



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

Statement by Ambassador Peter Semneby, Head of the OSCE Mission to Croatia, to the OSCE Permanent Council, Vienna, 25 November 2004

I. Overview

The latest *Status Report* (the 15th) of the OSCE Mission to Croatia, covering the period between July and November, has been distributed to all delegations prior to today's meeting. A draft version of the report was shared with the Government and other International Community partners. Wherever possible, their comments have been taken into consideration. Once again, the Status report proves to be a valuable instrument of dialogue with the Croatian authorities, as well as with other international entities.

Almost one year has elapsed since the *new centre-right government* led by Dr Ivo Sanader took office and committed itself to achieving progress on remaining post-conflict issues, in particular the return of Serb refugees, minority rights, war crimes and cooperation with the ICTY, and regional cooperation.

The efforts by the Government to *address the issues within the Mission's mandate*, particularly noticeable in the first semester of 2004, continued in the second half of the year. The *acceleration of the EU integration process*, marked by the EU decision on 18 June to grant Croatia the formal status of a candidate, and by the adoption on 13 September of the *European Partnership* with Croatia, appears to have strengthened Croatia's determination to continue on this course.

In particular, the Government has ensured that reconstruction assistance is widely available to Croatian Serb refugees, and taken steps towards addressing the problem of occupied properties belonging to refugees. On war crime issues, a more effective inter-state cooperation is developing, and targeted efforts are preparing some parts of the judiciary for the possible transfer of cases from the International Criminal Tribunal for the former Yugoslavia (ICTY).

Yet, it seems that the pace of reforms somewhat slowed, such as media reform, minority representation and electoral legislation. Regarding refugee return, there are still concerns about adequate solutions for the numerous Serb refugees (up to about 30,000 households, i.e. approximately 100,000 persons) who lived in socially-owned flats before the 1991-1995 conflict. In domestic war crime proceedings, there is a lingering problem with ethnic bias in lower courts.

In the early autumn, the political context was marked by reservations expressed publicly by Members of Parliament representing the Serb minority, at the implementation of the

Cooperation Agreement signed with the Croatian Democratic Union (HDZ) in December 2003. The criticism focused mainly on the refugee return process, as well as on minority representation in the State administration, the judiciary and the police. After Prime Minister Sanader held a series of meetings with representatives of the Independent Democratic Serb Party (SDSS) in late October, the Serb delegation finally expressed the view that the *Cooperation Agreement* was leading to positive results.

Regional cooperation is intensifying and is expected to develop further, not least since it has been identified as a remaining political task by the European Union. Prime Minister Sanader visited Belgrade on 15 November: it was the first official meeting ever of the Prime Ministers of Croatia and Serbia and Montenegro. On that historical occasion, a bilateral *Agreement on the Protection of Minorities* in both countries was signed, which could prove beneficial for the progress of minority-related issues in Croatia. In addition, judicial cooperation on war crime trials is gradually developing between Croatia and the neighbouring countries. On refugee return, the Government has indicated that it will participate in a joint regional initiative made by the Principals of OSCE, European Commission (EC) and UNHCR to the Governments of Croatia, Bosnia and Herzegovina, Serbia and Montenegro, for closing the refugee file within a reasonable time frame.

In a context of increased responsiveness to Euro-Atlantic integration by the Government, **the Mission** has consolidated its role as a provider of independent advice and a catalyst for change, and has thus established a **partnership with the Government**. The joint launching of a Public Awareness Campaign on refugee return, in mid-September, as well as the previous joint reports on war crimes, demonstrates that a continuing cooperation has been set up, even on politically difficult issues.

However, there are also some **factors that may have an adverse effect**. It seems that over the long summer recess and the autumn, the initial consensus for Euro-Atlantic integration has transformed into more measured support. The Government has announced its intention to launch a media campaign to better explain the benefits of joining the EU. With the upcoming Presidential election (first round due early January) and the local elections to be held in May 2005, the political life is entering an active period, which may deflect attention from some of the issues within the Mission's mandate.

II. Overview of developments in main mandate areas

Refugee return remains a major issue for the Mission and a challenge for the Government. Approximately 114,000 Croatian Serbs have registered as having returned to and within Croatia (6,500 so far in 2004) while approximately 200,000 remain outside the country. A recent research report commissioned by the Mission demonstrates that there remains a potential for return, access to housing and employment being the most important preconditions for return. To improve the atmosphere regarding return, the Mission co-launched with the Government, the European Commission and UNHCR, a Public Awareness Campaign on Reconciliation and Sustainable Return, to be implemented in 2005 among refugees, both in the neighbouring countries and in receiving communities in Croatia.

