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Croatia - A New Era?¹

Croatia Is Faced with a Double Challenge

Ten years after having declared full independence and six years after the end of the armed conflict on its territory, Croatia is being confronted with a double challenge. On the one hand, this country, like all other reform countries, is endeavouring to drive forward the transformation processes of its economic, political and legal system to be able to ultimately meet the requirements for Euro-Atlantic integration. On the other hand, Croatia is still battling with the direct and indirect results of the war. This war not only took human victims, caused flight and displacement and completely devastated large areas of the country, but has also impeded necessary reforms in the state, society and economy. Moreover, against the backdrop of the armed conflict and the nationalist mood of the country, which stemmed not least from the policies of the regime, there were regressive developments especially in the legal system. These developments were reflected in legislation and/or its implementation which led to ethnic discrimination against the Serbs in Croatia, to be more precise, to all those who were on the "wrong" side of the conflict. This legal framework and the state policy behind it were the main impediment for the return of the refugees who had fled in 1995. Furthermore they hampered reintegration of the Serbian population and thus obstructed reuniting the country.

A Response: The Establishment of the OSCE Mission

In the spring of 1996 the Permanent Council of the OSCE passed a decision to establish a mission in Croatia. On the one hand, its essential mandate was to give advice to the Croatian authorities in their endeavours to structure legislation and its implementation according to international standards, especially in the area of the protection of minorities, and parallel to this, to drive forward the process of reconciliation. On the other, the mandate was also to monitor the functioning and development of democratic institutions, processes and mechanisms. After the mandate was extended to include the area of refugee return around a year later, this field presence was enlarged considerably so that the Mission started the year 1998 with over 200 mission members and about 20 field offices and/or co-ordination centres in all former war zones. This extensive field presence allowed the Mission from that point on

1 The views expressed in this article are the personal opinions of the author and not the official views of the OSCE Mission to Croatia.

to establish co-operation with the local authorities, police stations, NGOs and representatives of the media, in order to support the return process and its sustainability. However it was even more significant that the local population used the Mission's offices to voice their problems and primarily to seek legal advice. At the beginning of the Mission, these people were for the most part returning refugees and members of the Serbian minority who had remained in the country. This allowed the Mission to gain a representative picture of the existing problems and thus confront the Croatian government as well as its international partners with the realities in the field.

The Political Turning Point in the Year 2000 and Its Implications

The parliamentary and presidential elections at the beginning of the year 2000 marked the end of the almost ten years of autocratic rule by the Croatian Democratic Union (HDZ). While during war and the immediate post-war period, the "Homeland War" (*Domovinski rat*) and the national question dominated politics and people, by the end of the 1990s, it was increasingly the economic and social situation that influenced political discussions and gave people cause for concern. The majority of the population ended their allegiance to the HDZ because the socio-economic situation had become increasingly worse, corruption and misuse of power were becoming ever more evident, the international reputation of the country had suffered during the HDZ rule and the people had become suspicious of the alleged or real influence of the Croats from Herzegovina on politics and economics for which they blamed the HDZ.

The new political leadership began to show distinct colours demonstrating their intention to take measures that would restructure Croatia into a state under the rule of law according to international standards. In public statements, state leaders declared the equality of all citizens in the eyes of the law and proclaimed the individualization of guilt as well as calling upon the Croatian Serbs to return home. In the first weeks and months more meetings than ever in all the years after the end of the Balkan war took place between senior diplomats, in particular from the European Union and the US, with Croatian state leaders. This already made clear that the international community welcomed both the new government and the new President. However, this recognition, which was favourable to Croatia and its people, was less important from the perspective of political stability in the region and the question of returning refugees than the fact that the relations between Croatia and its neighbours, in particular with Bosnia, began to normalize. From this point on, the new Croatian government began treating Bosnia as an integral and sovereign state. Furthermore, after the end of the Milošević regime, although this occurred with a slight delay, there was also an improvement in the relations between Croatia and the Federal Republic of Yugoslavia.

