NACIONES UNIDAS

E

Consejo Económico y Social

Distr.
GENERAL

E/CN.4/1999/163
28 de abril de 1999

ESPAÑOL
Original: INGLÉS

COMISIÓN DE DERECHOS HUMANOS
55° período de sesiones
Tema 9 del programa

CUESTIÓN DE LA VIOLACIÓN DE LOS DERECHOS HUMANOS Y LAS LIBERTADES FUNDAMENTALES EN CUALQUIER PARTE DEL MUNDO

Carta de fecha 31 de marzo de 1999 dirigida a la Secretaría de la Comisión de Derechos Humanos por la Misión Permanente de la República de Croacia ante la Oficina de las Naciones Unidas en Ginebra

La Misión Permanente de la República de Croacia ante la Oficina de las Naciones Unidas en Ginebra saluda atentamente a la Secretaría de la Comisión de Derechos Humanos y tiene el honor de remitirle un aide-mémoire del Gobierno de la República de Croacia relativo al informe (E/CN.4/1999/42) del Relator Especial sobre la situación de los derechos humanos en Bosnia y Herzegovina, la República de Croacia y la República Federativa de Yugoslavia.

La Misión Permanente de la República de Croacia pide a la Secretaría que tenga a bien distribuir el aide-mémoire adjunto* como documento oficial del 55° período de sesiones de la Comisión, en relación con el tema 9 del programa.

---

* El anexo se reproduce como se presentó, en el idioma original solamente.

AIDE-MEMOIRE

by the Government of the Republic of Croatia addressed to the UN Special Rapporteur of the Commission on Human Rights on the human rights situation in Bosnia-Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia

1. In this Aide-Memoire the Croatian Government gives its comments on some allegations in the Report by the Special Rapporteur of the Commission on Human Rights on the human rights situation in Bosnia-Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia to be presented at the 55th session of the Commission.

2. As already noted in the earlier comments by the Croatian Government of 20 January 1999 on the Special Rapporteur=s Report presented at the session of the UN General Assembly last year, the Croatian Government still awaits a comprehensive Progress Report on the human rights situation in the countries covered by the Special Rapporteur=s mandate established back in 1992.

Although aware of the technical problems that the UN are faced with in giving an updated account of the human rights situation in the countries covered by the Special Rapporteur=s mandate, we wish to stress that the Report describes the situation in these countries until mid-December 1998 and that meanwhile over the past three months a series of improvements have been made in Croatia in the area of human rights to an extent which makes the latest Report by the Special Rapporteur outdated. For that reason we believe that an annex to the Report will be prepared to cover the latest developments.

3. The Croatian Government again points to the incongruence appearing as a result of the combined reporting from these three countries where the situation greatly differ in terms of human rights protection and promotion. As an example, in the introductory part of the Report, point 2, it is stated that the regional offices often operate under difficult circumstances, although there is no doubt about the fact that the regional Office of the High Commissioner for Human Rights in Croatia has a safe and free access to any areas or institutions it wants to visit, as confirmed in her monthly field reports. After all, in para. 37 (introductory part related to Croatia) the Special Rapporteur himself expresses his thanks to the Croatian Government for its cooperative assistance to the regional Office of the High Commissioner for Human Rights.

As already mentioned, due to the ignored differences in the human rights achievements among the countries covered by the Special Rapporteur=s mandate, there is a lack of balance in Special Rapporteur=s reports, notably in his latest report. We hope, however, that this will change, especially after the status of the regional Office of the High Commissioner for Human Rights in Zagreb has been regulated and following the start of the technical cooperation project to be soon agreed between the Croatian Government and her Office.

RETURNEES AND REFUGEES

4. Implicitly criticized in part B. *Returnees and refugees* is the discriminatory way in which the Programme of Return is implemented. The Programme of Return, like the subsequent complementary regulations, was adopted after long negotiations and in cooperation with international organizations, especially in the context of the respect for human rights and non-discrimination of the Croatian Serbs returning or willing to return to Croatia. This Programme unconditionally guarantees all Croatian citizens to return to their homes, and it is carried out in

practice at a rate permitted by the available funds provided from the national budget and with the help of the international community, with due respect for the personal choice of individuals and families concerned. Besides, we find the Report=s approach to the problem of return rather one-sided, focused as it is on the Serbs of Croatian citizenship willing to return, whereas the problems of the Croats, also Croatian citizens, are ignored. It should be noted that all those still having the refugee status in Croatia are under the care of the Croatian authorities in accordance with the Croatian legislation and international conventions.

