

Ombudsman's 2003 Annual Report to Parliament notes significant increase in complaints

On 23 March 2004, the Croatian Ombudsman forwarded his 2003 Annual Report to the Parliament for discussion. Two issues dominated the complaints lodged in 2003. The first, constituting nearly 30 per cent of all complaints, pertained to violations related to various social welfare entitlements, including pension and disability insurance, health insurance, social welfare and labour. The majority of applicants complained about unreasonably long delays by pension offices and a failure by the administration to implement decisions of the Administrative Court.

The second largest group of complaints (approximately 29 per cent) pertained to violations of property and housing rights, primarily for refugees. The Ombudsman emphasized that despite the repeal in 1998 of the Law on Temporary Take-Over and Administration of Specified Property, property allocated by the Government pursuant to this Law remains occupied to the present day by temporary users, especially in the Areas of Special State Interest. The failure of state bodies to enforce court decisions on evictions remains the main reason for violations of the right to property. The Ombudsman also warned of the ongoing problem of owners who are saddled with the unpaid debts of former temporary occupants following physical repossession of their property.

Another significant reason for complaints was the difficult access to state reconstruction assistance. The main cause of such complaints was that the majority of applicants failed to meet the deadline for the submission of requests for reconstruction assistance which expired in December 2001. The Ombudsman reported that nearly 12 per cent of all complaints were related to delays in judicial proceedings, particularly at municipal courts, although the judiciary does not fall within the Ombudsman's jurisdiction.

Nearly one third of all complaints received in 2003 were lodged during field visits by the Ombudsman to ten counties. The field visits were financially supported by the Government of Norway and the OSCE Mission to Croatia and similar support for visits in 2004 will also be provided. Information provided during field visits also facilitated an increase in the number of complaints coming from Bosnia and Herzegovina and Serbia and Montenegro, primarily related to the termination of their occupancy/tenancy rights.

Findings from the field visits confirmed the need for expansion of the institution to better serve the needs of citizens with complaints against administrative bodies. This and other recommendations were also made in a report last year by the former Secretary General of the Canadian Human Rights Commission, Prof. John Hucker, who conducted an independent analysis of the Croatian Ombudsman institution on behalf of the ODIHR and the OSCE Mission to Croatia. The Annual Report endorses the recommendations of Prof. Hucker.

Minority councils face start-up difficulties

Two rounds of elections were held on 18 May 2003 and 15 February 2004, respectively, for the new Councils for National Minorities (CNMs) which are being established in accordance with the Constitutional Law on the Right of National Minorities (CLNM) from December 2003. Following these elections, approximately 300 of the 469 CNMs to which 16 national minorities are entitled were elected; approximately 70 of 140 individual representatives for smaller minorities were also elected. Since the councils have no precedent, they are facing start-up difficulties in many parts of the country.

Overall - but with certain notable exceptions - most CNMs still have to undertake operational initiatives beyond preliminary constituting sessions and registration with the Central State Office for Administration. Many activities such as the drafting of statutes, activity programmes and financial plans as well as the establishment of structured communication and dialogue with local authorities remain to be done. With regard to the CNMs elected in February 2004, Mission field staff have been reminding minorities that constituting sessions have to be held by 5 May at the very latest per Government decision. The Mission has also organized roundtables with CNM representatives in southern Croatian and in the Danube Region. Government and ministry officials have encouraged CNMs to begin start-up activities and planning as soon as possible.

Several obstacles have to be overcome for the new CNMs. First, many CNM representatives remain unaware of their roles and the activities expected of them. The novel nature of the CNMs as mechanisms for the protection of minority rights, combined with their consultative status and voluntary membership, often results in an initial lethargic, “wait-and-see” attitude on the part of CNM representatives and local government authorities. Second, technical and financial problems are hindering progress in most places. Most CNMs are still without permanent premises while financial support from local government is severely limited or is still due to be provided in the first instance. Third, many CNMs continue to be confronted with a lack of co-operation from local authorities.