As for the relationship between the Mission and the Croatian authorities, the climate of confrontation and even at times antagonism that had ruled during the HDZ government softened to a climate of co-operation and joint effort. Nevertheless the government as well as the international community, and with this the OSCE Mission, were forced to admit that the political, legal and administrative framework requiring reform was so extensive and complex that it had created a much greater challenge than generally expected.

New Government Confronted with the Economic Crisis, Its Political Inheritance and the Demands of the International Community

Although the demand made on Croatia by the Mission and the international community to fulfil its European and international commitments, particularly the return and reintegration of refugees, were voiced in the Croatian government programme and speeches of state representatives other factors have been determining the priorities in Croatian policy-making. Essentially, the government is interested in improving the social and economic situation in the country. The HDZ regime failed in this policy area, and political change occurred for this very reason. If perceptible improvements do not take place, sooner or later, this will not only endanger the government but also be detrimental to internal stability. Accordingly, the government has argued that the dreary economic situation is still the real obstacle for the return and reintegration of the Serbian minority. In other words: The rapid economic recovery of the country would lead to fulfilling the demands set forth by the international community. From time to time, Croatian government representatives have presumed to claim that there are no longer any legal and political obstacles preventing the return of the Serbs to Croatia, but only economic difficulties.

The extent to which the return of refugees, the protection of minorities and the establishment of the rule of law, as stated in the Mission mandate, have a direct influence on the economy, can be illustrated by two examples. One of the explicit goals of Croatian policy is Euro-Atlantic integration. Within a period of one year, Croatian foreign policy achieved a number of goals: The country became a member of the Partnership for Peace programme and the World Trade Organization. In May 2001, the Stabilization and Association Agreement (SAA) with the EU was initiated and signed in October of the same year. However, although these objectives were accomplished, Croatian integration in particular into the European Union and NATO will, *inter alia*, be dependent on the points mentioned above. Legal and political security and stability are not only requirements to integrate the country internationally, but are also of decisive importance to induce foreign companies and international financial backers to invest in Croatia. In turn, investment and fresh capital could contribute decisively to economic recovery causing Croatia to come a

great deal closer to EU as well as NATO membership. After all, this would give validity to the government's argument that improvement in the economic situation would then increase the intensity and sustainability of the return and reintegration process.

Another important point with which the new government has been faced since it assumed office has been the country's confrontation with its most recent political past. The question whether the Croatian side may have committed war crimes, co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague as well as the Bosnia policy, particularly the situation of the Croats in Bosnia and Herzegovina, have now and again dominated the public and political debate.

There is a danger that these issues could cause political polarization and be instrumentalized by the right-wing political opposition to arouse nationalist emotions and to link these with increasing social dissatisfaction, which at the end of the day could topple the government. However, it would damage Croatia in the long term to ignore these problems.

In particular, co-operation between the Croatian authorities and the Hague Tribunal has improved perceptibly since the change in government. Formerly the HDZ government had tried in public to discredit the work of the ICTY as being politically motivated. Moreover, it had disallowed the examination of war crimes that may have occurred during the military operations, "Lightning" and "Storm", in 1995 by asserting they were not under the jurisdiction of the Tribunal. In contrast, the newly elected Parliament adopted a resolution in April 2000 that clearly emphasized its intention to co-operate with the ICTY. However, during the second half of the year rumours emerged that Croatian generals were on the list of alleged war criminals. This led the government, not least as a result of political pressure emanating from the street on the part of the extreme political right and veteran organizations, to draw up a document in which it attempted to redefine co-operation with the Hague Tribunal. There was an easing of tensions only after Carla del Ponte, the Chief Prosecutor at the Hague Tribunal, paid a visit to Zagreb in January 2001 to clarify the situation. Following this, it was made clear that there was willingness to co-operate through joint efforts to exhume the victims of alleged war crimes as well as government plans to create special departments within the judiciary and the executive apparatus to deal exclusively with the investigation and prosecution of war crimes. In the summer of 2001, the charges against two Croatian generals because of alleged war crimes during the armed conflict from 1991-1995 have shown that the topic of war crimes and relations with the Hague Tribunal will be a burden to Croatian domestic affairs for some time to come. Disputes within the government on the extradition of the two generals and co-operation with the Hague Tribunal led to

the resignation of several ministers following which the Prime Minister called for a vote of confidence in Parliament.²

The individualization of guilt and prosecuting war crimes regardless of ethnic background - emphasized publicly by the new leadership since they assumed office, especially President Stipe Mesić - are two of the most important factors affecting the return of Croatian Serbs and the reconciliation of the various ethnic groups in Croatia.

