



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

Presentation by Ambassador Peter Semneby, Head of the OSCE Mission to Croatia, to the OSCE Permanent Council, 18 December 2003

Introduction

The Mission's latest Status Report (13th) has been distributed before this Council meeting to all Delegations. Once again we submitted a draft to the Government for comment. Where possible, we have taken the Government's input into consideration. Keeping with past practice, I will today take the opportunity to briefly highlight some of the key issues from the Report, but will begin with and focus this presentation on the recent parliamentary elections which took place on 23 November and were monitored by a long-term ODIHR Election Observation Mission. I will also briefly mention the Mission's activities and its role in the changing political environment.

Elections and a New Government

As a result of the *general elections* in Croatia on 23 November 2003, the centre-left coalition Government lost its majority in Parliament. The centre-right Croatian Democratic Union, HDZ, which governed alone or in coalitions until early 2000, re-emerged as the dominating force. On 9 December President Stjepan Mesic appointed the HDZ President, Dr. Ivo Sanader, as the Prime Minister Designate. A first session of the new Parliament will most likely be held on 22 December when a vote of confidence in the new Government is expected.

Although the HDZ initially had several *options for forming a coalition*, the most important potential coalition partners, the far-right Croatian Party of Rights, HSP, and the Croatian Peasants' Party, HSS, which was also the second largest party in the outgoing coalition, have been excluded from the picture for different reasons. Senior representatives of the diplomatic community in Zagreb have made clear that the presence of the HSP in the Government would jeopardize Croatia's EU accession. HSS has removed itself from consideration after the party leader was overruled by local party functionaries who maintain coalition agreements with the Social Democrats, SDP, at the regional and local levels, but the party has pledged to vote for a new HDZ-led government without participating in it. As a result, the HDZ is expected to form a coalition government with a number of smaller parties, including representatives of national minorities. The coalition will at best only enjoy a very slim margin in Parliament.

Challenges and the New Government

The new Government inherits a mixed legacy, on the one hand, the forward-looking focus on EU membership, and on the other hand the continued presence of issues remaining from the armed conflict. The new centre-right Government will have to address the same key issues within the mandate of the OSCE Mission which occupied the predecessor centre-left Government: refugee return, minority rights, war crime prosecutions at the ICTY and in domestic courts, judicial reform, police reform, and media reform. The Government should take a broad strategic approach to the issues in order to be successful. Success will further depend on several factors.

Among *negative factors* is the risk that the new Government will have such a small parliamentary margin that it becomes too risky to propose controversial legislation or actions. Furthermore, the legacy of the HDZ may impede reform efforts. The party leadership under Dr. Sanader has made considerable efforts to reform the party over the last one and a half years, including personnel changes, but the sustainability of those efforts still has to be proven. The HDZ electorate is still considered to be more nationalist than that of the SDP.

But there are several *mitigating factors* indicating that the new Government has a unique opportunity to resolve many difficult issues. First, and perhaps most important, the Government is likely to depend on MPs from the special minority constituencies for support, and will therefore have to take their different concerns into account. Second, the HDZ leadership seems to be aware of the need to demonstrate externally—in particular to the EU—that the party has shed its authoritarian and less tolerant past. Conversely, it does not have to prove its nationalist credentials. Therefore, an HDZ-led government could have better possibilities than the outgoing SDP-led Government to bring hard-line local and regional political leaders (often belonging to HDZ) into line with government policy on refugee return, although this positive approach may be challenged by some hardliners who may see the return of the HDZ as an opportunity to revert to a more authoritarian and less tolerant political style.

The mitigating factors could be particularly important in facilitating for the new Government to deal with *refugee return* and *minority rights*. In both cases, progress largely depends on implementation. This requires support at the local level. On *war crimes* issues, the need for the new Government to demonstrate its even-handedness is critically important since the party was in power when many of the alleged crimes were left unaddressed. Some senior HDZ functionaries have also recently been mentioned in possible future ICTY indictments. The new Government will have to deal impeccably with any further indictments that will be issued by the ICTY Prosecutor by the beginning of 2004. An appeal to fugitive General Gotovina to give himself up may have a slightly greater chance of success if coming from an HDZ government, but this possibility should not be overestimated.

While the technical aspects of *judicial reform* are generally not politically controversial, the substance of judicial reform, including understanding of and adherence to a culture of “rule of law” by all official bodies, will require more far-reaching efforts than seen to date. The new Government should demonstrate greater adherence to the decisions of the Constitutional Court. It is, however, of relevance that the HDZ dominates important lobby groups with a profound interest in the timely and predictable resolution of legal disputes, not least industry organizations.