5. Regarding the part related to the tenancy rights, it was a topic of many discussions with the relevant representatives of the international community. As a legal institute *sui generis* the tenancy right ceased to apply upon expiration of time limits legally set for all Croatian citizens. Considering the specific situation after the end of war operations, the Croatian Government wanted to give a chance to return to all persons willing to do so, and, basically, that was the purpose of the Programme of Return and the ensuing regulations. The persons arrived too late to make use of their earlier tenancy rights can exercise them within the Programme of Return and the appurtenant Mandatory Instructions.

6. As for the concern expressed about the procedure of obtaining the Croatian personal documents, no person has been denied the Croatian citizenship for reasons of discrimination, but for reasons of non-fulfilment of required legal conditions. Each applicant is guaranteed equal and fair procedure as well as court protection. The Law on the Croatian Citizenship defines the conditions for granting the Croatian citizenship in compliance with the European legal standards.

7. The provisions of the Law on the Croatian Citizenship conform with the Convention on

the Abolition of All Forms of Racial Discrimination, especially in respect of its part related to the prevention of creating stateless persons. These provisions are consistently applied in practice.

8. As for the mined areas, a result of war operations during the aggression against Croatia, the Government is putting utmost efforts in implementing its demining programme. However, considering the enormous costs involved in it, without a more significant international aid it will not be possible to solve this problem over a short period of time. That is why the process of safe return has been slowed down in some places and areas.

JUDICIAL PRACTICE

9. As to part C. Judicial Practice it should be pointed out that the Croatian courts act in compliance with the Constitution and current legislation, as well as international treaties which have been incorporated into Croatia=s legal system. Court decisions are independent of any considerations such as race, colour of skin, gender, language, religion, political or other beliefs, national or social origin, property, birth, education, social position or other considerations concerning the parties involved in a procedure. Consequently, courts cannot inappropriately reflect ethno-political factors, as stated in the Report. According to the Constitution the judicial authority is wholly independent. Judges are appointed, revoked or subject to disciplinary proceedings by the State Judicial Council.

10. In order to improve the efficiency of the State Judicial Council, the Ministry of Justice drafted amendments to the Law on the State Judicial Council. Under these amendments the

chairman or a member of the Council could be revoked even before expiry of his/her mandate in case of serious violation of the Constitution or laws of the Republic of Croatia. Also proposed is a new institution of judicial councils at courts. The proposed amendments precisely define disciplinary proceedings and penalties as well as the powers of the bodies conducting disciplinary proceedings. Before its presentation for parliament debate this final draft was sent to the Council of Europe whose experts have positively evaluated it.

In view of the above, we feel that the adoption of the proposed amendments to the Law on the State Judicial Council would in no way lead to a greater control of the judiciary by the executive power, as suggested in the Report, and that these amendments would not affect the independence of the judiciary.

11. Concerning the disciplinary procedure against the former chairman and judge of the Supreme Court Dr. Krunislav Olujiæ, the Croatian Government, based on its powers under Article 23, para. 1, subpara. 3 of the Law on the State Judicial Council, requested the Council on 13 November 1996 to institute disciplinary proceedings against him for serious offences committed under Article 20, para 2, subpara. 6 of the Law on the State Judicial Council. Pursuant to the said Law the Council instituted a procedure against the accused and passed the Decision No. I-DP-2/1966 dated 14 January 1997 dismissing Dr. Krunislav Olujiæ from his duty of chairman and judge of the Supreme Court. Pursuant to Article 20, para. 3 of the Constitution and Article 26 of the Law on the State Judicial Council the defendant in the disciplinary proceedings appealed to the Parliament House of Counties for the protection of legality, i.e., against the said ruling of the Council. On 19 February 1997 the Parliament House of Counties confirmed the Council=s decision to dismiss the plaintiff from his duty of chairman and judge of the Supreme Court and thereby from his duty on the Council.