Access to housing to the large category of refugees and internally displaced persons (there are up to 30,000 households concerned), who lived in socially owned flats with **occupancy/tenancy rights (OTR)** has still not been adequately addressed. The implementation of the Government programmes designed to provide housing to former OTR holders have yet to show visible results. The Government has reaffirmed its commitment to implement them after a European Court on Human Rights verdict (*Blecic v. Croatia*) alleviated Government concerns that the State would have to compensate all former OTR holders. However, funding for the programme in the 2004 budget remains unused, and has been recently reallocated to other budgetary goals, and a long-awaited information campaign of the Government (with UNHCR's assistance) to potential beneficiaries started only in October. The Government has indicated that the December deadline for applications—originally set under the assumption that information to beneficiaries would be disseminated when the programme was formally adopted more than a year ago—may not be extended. Providing housing to former OTR holders would enable the return of the urban population and thus contribute to a more vital and diverse Serb community in Croatia.

Repossession of property issues is being dealt with more forcefully. There were approximately 19,000 occupied properties after the 1991/95 conflict; as of 1 November only 1,400 remain occupied, after more than 2,000 cases have been resolved this year alone. Yet, the legal regime on property repossession still favours the interests of the temporary occupants of private property over the rights of the owners. Remaining obstacles to be tackled include the looting of the properties upon departure of the temporary occupant; and the issue of counterclaims filed in courts by occupants pressing for 'compensation' by the owner for 'investments' made without his consent.

The progress on **reconstruction assistance** is satisfactory. While the programme 2003/04 benefited 8,000 households, the one for 2004/05 foresees reconstruction assistance for 10,800. In March, the Government reopened the possibility to apply for an additional six months, until the end of September 2004, allowing the submission of more than 14,500 new applications in addition to 2,200 already pending.

There remain other **legal and administrative obstacles** to refugee return which need to be removed, e.g., recognition of working years spent in the former so-called "Republic of Serb Krajina" for calculation of pensions, and assistance to owners in repossessing their occupied non-residential properties (business premises and agricultural land).

Judicial reform is underway, based on a series of technical measures, the most recent being outlined by the Minister of Justice in late October 2004. They aim at decreasing the case backlog, expediting court procedures, enhancing performance of judges through financial incentives and training etc. Delays in the issuance of judicial decisions as well as the execution of verdicts are still widespread. In support of judicial reform, the Minister announced a 10 per cent increase of the budget of the Ministry of Justice in 2005. However, judicial reform still does not address some key issues.

The **Constitutional Court** has gradually enhanced its role as an effective domestic institution for enforcing basic human rights standards, including supervising delays in the lower courts.

The number of complaints against Croatia at the European Court of Human Rights declined in 2004, but several cases remain in which the court is not seen to provide a sufficient remedy.

The delay in appointing an *Ombudsman* (the post has been vacant since July) has prevented further consideration of OSCE expert recommendations for strengthening this institution.

Croatia's *minority rights regime* is framed within the Constitutional Law on the Rights of National Minorities (CLNM). Minority representation in elected bodies is generally considered as satisfactory but, two years after the adoption of the Law, guarantees related to employment of minorities in the judiciary, police and State administration remain mostly unimplemented. The Mission and representatives of the OSCE High Commissioner for National Minorities have begun discussions, together with the Government and minority representatives, regarding the development of plans for recruitment of qualified minorities in the judiciary and State administration.

Regarding war crimes, Croatia has received positive assessments about the technical *cooperation with the ICTY*, most lately when the ICTY President reported on 29 June to the UN Security Council. Nevertheless, prosecution of high-ranking military officials for war crimes remains politically sensitive. During the autumn, the ICTY has again asked for intensified efforts by the Croatian authorities to secure General Gotovina's arrest and surrender to the Tribunal.

While Croatia's highest political authorities attest to even-handedness and competence of the judiciary, statistical data and substantive review of *war crime procedures in domestic courts* suggest that national origin of defendants and victims continued to have an impact on domestic war crimes proceedings throughout 2004. Serbs continue to be disadvantaged at all stages of proceedings. At the same time, the number of individuals facing war crime prosecution compared to 2002 and 2003 has decreased. The Chief State Prosecutor has completed a *review of pending war crime proceedings*, with the abandonment of a significant number of unsubstantiated charges against Serbs, keeping a list of about 1,900 "substantiated" cases.

Efforts to improve the quality and fairness of domestic war crime proceedings remain largely targeted on ICTY transfer issues rather than viewing domestic war crimes adjudication in a comprehensive fashion. This could contribute to the creation of a two-tier system of justice for war crimes.

