

Changes to the Criminal Code introduce more liberal libel regime; but fail to decriminalize libel

Amendments to the Criminal Code adopted by Parliament on 16 July do not remove libel provisions from the Criminal Code, although they allow for a more liberal libel regime. While libel has not been decriminalized, Croatian experts on media law nevertheless believe that these are the most favourable libel laws Croatia has seen. A group of international experts invited by the OSCE, the European Commission and the Council of Europe had previously recommended that libel be decriminalized and subject to civil procedure.

A controversial clause in the Criminal Code - on the liability of the editors-in-chief in acts of libel - has been removed, while another key provision has been amended to shift the burden of proof away from the defendant. It is now for the plaintiff to prove the defendant's intent to defame. A renewed debate surrounding the decriminalisation of libel has been prompted by two recent libel cases, over which the Mission has publicly expressed its concern. Both cases involve journalists sentenced for libel under Article 200 of the Criminal Code. The Mission has publicly reacted to a two-month suspended prison sentence given to a Croatian Radio journalist in one case, stating it was unacceptable that journalists should face prison sentences for their work. In another case, the Justice Minister decided to personally pay the libel fine of a former editor-in-chief, who had refused to pay the fine in protest against the verdict, instead opting to serve a prison term. The payment of the fine by the Minister was criticized in legal and political circles, in particular by the Croatian Judges Association, on the grounds that it encouraged civil disobedience. Explaining her motives to the media, the Justice Minister said the verdict was the result of previous "undemocratic" provisions, which had since been changed by the amendments to the Criminal Code adopted by Parliament last week.

Echoing recent statements by the OSCE Representative on Freedom of the Media, the Mission called on the Government to remove libel and defamation completely from the Criminal Code, or failing that, to remove incarceration as a punishment for these offences.

Parliament adopts Law on Campaign Financing for Presidential Elections; new law raises concerns over transparency

On 16 July Parliament adopted the Law on Campaign Financing for the Presidential Elections in urgent procedure. The law on the Election of the President of the Republic of Croatia itself contains no provisions regulating campaign financing. The new law requires the public disclosure of funding sources but these are to be published and made available to voters by the State Election Commission (SEC) only *after* the election. The new law does not establish a limitation on individual contributions or total campaign expenditure, the specifics of the financial reporting required, or specific penalties for its violation. In addition, the law does not provide guidance on the issue of anonymous donations.

GONG, Croatia's lead domestic election-support NGO, issued a press release before the law's adoption, outlining a series of concerns over the provisions of the draft law and the short time-frame available for discussion, and suggesting that the issue should be treated in normal procedure. GONG has proposed a single law to regulate campaign financing for all elections.

With the exception of the limited disclosure requirement, the law does not incorporate ODIHR's recommendations following the Presidential elections in 2000, as detailed in its 31

May 2000 report, nor does it observe several norms and principles established in the OSCE/ODIHR 2003 Progress Report “Existing Commitments for Democratic Elections in OSCE Participating States”. The reports propose *inter alia* that limits for individual contributions and total campaign expenditure be set, that the procedure for auditing campaign accounts be properly specified, that there be periodic reporting on campaign funds, including prior to the elections, and that an official body have the competence to penalise irregularities. The HoM sent a letter to the Parliamentary Speaker, Vladimir Seks, before the law was adopted, with the purpose of drawing the attention of Parliament to ODIHR’s recommendations.

In a further development, there has been recent speculation in the media that the forthcoming presidential and local elections will be held simultaneously. While the Prime Minister, Ivo Sanader, has denied that an official decision to this effect has been made, opposition parties responded to the media speculation by forming coalitions for the local elections. According to the relevant laws and the Constitution, presidential elections must be held no earlier than 16 December 2004 and no later than 15 January 2005, while local elections are due to be held on 15 May 2005. The law regulating local elections would need to be amended to allow the Government to change the date prescribed.

