation of the housing care programmes continued in the first months of 2008. According to Government data, additional 105 beneficiaries have been provided with housing by the end of February 2008 (54 inside and 51 outside the ASSC, respectively), thus bringing the percentage of the physical implementation for the 2007 benchmark to nearly 70 percent (961 resolved cases out of 1,400).

Out of the total 13,100 applications by former OTR holders, the Government estimates of early 2008 foresee around 5,600 requests for housing care to be resolved in 2008 and 2009 to finalise the entire process, both inside and outside the ASSC. This figure will have to be adjusted for the remaining cases of the 2007 benchmark still awaiting physical resolution at the end of the year. To accommodate for the beneficiaries who will be granted housing care, the Government predicts a need for around 3,600 housing units to be made available (including re-/construction and purchase) in the upcoming period. Additional housing stock may be warranted for beneficiaries found eligible among the new applications for inside the ASSC, among pending applications (including case where an application needs to be completed from abroad) and among cases where beneficiaries have already been granted housing in administrative procedure, but their whereabouts are not known at the moment.

The OSCE will continue in its systematic field-verification activities both outside and inside the ASSC in close cooperation with the respective Ministry, and other partner organisations. An extensive field verification exercise is to be conducted jointly with the Ministry's regional offices, heralded by an upcoming joint field visit of the OSCE Head of the Office and the responsible State Secretary and/or Minister.

Regarding the reconstruction issues as they relate to the housing care implementation, the Ministry presented the Office in March 2008 with a new set of measures for the upcoming period aiming at speedy elimination of the backlog of appeals against reconstruction decisions. To this end, the Directorates for Reconstruction of Family Houses and Directorate for Displaced Persons, Returnees and Refugees established a Working group to develop a detailed working plan specifying future steps to resolve this issue as a matter of the highest priority.

## CONCLUSIONS

The efforts and progress by Croatia in fulfilling OSCE commitments have permitted the culmination of a process that began almost 12 years ago when the Mission to Croatia was established in the aftermath of the armed conflict. The Mission has been a success for both the OSCE and Croatia and the final balance is quite positive. Croatia has proved to be a stable and maturing democracy subject to irreversible and self-sustaining reform processes through its institutional and organizational framework. The processes for EU and NATO membership represent additional guarantees.

Croatia's completion of most aspects of the Mission's mandate convinced the Permanent Council to close the Mission. Since further progress was warranted in relation to several mandate issues, notably the prosecution of war crimes, the PC established the Office in Zagreb.

The OSCE High Commissioner on National Minorities (HCNM) has indicated his continued engagement with the protection and promotion of rights of persons belonging to national minorities in Croatia, consistent with his engagement in all Participating States.

**Four Closed Units.** Developments during 2007 confirmed that the December 2006 decision to cease Mission activities related to police reform, freedom of the media, civil society development, and election reform was appropriate (including the application of the new Mission-facilitated electoral legislation during the Croatian Parliamentary Election). Questions in these fields were effectively resolved by Croatian institutions without the need for external intervention. Although these areas were closed, the Mission kept an eye on them.

**From refugee return and integration to housing care.** The Mission noted the Government's reinvigorated efforts to advance the "return file." The initiatives undertaken to address the remaining aspects of the Sarajevo Declaration Process faced political challenges on both the national and international level, including the general elections in Croatia. The resolution of the issue of fair settlement for former OTR holders and the closure on the political phase of the Sarajevo Declaration Process depends upon reaching consensus in the region, and remains difficult to foresee. On the issue of convalidation, the assurances given by the Government with the agreement of the leading Serb political party representatives were regarded by the Mission as guaranteeing timely resolution in line with the interests of the affected beneficiaries.

On the technical level, the Government's efforts resulted in accelerated implementation of the Housing Care programmes aiming at former OTR holders wishing to return to Croatia. Yet, only about two thirds of the foreseen 1,400 housing units were physically handed over by the end of 2007. The work will have to continue to rectify the delay, as well as to set up a firm plan in order to process the remaining housing care applications in a transparent and efficient way, and to allocate housing to all those entitled within the deadline set by the Government for 2009.



**From rule of law to prosecution of war crimes.** Democratization developments in relation to the funding of the Ombudsman and the Constitutional Court, establishment of a free law aid scheme, and implementation of the guarantee of proportional minority employment at all levels of the public service were deemed sufficiently self-sustaining and subject to other monitoring processes so as to no longer warrant OSCE engagement beyond 2007.

Further steps are needed to achieve a system that effectively delivers ethnically neutral accountability for both the perpetrators and victims of war crimes, including adequate self-correcting mechanisms for addressing past and present errors. Recognition by State institutions of the need for reform, including those discussed during the Ministry of Justice plenary and set out in this and other reports, together with the requisite political will to implement reform are essential to progress in this area. So too, observable strengthening of the judiciary and civil society will be key indicators.