The Revised Role of the OSCE Mission

At the time the Mission opened its doors in Croatia, physical attacks on Serbs and their property were not infrequent. The obstructionist policy towards the Serbs, inasmuch as they like the Croats had not left the occupied areas of the so-called Republika Srpska Krajina (RSK) at the beginning of the war, was a part of state policy. Even in 1999 local HDZ rulers publicly opposed the return of Serb citizens, who had fled in 1995 abandoning their homes, and promised these dwellings to Croats who had fled primarily from Bosnia and in the meantime had moved into them. In discussions on the importance and purpose of an OSCE presence, Serbs often made the following terse statement, the gist of which was: "There is not very much you can achieve, but without your presence, things would be a great deal worse."

Although the international community does not have any means to introduce sanctions - this is different in Bosnia - the Mission has been able, through its work and reporting system, to confront the appropriate international bodies as well as diplomatic circles and the government in Croatia with the deplorable conditions in the country.

Since the political change, the Mission has been successful in developing its function to assist and advise the Croatian government in a spirit of co-operation although this has not occurred to the extent that was originally expected. For example, the Mission offered to act, based on its extensive field presence as the "additional eyes and ears" of the government in Zagreb, to inform them of the deplorable conditions in the former war areas still governed by the HDZ. However Zagreb initially did not take enough advantage of this opportunity. Although the contacts between experts in the Mission and those in the ministries have been intensified and improved, the active utilization and inclusion of the Mission and its capacities to solve problems jointly with the government has only recently begun.

2 Premier Ivica Račan's government did in fact win the vote of confidence, however the problem is a long way from being solved. While General Rahim Ademi, who is of Albanian origin, surrendered voluntarily to the Hague Tribunal in July 2001, at the time this article was written, Croatian authorities were unable to trace General Ante Gotovina. This affair led to numerous demonstrations of solidarity for the defendants and harsh attacks against the government from the political right, the war veterans associations as well as parts of the Roman Catholic Church. Meanwhile, in February 2002, Ademi returned from The Hague and has been allowed to defend himself in freedom.

The Arduous Path towards Rule of Law and Democracy

Despite the progress that Croatia has made recently, there are still many aspects of the Mission mandate regarding post-conflict rehabilitation, democratization of the state and reintegrating returnees as well as ensuring a sustainable return process, which remain still to be completed.

Although there should no longer be any real political obstacles³ for the return of the Serb refugees as such - there are approximately a quarter of a million, primarily in Yugoslavia and Bosnia - the process has remained unsustainable because the homes of those who are willing to return or have already returned have either been destroyed or are occupied.⁴ In addition to this there is a more specific problem. Those people who had lived in so-called socially-owned apartments were deprived their occupancy right, which was different to the procedure for example in Bosnia.⁵ Despite certain reforms, there is still no legislation (nor administrative implementation) on this issue that would be divested of all its existing discriminating elements and give priority to property rights over the rights of the temporary occupant. According to the regulations in force, which however have not yet become law, the property owner may in general only repossess his house or apartment when the so-called temporary user - most often a Bosnian Croat in this case - has been offered a comparable so-called alternative accommodation. The lack of alternative housing is the main reason Serbs cannot regain their property. A second important reason is that the Croatian government has up to now almost exclusively financed the reconstruction of houses that are owned by ethnic Croats. The establishment and implementation of human rights and in particular minority rights is the prerequisite for surmounting the social tensions still in existence as a result of the armed conflict.