In preparation for presidential and local elections in 2005, the Government needs to implement *electoral reform* measures identified in international election observation reports on elections in Croatia in 2000, 2001 and 2003. A two-day roundtable convened on the subject by the Mission on 18-19 November, together with ODIHR and the Council of Europe, reiterated the need for improvements in the legislation. The main concerns are the lack of a permanent State Election Commission (SEC); insufficient regulation of campaign financing; inadequate update of voters' lists and lack of a clear framework for out-of-country voting, in particular for refugees from Croatia now dislocated in the neighbouring countries.

The Government continues implementing the *police reform* programme of the former government. “Community policing” remains one of the most advanced police reform initiatives, although there has been delay in the training and deployment of community policing “Contact Officers”. The Ministry of the Interior has agreed to the Mission’s proposal to develop a *Road Map* for the further development of a modern European police service.

The new Government initiated a *reform of media legislation* but changes are still pending to the Law on Croatian Radio-Television and Law on Electronic Media. In particular, there remains a need, in line with recommendations by the OSCE, the Council of Europe and the European Commission, to shield the *regulatory bodies* from possible political interference. The Government has not decriminalised *libel* but amendments to the Criminal Code adopted in July allow for a more liberal libel regime. Croatian media still lacks a *self-regulatory system* to effectively adjudicate complaints against the media.

The *civil society sector* continues to be relatively weak. Cooperation between NGOs and local authorities in most cases remains superficial and insufficiently organised. However, encouraging and innovative developments have been noticed in Zagreb and in Eastern Slavonia to foster public, private and non-government sector cooperation. There is a need for a regulatory framework to organise relations between authorities and NGOs working in democratisation and minority rights. The decision to impose value-added tax on NGOs active in democracy and human rights remains an issue of concern.

III. Priority activity areas for next period

In 2005, the Mission will primarily focus on mandate-related issues deriving from post-conflict recovery: housing for refugees; regional cooperation on refugee return; minority representation; and war crimes adjudication in domestic courts.

The Mission will monitor the completion of property repossession in 2005 and engage in further discussions with the Government in order to find solutions for refugees who used to live in socially owned housing with occupancy tenancy rights (OTR) and who want to return. The Mission will also assist in creating an atmosphere conducive to refugee return through the implementation of a Public Awareness Campaign on Reconciliation and Sustainable Return. The Mission will support the development of the regional benchmarks for closing the refugee file by the end of 2006.

Regarding war crimes, the Mission will monitor any cases that might be referred from the ICTY to Croatia, as well continue to monitor regular war crimes proceedings in domestic courts, and will provide advice and support based on such monitoring.

Minority representation in the State administration, police and judiciary, in compliance with the Constitutional Law on Rights of National Minorities, will also be a matter of particular attention.

In addition, the Mission will encourage the Government to complete the reform of media legislation. In light of the local and presidential elections in 2005, the Mission will assist the Government in the reform of electoral legislation. The Mission will continue its support of police reform. The strengthening of civil society and local governance in war-affected communities will be also an area of interest.

IV. Streamlining/restructuring of the Mission

Both in today's statement and in my previous statement to the Permanent Council in July, I have made reference to the new environment in which the Mission works. During the reporting period, the Government has continued to demonstrate its commitment to addressing Mission mandate issues, particularly within the framework of Croatia's EU accession.

The restructuring currently being implemented concentrates the field presence to six Field Offices in major political and administrative centres in or near the areas most directly affected by the war. All important areas of the country will still be covered with the new structure. There are several reasons behind the streamlining:

- The streamlining reflects cumulative progress made by Croatia to date as it has continued to address Mission mandate issues.
- It reflects a gradual shift in focus from individual case work in small communities to advisory activities *vis-à-vis* the central Government as well as regional and local authorities.
- The new structure permits a more efficient use of available resources, particularly human resources, since it is flatter and concentrates resources to a smaller number of locations.

As a result of the restructuring, the Mission has proposed a 6 percent overall reduction in the budget for next year, reflecting a decrease of 13 international staff and [] national general staff, and an increase of 2 national professional staff.

V. Review of Benchmarks

In my last statement to the Permanent Council on 8 July, I identified a tentative list of tasks or benchmarks for the fulfilment of the Mission's mandate. I would like to end this presentation by giving a rough assessment of the extent to which these benchmarks have been fulfilled in the meantime, and what remains to be done.

Ensure that all refugees who wish to return have access to adequate housing, including those who lived in socially owned flats.

Implementation of the housing programmes for those who lived in socially owned flats and want to return is behind schedule. There is still a need to allocate funds; to adequately inform potential beneficiaries as suggested by UNHCR; and to extend the current application deadline which was based on the assumption the information would be available already last year.

Measures have been taken to speed up the repossession of remaining occupied private properties of Croatian Serbs. The solution of 1,400 cases of occupation of private property remains and is unlikely to be reached until 2005. Measures need to be taken to prevent looting and devastation at handover of properties, and to adequately compensate the owners if looting still occurs. Measures should be taken to facilitate repossession of agricultural and business properties.