Parliament amends Criminal Code to add new war crimes provisions

In its last session before the summer recess, Parliament adopted several provisions intended to harmonize the Criminal Code with the Statute of the International Criminal Court. The amendments, which will come into force on 1 October, introduce the new criminal offences of *Crimes against Humanity* and *Subsequent Assistance to a Perpetrator of a Criminal Act against Values protected under International Law*. The amendments also specify *Command Responsibility* as a basis for individual criminal liability in war crimes prosecutions. The amendments additionally introduce a new offence of *Revealing the Identity of a Protected Witness*, which has relevance for war crimes procedures as well as other types of criminal prosecution. In July 2003, the Parliament adopted similar amendments to the Criminal Code. However, the Constitutional Court invalidated the amendments on the grounds that they were adopted with less than the constitutionally required number of votes. It is not clear what impact the new provisions will have on the numerous ongoing investigations and prosecutions for war crimes committed during the 1991 to 1995 conflict, including the impact on any cases which might be transferred from the ICTY. Several judicial officials, as well as legal scholars, have expressed the view that the principle of legality prohibits punishment for conduct that was not criminalized at the time of its commission; hence the new offences could not be applied retroactively. In contrast, the European Convention on Human Rights foresees an exception from the general prohibition against retroactive application of criminal sanctions for any act or omission which, “at the time it was committed, was criminal according to the general principles of law recognized by civilized nations.”

ICTY indicts former President of the self-proclaimed “Republika Srpska Krajina” for war crimes committed in Eastern Slavonia

On 16 July the ICTY made public a fourteen-count indictment against Goran Hadzic, the President of the self-proclaimed “Republika Srpska Krajina” between February 1992 and December 1993. The indictment is for crimes against humanity and violations of the laws or customs of war committed in Eastern Slavonia against Croats and other non-Serb civilians. The Trial Chamber unsealed the indictment after it became evident that secrecy was no longer necessary to facilitate Hadzic’s arrest. He went into hiding within hours of the

indictment being delivered to authorities in Serbia and Montenegro on 13 July, as documented by the ICTY.

The indictment alleges that between June 1991 and December 1993 Hadzic participated as a co-perpetrator in a *joint criminal enterprise*, the purpose of which was the permanent forcible removal of a majority of the Croat and non-Serb population from approximately one-third of the territory of Croatia, in order to make it part of a new Serb-dominated state. Other participants in the *joint criminal enterprise* included then federal and republic officials and political figures such as Slobodan Milosevic, Milan Martic, Vojislav Seselj, and Zeljko Raznatovic (aka Arkan). Hadzic is alleged to have supported these crimes through his political position, as well as having personally committed crimes. The indictment holds Hadzic responsible for *inter alia* the murder of hundreds of Croat and other non-Serb civilians, including the killing of 200 patients taken from the Vukovar Hospital; the prolonged and routine imprisonment of hundreds of Croats and other non-Serb civilians; the forced labour of Croat and other non-Serb civilians including digging graves, digging trenches and other forms of labour at the frontlines; wanton destruction and plunder of public and private property; and the deportation or forcible transfer of tens of thousands of Croat and other non-Serb civilians to Serbia, including the transfer of at least 5,000 inhabitants from Ilok and 20,000 inhabitants from Vukovar, in addition to the forcible transfer of other civilians to locations in Croatia. The Hadzic indictment underlines the increasing connection between domestic war crimes proceedings and those conducted by the ICTY, as well as the increasing need for inter-state judicial co-operation regarding war crimes prosecutions. Hadzic, along with 9 others, including 3 already indicted and in custody at the ICTY, was indicted by the Vukovar County Court in late 2002. That indictment remains pending. Hadzic was also listed as a prosecution witness with known residence in Serbia and Montenegro in the indictment in the *Ovcara* case involving the Vukovar Hospital killings, which is currently on trial in the Belgrade Special War Crimes Court.

Constitutional Court again deliberates whether lawyer's wartime absence prevents Bar membership; Bar Association reprimanded

In July, the Constitutional Court invalidated for the second time a decision by the Bar Association denying membership to an attorney who was absent from the country for more than six months in 1991-1992 for a lack of "dignity to practice law". The Constitutional Court ordered the Bar Association to reconsider its negative decision, finding that the repeated denial of membership violated the lawyer's constitutional rights to equality before the law, equality before the Court, right to participate in public affairs, and his constitutional right to work.