In the spring of the year 2000, laws were adopted on the use of the language and the script of minorities (that is, the Cyrillic alphabet) in the school system as well as in public offices. The representatives of minorities and the OSCE Mission evaluated this very positively. However, a revised version of the

3 In addition to the application of the Amnesty Law that was not very transparent or uniform, in the course of the revision process, the most recent wave of arrests and indictments related to committing war crimes led to a feeling of insecurity among Serbs willing to return to Croatia particularly in the Danube region.

4 According to an internal audit by the ministry responsible for reconstruction at the end of May 2001, there are still approximately 10,000 houses that are occupied. Of the temporary users, 61 per cent are from Bosnia, six per cent from Yugoslavia (Kosovo and Vojvodina Croats) as well as 29 per cent from Croatia itself and four per cent from other countries.

5 According to statements by non-governmental organizations, 50,000-55,000 people, who left territory under Croatian control during the war, were divested of this right, which in the opinion of international legal experts constituted a *de facto* private property right. Because the majority of these dwellings have in the meantime been sold to third parties, the international community has demanded that former owners at least be compensated for their property loss. However, up to now the Croatian government seems to regard this problem as a taboo subject.

Constitutional Law on the Rights of National Minorities⁶ has yet to be introduced.

In this regard, it must be mentioned that it was a prerequisite for the international recognition of Croatia that minority rights were guaranteed in its 1991 constitutional legislation. However, in the course of the armed conflict quite a few passages were suspended, in particular those relating to the political participation and the autonomy rights of primarily the Serb minority. Revision of constitutional law has already been delayed several times. The proposals contained the regulation of minority representation in upper-level state organs as well as the establishment of minority self-government in addition to the existing self-government system. The difficulty in introducing an adequate legislative proposal in Parliament is probably less a matter of giving consideration to the opinion of the Venice Commission of the Council of Europe, but rather lies in the fact that these far-reaching minority rights even meet with resistance within government parties. Thus the two-thirds majority in Parliament required to make them law is far from assured.⁷

The most clear-cut progress has been made in the area of democratization and the separation of powers. Although this process has not yet been completed, the new government has begun transforming state television, which was misused as a political instrument during HDZ rule, into an independent institution. In the area of state structures, reform of the system of local self-government has been initiated, and is designed to lead to the decentralization of political and administrative responsibilities according to the standards of the Council of Europe and the EU. These reforms were necessary because the HDZ government had centralized excessively,⁸ which in time led to disfunctionalities in the entire system. The question of how citizens will be enabled to participate more actively in the political process at the local level is still open.

Furthermore, against the backdrop of the changing political climate, a revival of the NGO scene occurred. Indeed, the protagonists of these non-governmental organizations did not play a minor role in this change of climate. Par-

6 The exact wording is: Constitutional Law on Human Rights and Freedoms and Rights of Ethnic and National Communities or Minorities in the Republic of Croatia.

7 A working group under the auspices of the Ministry of Justice was tasked with elaborating a draft law. After several consultations with the Venice Commission, the working group, encompassing experts and Ministry representatives, submitted the final version of their proposals in November 2001 ready to enter the parliamentary procedure. Surprisingly, the government rejected the draft in February 2002 and decided to form a new working group consisting of several ministers, but without minority representatives. This new body has been tasked with drafting a new law by June 2002.

8 While in other reform countries, the centralization of communist rule was ended and local (regional) self-governing units were strengthened, in Croatia the trend went in exactly the opposite direction. While before the disintegration of Yugoslavia, which differed from the other socialist countries because of its high degree of decentralization, the sum of all of Croatia's municipal budgets was 20 per cent higher than that of the Republic, the state budget at the end of HDZ rule was five times as high as the sum of all municipal budgets. Paradoxically, during this same period the number of self-governing units quadrupled, which cast additional doubt on whether the municipal system was functioning.

