



Office for Democratic Institutions and Human Rights

**Information Submitted to the
Office of the United Nations High Commissioner for
Human Rights
as a Stakeholder in the
Universal Periodic Review of the Republic of Croatia**



WARSAW, 15 SEPTEMBER 2014

The following information is submitted by the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR) about an OSCE participating State or Partner for Co-operation under consideration in the Universal Periodic Review process:

Participating/Partner State: Republic of Croatia

UPR Session and Date of Review: 22d Session, April-May 2015

Background

The Republic of Croatia is a participating State of the Organization for Security and Co-operation in Europe (OSCE) and has thus undertaken and has recently reaffirmed a wide range of political commitments in the “human dimension” of security as outlined in relevant OSCE documents.¹ The OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) has been mandated by OSCE participating States, including the Republic of Croatia, to assist them in implementing their human dimension commitments. OSCE/ODIHR assistance includes election observation and assessment activities as well as monitoring and providing assessments, advice and recommendations relating to implementation of commitments in the fields of human rights, democracy, tolerance and non-discrimination, and the situation of Roma and Sinti in the OSCE area. The present submission provides publicly available country-specific information that may assist participants in the Universal Periodic Review process in assessing the situation in the Republic of Croatia and its implementation of past recommendations, as well as to formulate new recommendations that may be relevant to enhancing the enjoyment of human rights and fundamental freedoms.

Election-related activities

Presidential Election, 27 December 2009 and 10 January 2010: Following an invitation from the Croatian authorities and based on the findings and conclusions of the OSCE/ODIHR Needs Assessment Mission (NAM) conducted in Zagreb from 2 to 4 November 2009, the OSCE/ODIHR deployed a Limited Election Observation Mission (LEOM) on 8 December 2009 to observe the 27 December 2009 presidential election. The OSCE/ODIHR LEOM was headed by Ambassador Daan Everts of the Netherlands and consisted of a 10 core team experts based in Zagreb and 12 long-term observers deployed throughout the country.

The final report concluded that: “The presidential election complied overall with OSCE commitments and other international standards for democratic elections as well as with national legislation. The election underscored recent efforts by the election administration and other state institutions involved in improving the electoral process. Election stakeholders expressed a considerable degree of confidence in the integrity of the process. Continued efforts, however, are necessary to address remaining issues. These include consolidating and harmonizing the legal framework, advancing institutional reform of the election administration, pursuing the update of the voter register, and promoting better awareness among voters and candidates of the key elements of the electoral process.” See the full report and recommendations at: <http://www.osce.org/odihr/elections/67596>

¹ Compendium of OSCE Human Dimension Commitments, vol 1 and 2; Astana Commemorative Declaration, 2010.

Parliamentary Elections, 4 December 2011: Following an invitation from the Ministry of Foreign Affairs and European Integration of Croatia to observe the 4 December 2011 parliamentary elections and based on the recommendations of the NAM conducted in Zagreb from 21 to 23 September 2011, the OSCE/ODIHR deployed an LEOM on 9 November 2011 to observe the 4 December 2011 parliamentary elections. The OSCE/ODIHR LEOM was headed by Ambassador Geert-Hinrich Ahrens of Germany and consisted of 10 core team experts based in Zagreb and 6 long-term observers deployed to three locations.

The LEOM's final report concluded that: "The parliamentary elections took place in a pluralistic environment and were administered in an efficient and transparent manner. While most aspects of the electoral process enjoyed a high degree of public confidence, further steps should be taken to improve the process, in particular with regards to the legal framework and the compilation of voter lists." See the report at <http://www.osce.org/odihr/87655>

Legislation reviewed by ODIHR

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Tolerance and non-discrimination issues, including incidents of and responses to hate crime

OSCE participating States have made a number of commitments to promote tolerance and non-discrimination and specifically to combat hate crime, and the OSCE/ODIHR supports states in their implementation of those commitments. In this context, the OSCE/ODIHR produces an annual report on hate crime – *Incidents and Responses* – to highlight the prevalence of hate crimes and good practices that participating States and civil society have adopted to tackle them. It also helps participating States to design and draft legislation that effectively addresses hate crimes; provides training that builds the capacity of participating States' criminal justice systems and the law-enforcement officials, prosecutors and judges that staff them; raises awareness of hate crimes among governmental officials, civil society and international organizations; and supports the efforts of civil society to monitor and report hate crimes.