Nevertheless, the Mission has noted a limited improvement in the quality of work of the CNMs since early 2004. Of note lately has been the successful establishment of so-called ‘co-ordinations’ among different minority CNMs, sanctioned by the CLNM as a way of facilitating co-operation, co-ordination and consensus-building between minorities. The national-level CNM will soon tour the country to promote the creation of ‘co-ordinations’. Following the establishment of the first official ‘co-ordination’ in Zagreb among nine national minorities, two official ‘co-ordinations’ were initiated in February in Eastern Slavonia, a region where the development of the CNM framework, particularly within the Hungarian minority community, is advancing faster compared to the rest of the country.

There has also been an increase of late in positive examples of co-operation between CNMs and local government, including action-orientated activities by county prefects and mayors who are supporting the development of CNMs within their area of jurisdiction. In the city of Sisak in central Croatia, the Bosniak CNM and the Mayor of Sisak have established a model case of co-operation and dialogue, while in the municipality of Ogulin the local authorities have been highly supportive of the municipality’s Serb CNM, which was recently provided with permanent premises and start-up funding.

In 2004, as in 2003, the Ministry of Justice and the Government Office for National Minorities will provide training to CNM representatives and local government authorities. The training sessions are designed to provide a better understanding of the practical application of minority rights, the role of the national-level CNM in Zagreb, guidance on the formation of ‘co-ordinations’, use of the media, and co-operation and dialogue with local authorities. The OSCE Mission to Croatia is continuing to provide funding for this training.

Continuing war-crimes arrests in 2004; conviction in the ‘Paulin Dvor’ case

As part of its regular monitoring of war-crimes investigations and prosecutions, the OSCE Mission to Croatia has recently observed an increase in the number of war-crimes arrests, particularly of ethnic Serb returnees. The Mission has also been examining cases that have

been before the courts for some time and noted the delivery of a number of verdicts in several relatively high-profile trials against both Croats and Serbs.

Since mid-March four Serbs have been arrested on suspicion of having committed war crimes against the civilian population. Three of the four suspects were arrested at border crossings while entering Croatia, with two entering the Danube Region from Serbia and Montenegro and one entering central Croatia from Bosnia and Herzegovina. The fourth suspect was arrested in Osijek-Baranja County while trying to obtain Croatian documents at a police station. All four remain in detention.

Since the beginning of 2004, the Mission has followed a total of eleven arrests on war-crimes charges, all Serbs. Out of these, three were subsequently released as charges were dropped by the prosecutor due to lack of evidence. This trend in 2004 is consistent with Mission observations made during 2003, when one third of all individuals arrested were subsequently released and faced no further proceedings, as charges were dropped due to lack of evidence.

These observations demonstrate that a considerable number of war-crimes charges against Serbs are unsubstantiated, a fact that highlights the ongoing need for a thorough review of indictments stemming from the early 1990s as mandated by the Chief State Attorney. The substantial amount of releases also indicates that the review should take place at an earlier stage in order to avoid that individuals are taken in detention.

In Eastern Slavonia, the Osijek County Court pronounced a verdict on 8 April finding Nikola Ivankovic, a Croat, guilty of having committed war crimes against the civilian population in 1991 in Paulin Dvor near Osijek in Eastern Slavonia. Ivankovic was sentenced to 12 years imprisonment. A second defendant, Enes Viteskic, was acquitted. The court found that Ivankovic killed 19 Serb and Hungarian civilians in Paulin Dvor.

Further, the Osijek County Court passed another verdict on 8 April finding three Serbs guilty of having committed war crimes against the civilian population. The court held that the defendants maltreated Croats between 1991 and 1996 in the village of Popovac, near Beli Manastir. The court found mitigating circumstances and sentenced the defendants to periods of imprisonment below the legally prescribed minimum (18 months to two and a half years). A fourth suspect was amnestied.