On *media reform*, the HDZ has recently demonstrated an interest in issues that remain of concern to the Mission, in particular the continuing need to provide adequate safeguards against political interference in electronic media, although much of HDZ’s interest was related to specific allegations of media bias during and before the election campaign.

Developments on Substantive Mission Issues

Developments in the substantive areas covered by the Mission’s mandate were less evident during the second half of 2003 compared to the beginning of the year. The summer recess and the impact of elections, which dominated the autumn agenda, offer some explanation to this.

Although the *legislative and administrative framework for return* has improved, it has lacked the determined implementing efforts required to obtain significant results. Several important issues related to return have still not yet been addressed, including the repossession of other properties than housing, such as land and business premises, and issues related to recognition of working years spent in the formerly Serb-controlled areas for, *i.a.*, pensions.

The repossession of occupied private property continues, but still at a slow speed. The law continues to favour occupants over owners and the resolution of cases continues to rely on the state provision of housing and decisions by the judiciary. The ambitious target set by the outgoing Government will not be met.

The outlook for displaced former *occupancy/tenancy rights* holders was improved through the Government's decision in June 2003 to secure housing for such persons outside the Areas of Special State Concern (ASSC), primarily in the major urban centres, though implementation has not yet started. The programme does not address the larger issues of whether the terminations of occupancy/tenancy rights of refugees and displaced persons during and after the conflict was legally justified, an issue that is likely to be addressed in the near future by the European Court of Human Rights.

The Government's efforts to provide *reconstruction assistance* are bearing positive results. 8,500 families of beneficiaries with positive eligibility decision are expected to be included in the Reconstruction program for 2003/2004. An additional 13,500 claims are still to be processed by the Ministry.

Croatia's *minority rights regime* improved following the adoption in December 2002 of the Constitutional Law on the Rights of National Minorities (CLNM), which guarantees minority representation at all levels of elected government, as well as in the judiciary and state and local administration. Although the minority underrepresentation in the administration and judiciary, particularly of Serbs, remains significant, there is little indication that the CLNM guarantees in this area will be implemented in the near future.

The Government adopted an implementation plan for *judicial reform* in June 2003. The Government acknowledged two particular challenges for the implementation: the quality and competence of judicial personnel and the case backlog amounting to 1.4 million cases at the end of 2002. While the reform plan addresses technical aspects, judicial reform will also require attitudinal change on the part of all those involved in court cases. The Ombudsman Office, which could play a central role for safeguarding human rights in Croatia as a transition country, lacks sufficient government support.

The outgoing Government has on several occasions stated that it maintains full *co-operation with the ICTY*. In October 2003, the ICTY Chief Prosecutor addressed the UN Security Council stating that Croatia's obligation remained unfulfilled because of failure to make progress related to the surrender of fugitive General Gotovina, although co-operation in terms of production of documents improved significantly. With the Completion Strategy of the ICTY Croatia can expect a limited number of *domestic war crimes prosecutions* in the coming years. These cases remain highly charged and require particular attention by the judiciary. The experiences from previous war crimes trials in domestic courts have been mixed. The application of a double standard against Serb defendants and in favour of Croat

defendants continues as a rule. However, the current State Attorney continues to pursue reviews of pending war crime cases with the purpose of dropping unsubstantiated charges.

In the area of *police reform*, the community policing programme continues to be the most advanced of the six reform areas detailed in the Ministry of Interior's reform strategy. Minority representation in the police service continues to be at a considerably lower level than foreseen in the CLNM.

The Parliament has recently adopted a number of laws relevant to the *freedom of the media*. Although the new laws go some way towards harmonizing Croatian media legislation with European standards, there are particular concerns related to remaining possibilities of political influence on regulatory bodies. The new system of appointing the members of the Programme Council of Croatian Radio and Television (HRT) through the political parties represents a step backward in ensuring the public broadcaster's independence. As a positive development, it can be noticed that Croatian Television (HTV) news programmes have been balanced during the recent election campaign, and that they now contain more reports devoted to refugee return and national minorities. Political interference in the work of local media continues in some places.

The *state of civil society in Croatia* has benefited from improved working relations between the Government and NGOs. Encouraging steps have recently been taken by the Government to establish institutional structures and organizational networks to support the development of civil society.

The Role of the OSCE Mission

Most of the issues within the mandate of the OSCE Mission coincide with the *political criteria for EU membership*, as they have been formulated by the European Commission in the case of Croatia. This, in combination with the Mission's accumulated experience and extensive field presence, gives the OSCE Mission a unique opportunity to develop synergies with the EU accession and thereby also to support Croatia's EU aspirations. The attitude and the actual policy of the new Government following the elections will play a significant role for Croatia's EU membership aspirations.