The Bar Association had found, in common with its earlier decision, that the lawyer should be denied membership because of his departure from Osijek in 1991, which made him inaccessible to the Croatian authorities. The Bar stated that the attorney thus "avoided the possibility of defending his country in the war which was imposed on it." The Bar Association had effectively concluded that leaving the country during the conflict created a permanent bar to practicing law, thus raising a fundamental question regarding the reconciliation and re-integration of national minorities into the judiciary and legal profession. The Constitutional Court reprimanded the Bar Association for violating its duty to respect and follow the legal opinions and standpoints of the Constitutional Court, a duty imposed on every public body in the Republic of Croatia.

Ombudsman's mandate expires without new appointment by Parliament

The post of human rights Ombudsman has been vacant since the eight-year mandate of the former Ombudsman expired on 28 June. The Parliament did not approve a successor by the time of its adjournment for summer recess on 16 July, although the application process for filling the position had been completed prior to the expiration of the mandate. The office continues to function on a day-to-day basis with three deputies.

While there were budget revisions leading to cuts for a range of institutions and Government ministries, the cuts in funding for the Ombudsman nevertheless give some cause for concern given the precarious financial position of the institution, as noted in an expert report commissioned by the Mission in 2003, and the importance of the institution as a domestic human rights watchdog, as noted in April by the European Union both in its *Opinion* by the EC and the *European Partnership* with Croatia.

Government adopts Report from Commission on Return of Refugees

The Government on 8 July adopted the *Report on the Return of Refugees and Displaced Persons* covering the period from April to June. The report was submitted by the Government Commission for the Return of Expellees, Refugees and the Return of Property. The release of the report coincided with the expiration of the 30 June deadline for the repossession of illegally occupied properties established in the *Agreement on Co-operation between the Future Government of the Republic of Croatia and the Representatives of the Serb Independent Democratic Party in the Croatian Parliament*, concluded on 19 December 2003. Of 485 original cases of illegal occupancy, only 55 cases remained by the deadline. The report anticipates the resolution of the more than 2,000 remaining repossession cases by the 31 December deadline set for the remaining (legally) occupied properties.

Since its creation, the Commission has facilitated the vacation of private property by illegal occupants by providing them with housing, although in some cases the beneficiaries were not entitled to such housing. Some problems in the repossession process remain, however, such as the frequent failure of the competent State bodies to prevent departing occupants from looting houses, or to punish the perpetrators. Repair assistance for owners of looted property, as foreseen by law, is yet to be provided by the State.

Regarding the reconstruction of war-damaged residential properties, the report notes an increase in the processing of reconstruction applications in the last three months and anticipates the possibility that the remaining 4,200 claims will be processed before the 30 September deadline set by the Government. This does not include new claims filed after the application procedure was temporarily reopened as a result of the agreement with the Serb Members of Parliament. The report confirms that a firm majority of the 10,800 reconstruction beneficiaries foreseen for 2004/05 are Croatian Serbs. The report finally notes that the international community has repeatedly shown its appreciation for the reconciliatory steps taken by the new Government regarding refugee return, including the joint visit of the Prime Minister, Ivo Sanader, and the OSCE Chairman-in-Office, Solomon Passy, to return areas in the Zadar hinterland in May.

Government decision on tax exemption for foreign donations still eludes non-profit organizations

The discussions between the Government and NGOs on a possible reversal of the Government's decision to revoke the 22 per cent value-added tax exemption on foreign

donations to non-profit organisations, institutions and associations, have not yielded any result to date. The decision affects a range of NGOs working on human rights, minority rights, housing reconstruction, democratisation and election monitoring issues. Humanitarian, religious, and sports associations continue to be exempt from this tax. As previously reported, the Ministry of Finance agreed on 13 May to a working group proposed by NGO representatives in order to discuss the issue, but no further progress has been reported. In mid-June, Government representatives on the Council for Civil Society, which advises the Government on civil society issues, voted against the possibility of revoking this decision. Meanwhile, an NGO petition requesting that the exemption be reinstated has yet to be submitted.

Shortly after protests against the decision by GONG – a prominent NGO specialising in elections and voter awareness - and other NGOs, GONG was subjected to a financial inspection. GONG has been unable to comply with a request by the tax authorities to submit translations of all contracts with foreign donors since 1 January 2000, because the costs of official translation are prohibitive.

At the last Donor Co-ordination Meeting chaired by the Mission, both donors and NGOs expressed concern that the Government's decision was indicative of deteriorating relations between civil society and the Government.