The report relies mainly on information and statistics provided by governments, since such data collection is primarily the responsibility of states, as is the responsibility to respond to hate crimes. As of 2012, 55 of the 57 OSCE participating States had appointed National Points of Contact on Combating Hate Crimes, to support ODIHR in its task of serving "as a collection point for information and statistics collected by participating States". The bulk of information for the report was gathered through the completion of an online questionnaire by National Points of Contact. The questionnaire for 2012 contained questions about the following areas: data-collection methods; legislation; reported hate crime data; and policies and initiatives.

Information concerning Croatia in the most recent edition of the annual hate crimes report covering 2012 (<http://tandis.odihr.pl/hcr2012/>) includes the following:

- Croatia's hate crime laws are a combination of a general penalty-enhancement provision and penalty-enhancement provisions for specific offences. Croatia's Criminal Code also includes a statutory definition of hate crime.
- Hate crime data are collected by the Ministry of Interior, the Prosecutor's Office, the Ministry of Justice and the Office for Human Rights and Rights of National Minorities.
- Hate crime data are not published.
- Croatia regularly reports hate crime data to ODIHR. Croatia's reports fail to separate the incitement to hatred and criminal discrimination cases from hate crimes.
- In 2012, Croatia did not report any hate crimes <http://hatecrime.osce.org/croatia>

In 2012, ODIHR trained Croatian police as part of its Training Against Hate Crimes for Law Enforcement (TAHCLE) programme.

Roma and Sinti issues

The OSCE/ODIHR has a specific mandate to assist participating States in implementing the OSCE Action Plan for Improving the Situation of Roma and Sinti within the OSCE Area (<http://www.osce.org/odihr/17554>). A Status Report on implementation of the Action Plan was issued by ODIHR in 2013 (<http://www.osce.org/odihr/107406>). The Report included the following information about the situation of Roma and Sinti in Croatia: The report notes that in the judgment of *Oršuš and Others v Croatia*, from March 2010, the ECtHR found the violation of Article 14 and Article 2 of Protocol No. 1, together with Articles 6 & 1 (the right to a fair trial within a reasonable time). The Court found the placement of the Roma pupils, at times, into Roma-only classes during their primary education had not been justified (the segregation of the Roma children into separate classes had ostensibly been based on their language skills), holding that adequate safeguards had not been put in place at that time to ensure sufficient care for the applicants' special needs as members of a disadvantaged and vulnerable minority.

Country-specific ODIHR monitoring, assessment, co-operation and assistance activities (other than elections)

Freedom of Peaceful Assembly: The ODIHR report "Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States" (<http://www.osce.org/odihr/97055>) presents the findings of the monitoring of public events undertaken by ODIHR in selected OSCE participating States, including Croatia, between May 2011 and June 2012 in line with ODIHR's mandate to support participating States in the implementation of their commitments on freedom of peaceful assembly. The main goal of the monitoring was to identify gaps and challenges, as well as examples of good practices, in how participating States meet their commitments on freedom of peaceful assembly. OSCE participating States are committed to guaranteeing freedom of peaceful assembly to every individual without discrimination (Copenhagen 1990, Paris 1990).

In line with their OSCE commitments, Croatia facilitated ODIHR's assembly monitoring mission by providing access to assembly locations and official interlocutors, as well as supplying additional information when requested. In Croatia, ODIHR monitors observed the 2012 Split Pride event, which took place on 9 June 2012. The 2011 Split Pride event, which had been the first organized in this Croatian city, had been characterized by a large presence of counter-protesters, many of them violent, who reportedly threw rocks and other objects at participants in the Pride event and others. In advance of the 2012 Split Pride event, there were concerns about potential security problems caused by violent counter-demonstrators.

In Split the competent authorities had to take into account the violent incidents that had taken place during the previous Split Pride event in 2011, as well as the calls for violence by certain extremist groups in advance of the 2012 Pride parade. For this reason, their cautious approach in maintaining distance between Pride participants and counter-protesters, observed by ODIHR, may have been justified. However, while this may not have been possible to achieve following the incidents in 2011, the ultimate goal for similar events in the future should be to accommodate peaceful assemblies and counter-demonstrations within sight and sound of each other in those cases where the latter are not intended to prevent the other assembly from taking place.