On 29 March the Sisak County Court in central Croatia found Mirko Vuckovic, a Serb, guilty of war crimes against civilians and sentenced him to six years imprisonment. The court held that Vuckovic, together with three identified suspects, burned down 12 houses owned by Croats in the village of Josevica in mid-1992. The verdict was immediately appealed.

Despite an order in June 2003 from the Supreme Court to conduct a new trial in the case of Nikola Cvjeticanin, a Serb previously sentenced to nine years imprisonment for war-crimes, the re-trial has not commenced yet. The delay of more than nine months is of concern as the defendant has remained in detention awaiting the commencement of the re-trial. In the case of Dane Serdar, a Serb previously convicted *in absentia* to 15 years imprisonment, the Gospić County Court has failed to commence the re-trial as requested by the defendant in October 2003 when arrested at a border crossing with Serbia and Montenegro. The defendant also remains in detention.

Public debate restarts over racial discrimination and hate speech

Following a recent verdict in a much disputed and highly publicized case of hate speech, the public debate on the shortcomings of current Croatian legislation sanctioning racially and ethnically motivated crime has started anew. The debate coincides with discussions on proposed amendments to the Criminal Code following the Constitutional Court's invalidation on procedural grounds in December 2003 of amendments adopted by the Parliament in July 2003.

The discussion was largely triggered by a decision delivered in February 2004, in which the Kutina Municipal Court in central Croatia acquitted Gordana Dumbovic, the former Deputy Mayor of Petrinja and President of the Croatian Party of Rights (HSP) in Petrinja, of charges that prohibits public statements and the dissemination of ideas on the superiority of one race over another or inciting racial hatred or racial discrimination. The basis for the prosecution was Dumbovic's statement, carried on local radio prior to the May 2001 local elections:

[t]hat poor Serbian minority member, who returned from Mother Serbia, is neither a man, nor an animal. The animal doesn't deserve to be compared to them. Not a single Serbian gipsy minority member will have peace in Petrinja or anywhere else as long as a mother or a child of a slaughtered or killed Croat walks there.

The court found that although some parts of the speech could be regarded as hateful, they did not incite hatred against Serbs as a group but were targeted against a few specific individuals. The court also determined that the prosecution failed to prove intent to incite on the part of Dumbovic. The Municipal State Attorney has appealed the verdict.

The provisions criminalizing racial discrimination in the Criminal Code have been amended several times during recent years. As currently written, Article 174 penalizes a wide range of acts including the violation of basic human rights and freedoms based on differences in race, gender, skin colour or national or ethnic origin, the dissemination of ideas claiming the superiority of race as well as the promotion of racial hatred and the incitement to racial discrimination.

The pending proposal by the Ministry of Justice would amend Article 174 to criminalize the dissemination of materials denying, diminishing, approving, or justifying genocide or war crimes against humanity through information technology, i.e., internet and computers. Unlike the amendments previously invalidated by the Constitutional Court, the proposal does not contain any prohibition of the glorification of fascism, totalitarianism and its symbols.

Recent public discussion and focus in the media on this question has been amplified further by several recent ethnically motivated incidents, including violent acts against Serb returnees in the Zadar hinterland of southern Croatia as well as the ongoing public attention to the notorious pro-fascist Croatian rock singer, Thompson. This debate frequently fails, however, to distinguish between the different aspects of racially motivated crime, e.g., speech versus conduct.

As reflected in the most recent report on Croatia by the European Commission against Racism and Intolerance (ECRI), Croatia has only pursued a handful of prosecutions against hate speech. The ECRI states that priority should be given to the full implementation of Article 174. The Mission assesses that current legislation may arguably be inadequate in combating the variety of manifestations of racial discrimination, given both its broad language and high burden of proof. Hence, additional criminal legislation in this area may

need to be considered. In addition, and consistent with EU directives on non-discrimination, a comprehensive approach to the elimination of racial and ethnic discrimination would also include the further development of remedial measures similar to those already adopted in the field of employment, such as a person's right to initiate court actions for monetary compensation when discrimination has taken place.