Following the said decisions by the State Judicial Council and the Parliament House of Counties, Dr. Krunislav Olujiæ, through his attorneys, filed a constitutional complaint of 21 March 1997 with the Constitutional Court which found that the plaintiff=s constitutional rights had been violated and on 17 April 1998 passed its Decision accepting the constitutional complaint and revoking the decisions of both the State Judicial Council and the Parliament House of Counties, whereby the case was returned to the State Judicial Council for a renewed procedure. The renewed procedure was carried out with new evidence produced and the defendant was found guilty and dismissed from the duty of the Supreme Court=s chairman and judge.

12. In order to address the current problems encountered by the judiciary, including the backlog of work, last October the Ministry of Justice submitted a report to the Parliament House of Representatives proposing concrete measures designed to improve the situation and overcome the problems. At its session of 4 December last year the Parliament House of Representatives accepted the Ministry=s report and thereby adopted its proposed measures.

We expect that the implementation of the said measures will create a more favourable climate for the work of the courts and other judicial authorities and enhance their efficiency. During his latest visit to Croatia the Special Rapporteur was briefed in detail on the mentioned reforms.

13. As for the objections in the Report concerning the court fees, it should be noted that under the earlier Law on Court Fees superseded by the subsequent 1995 Law on Court Fees the fees were unreasonably low (e.g. only Kn 6 for filing a criminal suit) to the effect that frivolous suits were piling up. That was the rationale behind the passage of the new Law on Court Fees. However, the Law on Court Fees and the appurtenant Court Fees Tariff provide for even wider

exemptions from the court fees. The beneficiaries are socially vulnerable members of the community. Thus court protection is assured to all categories of citizens. For example, always exempted from the court fees are displaced persons and refugees, holder of welfare cards, war invalids, etc., whereas others can produce evidence and make a declaration of their property status making them unable to pay the court fee. Therefore, the Law is combined with strong social mechanisms. Furthermore, a court can exempt a person from the court fee at its own discretion by taking into account all relevant circumstances, especially the value of the dispute, the number of his/her dependents, his/her income and the income of his/her family members. During the practical application of the Law it was found that the persons listed in Article 16 as eligible for court fee exemption did not include the pensioners receiving additional welfare allowance and being in the same position as persons with the welfare cards, so the amendments to the Law have extended this right to exemption to such pensioners.

Also, by changing some item numbers in the Court Fees Tariff, the court fees in the proceedings involving civil status rights have been reduced. Otherwise the court fees have been reduced by combining the increased ceiling of the dispute value with the same retained amount of the fee or with the reduced amount of the fee. Thus in some cases, like those involving low-value disputes, the court fees have been reduced as much as threefold. On the whole, the introduced changes in the Court Fees Tariff have brought down the fees by about 40% on the average.

14. The objections mentioned in the report that some cases are resolved expediently while others remain unprocessed for a long time and that this indicates external interference - are not founded. Cases are being processed in accordance with the Rules of courts on the basis of their dates of submission. The order of priority is regulated by law (housing, maintenance, labor disputes etc.).

It can be generally said that long duration of court proceedings depends on numerous other factors, like the type and complexity of cases, extensive presentation of evidence in individual cases etc.

15. Concerning the mention of vacancies at courts, note that of a total of 1571 post in the Republic of Croatia, 1277 or 81.3% are being occupied by judges. Due to the lack of interest for certain areas, primarily those devastated during the Serbian aggression against the Republic of Croatia, there is a shortage of candidates, although the Ministry of Justice has repeatedly published advertisements. Note that according to the Constitution and the Courts Act, a judge may not be transferred against his or her will, so we could not cope with this problem by transferring judges. However, since the enaction of the Judicial Wages Act, we have noted a considerably increased interest in the vacant judge posts even in the unattractive areas. Besides, it seems that positive selection of judges will prevail in staffing the courts, because our recent experience shows that more than a hundred candidates have applied for the several vacancies. Such interest should make it possible to select the best candidate for the job.

16. Concerning the allegation that judges have no adequate staff and equipment at their disposal, note that all expenditures are being realized in accordance with the plan for each year, depending on the funds allocated from the budget which are not unlimited. Pursuant to the Courts Act, the Ministry of Justice - which provides material, financial, spatial and other conditions for the operation of courts - does its best in order to provide the best possible conditions to all courts alike.