In relation to the legal framework regulating assemblies in Croatia, the Croatian Law on Public Assembly appears to give shared responsibility to organizers and the police authorities to maintain order during an assembly. Article 16.1 places an obligation on the organizers to ensure that peace and order are maintained during assemblies, while Article 16.4 gives responsibility to the police authorities to maintain public peace and order within and outside the location where the assembly is taking place. In addition, organizers have a duty to ensure the presence of a sufficient number of assembly stewards. According to the Croatian Law on Public Assembly, assembly stewards have a duty, inter alia, to protect assembly participants and property and to detain and immediately transfer into the police custody any assembly participants or others carrying weapons or who are responsible for grave breaches of peace and order. Notably, assembly stewards are prohibited from carrying weapons.

It is a matter of concern that provisions in Croatia appear to partly shift the responsibility of maintaining order during the assembly to its organizers and to assembly stewards. Croatian law appears to delegate official powers and responsibilities to assembly stewards that go beyond their proper role as facilitators and that should rather be assigned to law enforcement officials. Provisions in Croatian law that give assembly stewards the responsibility to maintain peace and order and to (albeit briefly) detain individuals are in conflict with the principle that it is a central responsibility of the State to maintain public order. Moreover, legislation requiring organizers to ensure the presence of stewards during assemblies could result in the imposition of disproportionate restrictions on assemblies.

Croatia as a targeted jurisdiction of the War Crimes Justice Project Phases I and II: During the reporting period 2011-2015, ODIHR completed Phase I of the War Crimes Justice Project (WCJP), in partnership with the International Criminal Tribunal for the former Yugoslavia (ICTY), the United Nations Interregional Crime and Justice Research Institute, and the OSCE field operations in the Western Balkans. The project aimed to enhance sustainable peace and security in the countries of the former Yugoslavia, including Bosnia and Herzegovina, to end impunity and deliver justice to victims of the 1990's conflict. Specifically, the project contributed to enhancing the capacity of the institutions for prosecuting and adjudicating war crimes cases facilitated exchange of experience between justice actors from the region and the ICTY; transferred relevant material from the ICTY to the region; and fostered regional cooperation between legal professionals.

While the project contributed to advancing the capacity of domestic justice systems to process serious violations of international criminal law, gaps still remained unaddressed at the time the project ended in October 2011. Based on the continuing needs of justice actors and to build on the progress to date, ODIHR, in co-operation with relevant OSCE field operations, developed a follow-up project that aims at further supporting the jurisdictions and legal professionals of the countries to enhance their capacity to process war crimes cases. The WCJP Phase II, which started with implementation in July 2012, builds on some of the major

achievements of the WCJP Phase I and further strengthens the institutional capacity of training institutions and other legal practitioners, through regional peer-to-peer meetings gathering justice actors from the entire region and targeted training based on expertise and curriculums developed under Phase I of the project. See for instance the latest WCJP II activities: <http://www.osce.org/odihr/108426>; <http://www.osce.org/odihr/102186>; <http://www.osce.org/bih/118777>.

Representatives of the Croatian judiciary and prosecution services and Croatian defence lawyers handling war crimes cases participated in Phase II's regional activities, which included three regional peer-to-peer meetings in 2013 (for judges in November in Sarajevo, for defence counsel in April in Podgorica and for witness support providers in June in Skopje) and the international conference "The role of national jurisdictions in implementation of international humanitarian law – law and practice" organized by OSCE/ODIHR jointly with the ICRC in Sarajevo in May 2014. During the latter, latest developments in Croatian legislation regarding the status of war crimes victims were discussed. Croatian civil society welcomed the signature of legal cooperation mechanisms for the prosecution of war crimes between Croatia and Serbia and Bosnia-Herzegovina in 2013 and draft legislation aiming to provide support to victims of sexual violence in war time. Yet, the non-extradition of nationals for the prosecution of war crimes abroad remains a serious challenge for victims' right to justice in Croatia.

Other assessments and recommendations contained in ODIHR reports on thematic human issues

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