ticularly in the areas of women and youth, the number of organizations and their activities have increased considerably. In addition, the attitude of the local authorities towards NGOs has changed positively even in periphery areas. While at the beginning of the Mission mandate, NGOs were not seldom seen as an extension of foreign interests, their efforts are now appreciated, particularly in the humanitarian sector. Furthermore, the Mission was also able to make a contribution to this positive development. During the last two years it financed around 120 projects in the framework of its "Peacebuilding Programme for Conflict Prevention" in the areas of human rights, reconciliation, building of democratic institutions and training programmes for NGOs, in particular for women and youth.⁹

Prerequisites and Prospects for Reconciliation

The wounds of war are still fresh in Croatia and neighbouring Bosnia. Hardly anyone - with the exception of extremists who would like to gain political capital by keeping negative emotions awake - doubts that reconciliation will take place. However, it is also constantly emphasized that this will take time. Nonetheless, there is the question whether this process could be accelerated and if so by what means.

The concept that the Serbs are collectively guilty still dominates among the Croats. In any case, the distribution of roles is clear-cut at least in the minds of Croats. They are certain they know who is guilty and who not guilty, who the perpetrators were and who the victims. The majority of the Croats still repress or deny that there were ever attacks, forced displacement of or even crimes against the Serbs.

The point of departure towards attaining reconciliation is surmounting the assumption of collective guilt and casting doubt on the above-mentioned dichotomy arising from the distribution of roles. Particularly the latter is proving to be a painful process because it presupposes that each side must confront the guilt and the perpetrators from their own ranks.

When one hears the statement the Serbs are to blame for everything, one cannot help asking which Serbs do they mean? Those who fought in the Croatian army? Those who fled from the war? Those that lived in the so-called Republika Srpska Krajina, but did not support its violent secession? Or those who were forced to serve as ordinary soldiers in the RSK army? Or do they mean those who consciously implemented a policy of confrontation and who wanted to create a Greater Serbia from the very beginning or who had a part in perpetrating war crimes?

The difficulty and emotion of coming to terms with the past was apparent at the latest at that point in time when it could no longer be denied that there

9 The total budget in 1999 and 2000 was 200,000 Euro per year. Unfortunately in 2001 no money had been pledged by the time this article was written.

had also been Serb victims and Croat perpetrators and that there had been systematic destruction even by parts of the regular Croatian army beyond the fighting in the war.¹⁰

A common reappraisal of the recent past and active reconciliation are hardly conceivable without the political will and the support of those politically responsible in the state and in both ethnic groups. To achieve this, the discussion that has already begun must be intensified, especially in the media and predominantly on television, which is still the primary source of information for the people. On the other hand, particularly those NGOs that support the cause of reconciliation must be supported by the state authorities because the failure of the state reconciliation programme¹¹ has shown that institutional methods to tackle a problem are not the only key to success.

In the final analysis, the framework for the public discussion of the recent past and for the reconciliation process as such, will be created by the fulfilment and implementation of those international legal acts, commitments and not least values that Croatia has acknowledged and committed itself to. These in turn, will contribute to the necessary reform of state and society. It is precisely here that the OSCE Mission can take on an important role through its monitoring, mediating and advisory functions, which those responsible in Croatia should learn to utilize more effectively.

10 The Croatian Helsinki Federation estimates that in the area of former Krajina and in Western Slavonia, 50,000 Serb homes were systematically destroyed. See e.g.: Drago Hedl (Ed.), *Expensive March of the "Neronian Brigades"*, 13 May 1998, AIM, at: <http://www.aimpress.ch/index.htm>.

11 In October 1997, the government passed a confidence-building programme, with the goal of promoting the reconciliation process. However, the programme was never effectively implemented because the political will was lacking and the local authorities resisted publicly acknowledging the Serbs' right to return as well as the reconciliation process. As a result of this, the new government gave up the programme, but at the same time attempted a new approach by creating an inter-ministerial co-ordination council, which was to deal, alongside other issues, with the area of reconciliation. Among other things, there are plans to include representatives of the Serbian minority, as well as those of Bosnian Croats who fled to Croatia. However, this body has yet to be activated.