17. Concerning the allegation that judicial decisions on the repossession of property remain

unenforced for several years despite numerous court orders for eviction and other eviction orders, note that the seizure pursuant to the final court judgements is executed under the Seizure Act. To improve it, Draft Amendments to the Seizure Act and the Bankruptcy Act were prepared and adopted by the Parliament on March 12, 1999.

18. Concerning the allegation that municipal courts in the Croatian Danube region bar the public from their hearings, note that pursuant to Art. 117 of the Constitution of the Republic of Croatia court hearings are public and court judgements are passed publicly in the name of the Republic of Croatia. Public can be barred from the hearings in general or just from one part of the hearings if minors are on trial or for the protection of privacy of the parties, or in marital disputes and proceedings concerning guardianship and adoption, or to keep a military, official or business secret, and for the sake of national security and defense. Openness to public is guaranteed by the aforementioned provisions and the Civil Procedure Act and the Criminal Procedure Act. We believe that nobody can order or instruct any court to bar the public from its hearings, given the autonomy and independence of courts provided by the Constitution and law. However, these allegations also constitute a sweeping judgement, because there is no indication to a specific court and case where the public was barred for no reason.

19. Concerning the cooperation between courts and the representatives of international organizations, the Ministry of Justice does its best - starting from the Memorandum of Understanding signed between the Government of the Republic of Croatia and the OSCE - to make such cooperation as good as possible. We have always emphasized that such cooperation must take place in accordance with the Constitution and law of the Republic of Croatia, particularly taking into consideration the autonomy and independence of courts in the Republic

of Croatia. Such attitude of the Ministry of Justice is contained in the circular letter of January 30, 1998, sent to all presidents of County Courts in regard of the cooperation with OSCE. The Ministry of Justice had a meeting with the representatives of OSCE on June 9, 1998, to discuss cooperation with Mr.Tim Guldimann, head of the OSCE Mission, at which the mutual cooperation was positively valued.

WAR CRIMINALS TRIALS

20. Concerning the war criminals trials, and contrary to the allegation contained in item 48 of the report that despite the fact that the adoption of the General Amnesty Act in 1996 was evaluated as a positive step toward conciliation the ambiguity and uncertainty as to the implementation of the Act continue, and that in the meantime many war crimes cases remain unsolved - we believe that the aforementioned Act is being fully complied with and implemented in the Croatian court practice.

21. According to the information available so far, courts in the Republic of Croatia have issued decisions on terminating criminal prosecution and proceedings in more than 18,000 cases (18,314 by March 1, 1999), 13,575 in the Croatian Danube region alone. In agreement with the representatives of the international community and the Joint Municipal Council in Vukovar, the aforementioned decisions were served to the persons to whom they related.

22. The Croatian side pointed out, on several occasions, the facts which are of relevance in the implementation of the Act, especially the fact that it does not apply to the war crimes and general crimes unrelated to the armed rebellion. Likewise, we noted that this Act is being further

implemented, and that in a number of cases proceedings were at the stage of appeal, that the competent courts are examining each individual case and deciding on the application of the General Amnesty Act.

23. Concerning the allegation of many unresolved war crimes cases, the fact is that the competent judicial bodies, pursuant to a larger number of reported cases, instituted proceedings for war crimes committed during and after the Storm military and police action. Information on their number, content and course may be requested and obtained from the competent courts, as all representatives of the interested international organizations have been instructed to do. Thus, it is not true that perpetrators of crimes during or after the 1995 Storm operation were not prosecuted. Data collected from the County Courts as early as in 1996 already gave clear indication as to the number of cases, their stages and proceedings. Immediately after the Storm operation, 1005 cases were examined, prevailingly against persons of the Croatian origin. According to the most recent data, a total of 2670 cases were opened after the Storm operation, of which 278 are being investigated, 1306 are at the first stage of proceedings, and 1086 cases have been finally completed.

24. Concerning this part of the report, it can only be concluded that there is a lack of knowledge of the way the criminal courts operate in the Republic of Croatia, and that there is by no means any lack of cooperation on the part of the Croatian authorities who are very much interested in settling any disputed issues to mutual satisfaction.