Most potential beneficiaries of reconstruction assistance will have had an opportunity to apply after the application period was reopened this year. Reconstruction applications (now approximately 10,000) will have to be adequately reviewed. The reconstruction programme is therefore likely to continue into 2006.

The Government has started to address the issue of (re-) electrification of minority Serb villages.

Ensure the removal of all other administrative and bureaucratic obstacles to return.

Measures should be taken to enforce and extend existing provisions for the re-establishment of the status of permanently residing foreigners, mainly affecting minority returnees who had not yet acquired Croatian citizenship. Working years spent in the formerly Serb controlled areas should be unconditionally recognized for pensions, etc.

Improve the atmosphere for refugee return in all parts of the country through public awareness efforts.

Awareness efforts targeting the receiving communities will be jointly undertaken by the Government and the Mission.

Reach agreement between the three Governments of Croatia, BiH and SCG, with the facilitation of the OSCE, EC and UNHCR, on conditions for closing the refugee file:

The Government has informally confirmed that it will take part in a trilateral initiative with Bosnia-Herzegovina and Serbia-Montenegro, with facilitation by the OSCE, EC and UNHCR, to develop benchmarks for closing the refugee file in the region. The target date for the completion of this project would be the end of 2006.

Ensure that the elected minority representatives at all levels have adequate conditions for carrying out their work.

Training efforts have been undertaken for the newly established councils of national minorities, in part with Mission support, but further training, support and awareness-raising efforts are necessary in order to make them effective for representing minority interests.

Develop and implement programmes for minority representation in the State administration, the judiciary.

A programme targeting and supporting minorities for recruitment should be adopted at a minimum.

Ensure that an adequate structure is in place for domestic handling and adjudication of human rights complaints, involving strengthening of the Constitutional Court, the Administrative Court and the Ombudsman

The Constitutional Court is increasingly functioning as an effective domestic remedy for human rights complaints, but its statute should be changed to provide the Court jurisdiction to assess all violations of the ECHR. The Administrative Court is in need of reform in order to provide fair trial guarantees. A respected person should urgently be appointed to the vacant position as Ombudsman and be tasked to strengthen the institution in line with expert recommendations.

Ensure that disadvantaged categories such as minorities and refugees have access to adequate legal representation in courts.

Initial measures have been taken to establish a system for free legal aid, and should be carried out.

Ensure an even-handed domestic adjudication of war crimes

Special war crime departments have been created in four courts and given training. The training should be extended to all courts in order to prevent a two-tier system of justice on war crimes. The State Prosecutor's review of pending war crime cases (indictments, convictions, etc.) should continue in order to ensure that unjustified arrests do not occur or function as a deterrent to refugee return. Further measures should be taken to improve inter-state judicial cooperation on war crime issues. The State Prosecutor's proposed cooperation agreements with prosecutors in neighbouring countries should be emulated by other institutions.

Implement recommended electoral reform measures.

A permanent electoral commission should be established to provide stability to election management. New legislation should be adopted to ensure greater transparency on campaign financing. Measures should be taken to improve voters' lists, particularly regarding registration of national minorities. Additional polling stations should be opened in neighbouring countries to enable more Croatian citizens living as refugees to vote.

Implement a Road Map on police reform, including the development of a modernized human resource management system.

The relevant authorities have engaged with the Mission and international partners to develop a reform Road Map, which should be introduced as a framework for further reform efforts. In particular, the human resource management system should be modernized, not least to prevent the possibility of political interference.

Implement community policing, in particular in refugee return areas in order to ensure reconciliation and the sustainability of return.

A conceptual programme for community policing is in place. Community policing contact officers should continue to be deployed. Preventive councils should be established in pilot communities.

Implement expert recommendations on key media legislation

No progress has been noted since the Law on Media was adopted in the first half of the year. A new Law on Electronic Media should be adopted in order to shield the oversight council from political interference and to give it adequate resources for its work. Some changes are pending to the Law on Croatian Radio and Television. Libel legislation may have to be further liberalized, in particular if journalists continue to be charged with criminal libel. The Law on Access to Information should be followed up with measures to make it effective. Awareness-raising and legislative measures should be taken to prevent hate speech.

Support the development of a self-regulatory body for adjudication of complaints against the media.

A self-regulating body for complaints against the media should be established.

Support capacity-building to enable the civil society sector to become an institutional counterpart for local authorities and to eventually assume responsibility for key parts of the Mission's work.

There is now a national strategy for the development of civil society, which should be supported by adequate financing and awareness-raising efforts. Discriminatory tax burdens on NGOs dealing with human rights, democratisation and minority rights should be abolished. Further efforts should be taken to promote good governance and interaction between local authorities and NGOs, particularly in war-affected communities.