The *Mission's work* can largely be subdivided into *three overlapping phases*. The first period was characterized by broad *monitoring* immediately following the armed conflict (1996-1999) that served to diagnose problem areas and highlight areas in which advice could be targeted. Subsequently, and following the election of the centre-left government, a period followed during which the Mission focussed on *advisory* functions (2000-2003). There is now either legislation or government programmes in place for most of the Mission's issues, but much remains to be done, since implementation is generally poor. The third period is likely to be dominated by *support* (from 2004), where implementation will be in the focus of attention. Some targeted monitoring will also continue to be required in specific areas of concern, *e.g.*, domestic war crime prosecutions. At the beginning of this period, the European Commission will present its opinion on Croatia's membership application, which is likely to point at several areas where further efforts are necessary even after an invitation to Croatia to start membership negotiations.

The Mission intends at an early stage, together with its international partners in Zagreb, to formulate *expectations vis-à-vis the new Government* regarding common areas of concern which are covered by the Mission's mandate. The Mission will continue to liaise with the

European Commission on the forthcoming opinion on Croatia's membership application, and, as stated in my last PC presentation in July, will review its activities after the presentation of the opinion in order to be able to focus on core issues where further external support is useful.

The Mission considers proposing, *i.a.*, the following expectations to the new Government for the **short term**:

- increase the pace of property repossession;
- implement housing plans for former occupancy/tenancy rights holders who were displaced during and after the armed conflict, in a way that ensures wide eligibility;
- address remaining obstacles secondary to return such as issues related to recognition of working years spent in the formerly Serb-controlled areas for, *i.a.*, pensions;
- improve the atmosphere for refugee return, with particular emphasis on HDZ-led municipalities;
- implement in full the Constitutional Law on National Minorities, including the holding of additional elections and the establishment of a framework and timetable for minority representation in state and local administration, the judiciary and the police;
- implement and refine the judicial reform plan;
- pursue co-operation on refugee return and other relevant issues with the Governments of Bosnia and Herzegovina and Serbia and Montenegro;
- take measures to ensure the independence of regulatory bodies for broadcast media and implement new media laws to eliminate the possibility for political interference, thereby making a commitment to full freedom of the media;
- continue and sustain police reforms to ensure a police service that operates according to the norms of modern policing in a democratic society;
- deliver new ICTY indictments swiftly in order to ensure speedy transfer of the indictees; make further efforts to locate and arrest fugitive General Gotovina;
- support even-handed approach to domestic war crime prosecutions, including enhanced co-operation with regional neighbours and adoption of relevant legislation;
- intensify working-level contacts with Zagreb-based international representatives.

The Mission's Role Further Ahead

The following issues are likely to remain in the focus of ***the Mission's attention in the longer term***:

Refugee return. The focus of attention will be on the issue of housing, including the implementation of the Government's housing plan for former holders of occupancy/tenancy rights holders. The continued support by the OSCE and other international partners is particularly important given the fact that most programmes in this area do not have the force of law.

Minority rights. The implementation of the most difficult part of the Constitutional Law on the Rights of National Minorities, the representation of minorities in state and local administration, the judiciary, etc., has not yet begun, and will require considerable attention, as will the implementation of general non-discrimination provisions protecting minorities, including refugees and displaced persons, in all aspects of public life.

War crimes trials. Domestic prosecution of war crimes, including investigations transferred from the ICTY, will continue for the foreseeable future. The outgoing Government committed itself in its response to the EU questionnaire to allowing international monitoring of war crimes trials. Only the OSCE has a field structure which allows a meaningful

monitoring of such trials. The Mission already spends considerable efforts following the handling of war crimes in the Croatian legal system. It can continue to be of assistance in the development of a witness protection system.

Justice reform and rule of law. Although the Mission is not playing the leading role in this area, the Mission can play a role in the review of legislation related to the implementation of judicial reform. There should be a follow-up of the work it has already done in order to support the domestic human rights watchdog institutions, *i.e.*, the Ombudsman and the Constitutional Court. Particular attention needs to be paid to enhancing the respect for the Constitutional Court among government institutions. The regular monitoring conducted by the Mission not only in war crimes but also civil cases related to refugee return will continue to provide valuable information related to practical reform measures.

On ***policing***, the Mission will continue to give advice on police reform, and particularly ensure the sustainability of the new community policing programme.

Media reform. The Mission can, together with its partners, provide further expert advice to align media laws with European standards. In addition, it can support the implementation of that legislation in a way that precludes such interference.

By continuing to undertake these efforts, the OSCE Mission will, together with the Government of Croatia, contribute substantially to ***defining the relationship and synergies between the OSCE and the European Union*** in other countries involved in the Stabilization and Association Process. This could also involve the sharing of experiences, together with the Government, to neighbouring countries.