25. Concerning the Šodolovac Group, we note that the Ministry of the Interior proceeded pursuant to a court order and within its legal powers. As we reported earlier, the Osijek-Baranja

Police Department - pursuant to an APB of August 28, 1998 - arrested Vujo Halavanja (born 1953), _eljko Keskenoviæ (1951) and Pero Klièkoviæ (1953) in Šodolovci and brought them in for investigation. After the interrogation, the police was informed that all three were released on August 31, 1998. Concerning the allegation that the main hearing set for September 19, 1999, was postponed, but that a new date has not been set, note that the Ministry of Justice, as a part of the executive branch, has no authority to influence the course of the main hearing in criminal proceedings, or the establishing of guilt and pronouncing sanctions, as representatives of the international community have been informed on several occasions in contacts with the representatives of the Ministry of Justice.

26. Concerning the trial of Goran Vušuroviæ from the Šodolovac Group, note that the defendant Goran Vušuroviæ was convicted of war crime by the final judgment of the County Court in Osijek, and that he is in custody of the court because the Penal Code provides that custody for persons convicted of war crimes is obligatory.

In regard of the legal matter in this case, the competent County Court in Osijek proceeded pursuant to the relevant accusation charge of the County Public Prosecutor's Office in Osijek, while in regard of the custody the provisions of the Criminal Procedure Act have been fully respected, so that in this respect the Ministry of Justice, as a part of the executive branch, has no possibility of intervention in the sense of influencing the court decision on extending the custody. This case is being continuously worked on, and the setting of the date for the hearing in the Vušuroviæ case depends on the military expert witness who is to submit his findings and opinion on the artillery pieces which had been used to shell Đakovo and Osijek. For the expert witness to be able to present relevant and concise findings, delimitation maps from the time of the so-called cease-fire must be procured. These maps are kept at individual ministries, and it will take

some time to obtain them.

27. The allegation that international and local observers of the court proceedings and lawyers (in the so-called Split case) have noticed deficiencies in the application of international standards of fair trial, such as presumption of innocence, the lack of evidence for the alleged offence, and the failure of the court to prove the alleged war crimes as charged, represent meddling with the jurisdiction of the judicial power which in all legal systems, including the legal system of the Republic of Croatia, is the only one authorized to evaluate the quality of the evidence presented. We, therefore, decline the objection that international observers noted a lack of evidence and the failure of the court to prove the alleged war crimes as charged, because nowhere in the world are international observers the ones who are to decide on the guilt of individuals in criminal cases and on the sanctions for criminal offences.

FREEDOM OF EXPRESSION AND INFORMATION

28. In regard of the item E. *Freedom of Expression and Information*, the Croatian Ministry of the Interior has initiated an investigation into the origin of forged and falsified documents on tapping which have appeared in some media. In this regard, the Ministry has brought criminal charges against persons who published documents classified as *state secret*. On several occasions the Ministry of the Interior has replied, in writing, to several queries of MPs on the alleged tapping of journalists, and the Minister of the Interior answered, in both Houses of the Croatian Parliament, on MP=s questions related to this issue.

PERSONAL FREEDOM AND SECURITY

29. As to the item G. *Personal Freedom and Security*, the Ministry of the Interior has adopted a responsible and professional approach to resolving the issue of establishment of legal order and normalization of security on the previously occupied Croatian territories, while respecting and applying all guidelines laid down by international Conventions on the protection of civilians and their property. Disciplinary and penal measures have been taken in all identified cases in which police officials overstepped their authority. Individual incidents do not jeopardize generally favourable state of public order and security in these parts of Croatia where the Croatian police have assumed all necessary safety and administrative functions within their competence.

LABOUR-RELATED RIGHTS

30. In the part H. *Labour-related Rights*, it is emphasized that the reasons for difficulties in running businesses lies in the basic factors such as the war consequences and war damage, as well as problems of transition and adjustment to market economy, and not in protectionist conditions. The Croatian Government has been taking a number of measures for solving the problems related to liquidity in economic and other entities and to rehabilitation of companies in order to make them competitive. It goes without saying that problems with liquidity and difficulties in running business entail problems in paying salaries to employees as creditors. Companies which do not pay salaries for a longer time are actually not working, are inactive and involved in bankruptcy or liquidation procedures. Despite the fact that employees do not receive their salaries when they do not actually work, their social, health and old-age pension insurance rights are not denied them because they are formally employed. They can exercise their right to health care for themselves and their dependants, as well as the right to old-age pension and disability insurance. They can also exercise their right to social welfare benefits as they are not receiving their regular incomes.

31. The laws and the practice in the Republic of Croatia consistently follow the standards of the freedom of association and activity (Convention of the 87th International Labour Organization). It is not true that the Supreme Court has banned a strike organized because of non-payment of salaries. However, in one specific case, the Supreme Court, as court of appeals and not a court whose ruling establishes precedents, has ruled that strike in one Croatian company was illegal on the basis of facts relevant only to this specific case and from which no general conclusions can be made. The right to strike is

defined by the protection of economic and social interests and not of legal issues. According to the Croatian legislation, the right to strike is defined in a very wide sense. Whether a legal issue, such as the issue of salaries regulated by work contract or collective agreement, exceeds the legal framework and becomes an issue of economic and social interest, will be decided by a competent court in each specific case, if the lawfulness of the strike is contested by an appeal to a competent court. All legal remedies were not exhausted in the specific legal matter mentioned in the Report, so it cannot be stated with certainty that the judgement of the competent court would eventually be the same as the Supreme Court=s ruling.

32. Representatives of Union enjoy full protection within their union activities. It is wrong to draw conclusion on the basis of a single, private civil lawsuit on the jeopardized rights of union representatives in matters which do not concern violation of rights of a union representative unless he or she acted within his union activities. Without knowing the facts and the court=s opinion, each allegation on the abuse of a union representative is pure speculation.

33. Allegations that certain provisions of the relevant Agreement between the Government and trade unions are not in force are not true. On the contrary, agreements with trade unions are incorporated in the Government=s policy such as the minimum salary, income tax system, tax allowances for dependants, salaries of national budget beneficiaries etc. In the specific case, it concerns the agreement on the work of courts in labour disputes which was executed in comparison to the organization of Councils for labour disputes, and in comparison to prepared drafts of relevant laws such as the Bankruptcy Act, the

Seizure Act, the Confiscation Act. In relation to the consumer basket, used by the state statistics and trade unions associations, the work of mixed government and union experts on the harmonisation of criteria and standards is underway.

GENDER EQUALITY

34. As to the part I *Gender Equality*, the Croatian Government Commission for issues of equality is pleased with the commendation by the Special Rapporteur as to the national policy for the promotion of equality. Many measures provided by the national policy have been carried out and are producing their first positive results.

35. Considering the protection of privacy guaranteed under para 2 of Article 102 of the Penal Code and realizing that this might have certain consequences in practice, the Commission has entrusted the Ministry of Justice with following the implementation of this provision and to determine whether it has any influence in the practice. It is well known that women are the main victims of sexual abuse and if it is determined that women are thereby in a less favourable position and that there is gender discrimination in practice, certain measures for amending the legislation will be taken, as provided in item 6.a) of the National Policy for the Promotion of Equality.

36. The Croatian Government Commission has made statements on several occasions in relation to the case of sexual abuse at work of Ms Danci Tripalo, the patients and employees of the Clinical Hospital in Split. The Commission has forwarded to the Ministry of Health a request for a speedy examination of the case.

37. Since there are no official statistics on the sexual harassment at work and since this issue should be given more attention, the Commission will, in the forthcoming period, encourage efforts made by several NGOs in raising the level of consciousness of and in combating sexual harassment at work. An elaboration of a new national policy will certainly include this field as well.

38. When adopting the National Policy for the Promotion of Equality, the Croatian Government Commission for equality issues has observed that there is an uneven representation of women in the political and economic life of the Republic of Croatia. Therefore, the National Policy has taken a number of measures for the improvement of the position of women in these fields, and in November 1998 a two-day gathering *Representation of women in the political life of the Republic of Croatia* took place. Addresses by eminent experts in the fields of political, economic and cultural position of women have been included in the brochure to be printed in April 1999.

30 March 1999