



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Ninety-seventh session

#### Summary record of the 2661st meeting

Held at the Palais Wilson, Geneva, on Wednesday, 14 October 2009, at 3 p.m.

*Chairperson:* Mr. Iwasawa

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*The meeting was called to order at 3.05 p.m.*

**Consideration of reports submitted by States parties under article 40 of the Covenant**  
(continued)

*Second periodic report of Croatia (CCPR/C/HRV/2; CCPR/C/HRV/Q/2 and Add.1; HRI/CORE/1/Add.32/Rev.1)*

1. *At the invitation of the Chairperson, the members of the delegation of Croatia took places at the Committee table.*
2. **Mr. Turkalj** (Croatia), introducing the second periodic report of Croatia (CCPR/C/HRV/2), said that in the decade since submitting its initial report to the Committee, his country had undergone rapid change, owing in large part to the process of accession to the European Union (EU). Accession negotiations with the EU had begun in 2005, the whole process serving to expedite all the reforms the country was attempting to make, particularly those targeting human rights. The Covenant and the Committee's concluding observations on the initial report had proved invaluable in improving the human rights situation and had been widely disseminated. The Covenant had been incorporated into the Constitution and other domestic legislation. Judges and prosecutors had been given training on the rights enshrined in the Covenant, which had recently been directly invoked before the Supreme Court and the Constitutional Court. Croatia was a stable democracy and had free parliamentary elections. There had been a smooth transfer of power between political parties, which had facilitated the reform process.
3. The return of refugees was a top priority for his Government, which had taken several measures in that regard. The housing programme for displaced tenancy holders should be concluded in 2010. Far from discriminating against the Serbian community in that programme, the Government had requested assistance from two Serbian NGOs and UNHCR to identify Serbs now living in Serbia who were eligible to submit applications. Plans to ensure the transferability of pension rights were in the final stages. Such issues had become technical rather than political, and were coordinated by the Deputy Prime Minister.
4. Significant progress had been made in achieving conciliation between Croatian citizens. Several minorities were represented in the government coalition, the Deputy Prime Minister was a member of the Serbian Democratic Party, and there were many minority representatives in high-level positions throughout the Administration. The constitutional legislation on the protection of minorities was an excellent example of minority rights. In 2008, the Government had set up an action plan, in cooperation with representatives of minority groups, to ensure that all legislative provisions were properly implemented. The Office for National Minorities, the Council for National Minorities and the eight members of parliament from minority groups ensured that minority interests were effectively enunciated and problems solved.
5. According to official statistics, there were some 9,000 members of the Roma community in Croatia; more realistic estimates put the figure at some 30,000. The Government continued to place great emphasis on improving the situation of the Roma community, as illustrated by the fact that the Prime Minister herself chaired the commission for monitoring the implementation of the national programme for the Roma. In recent years, the budget allocation for assistance to the Roma had increased by over 600 per cent, with programmes focusing on health, education and housing. The first Croatian-Romany language dictionary had been published and there was now a Roma member of parliament. While no direct reference to the Roma was currently included in the Constitution, that was the case for all but six national minorities which were named in the text. The Government nonetheless recognized 22 minorities, including the Roma, who were included in the Constitution by the reference to "other" national minorities. A proposal had been made

during the recent debate on possible constitutional amendments to include all 22 minorities by name; the debate would be concluded at the end of 2009. Legislative amendments in 2006 had introduced hate crimes into the Criminal Code. The police had been instructed to collect data on attacks against members of national minorities, which had proved to be unrelated incidents usually perpetrated by juveniles.

6. In 2005, judicial reform had begun. The backlog of cases had been halved between 2004 and 2008. The judicial academy had been set up in 2004 and would become an independent institution responsible for the initial and ongoing training of members of the judiciary. A system of comprehensive legal aid had been introduced in February 2009 in order to ensure that all citizens had access to justice.

7. The Government hoped to finalize consideration of all remaining war crimes issues in 2009. In conjunction with the international community, unresolved problems in that regard had been identified and solutions sought. Several reports to the Committee from NGOs focused on war crimes, but did not take account of developments in 2008 and 2009. One of the most important issues that had been tackled during that time had been witness protection, for which amendments had been made to the Criminal Code and the Criminal Procedure Act. In order to encourage witnesses to testify, the use of video links had increased so that those living abroad did not have to return to Croatia for court appearances. The Government had recognized that in the early 1990s, the defence in some war crimes cases had been inadequate. It had taken steps to train prosecutors and ensure that they applied impartial standards, and had reviewed all judgements that had been rendered in absentia. A total of 17 cases had been identified for retrial, which was proceeding. Those involved in trials who were living abroad would not be required to appear before the court in person. The Government was cooperating fully with the International Criminal Tribunal for the former Yugoslavia (ICTY), complying with all requests for suspects and missing documentation.

8. Comprehensive anti-discrimination legislation had been adopted in July 2008. National plans on human rights, non-discrimination and gender equality had also been adopted. Many women occupied leading political positions, including the current Prime Minister, and also held senior judicial posts.

9. **Mr. O'Flaherty** commended the progress made in the human rights situation in the State party in recent years and welcomed the valuable input of civil society to the work of the Committee. Exceptionally, he sought the preliminary views of the delegation on the Committee's findings in the case of *Vojnović v. Croatia*, examined slightly less than six months earlier under the Optional Protocol to the Covenant. The Committee had deemed that there had been a violation of article 2 of the Covenant in conjunction with article 17.

10. He requested details of legal cases in which the Covenant had been invoked. Although the State party provided training for lawyers and judges, it focused on European standards, which differed from those of the Covenant, and he asked if specific training on the Covenant was planned. Referring to amendments to the Constitution, he enquired whether article 15 thereof compromised the principle of universal non-discrimination enshrined in article 14, and whether article 44 was incompatible with the Covenant insofar as it appeared to restrict access to public services to Croatian citizens.

11. While acknowledging the State party's efforts to improve conditions for Roma people, he sought confirmation that, even if the Constitution were not specifically amended to include the Roma as a minority group, the list of those recognized would not be made exclusive. He asked to what extent vulnerable groups such as the Roma participated in initiatives to improve their situation, and enquired about the presence of Roma in parliament and at the highest levels of public service and positive measures being taken in

that regard. What had been achieved in practice to ensure that education was provided to Roma children on an equal footing with other groups?

12. He expressed concern that the provisions of the Constitution on the proclamation of a state of emergency were incompatible with those of the Covenant, and in that regard queried the State party's interpretation of the relationship between articles 16 and 17 of the Constitution. Similarly, to justify the absence of certain provisions from the Constitution on the grounds that they were included in subordinate criminal legislation was unconvincing from the standpoint of constitutional law.

13. Earlier that day, he had received photographic evidence suggesting that the practice of restraining children in cage or net beds in mental health detention facilities, which the Committee had repeatedly considered to constitute cruel, inhuman or degrading treatment, was widespread. What would the State party do to eliminate such a violation of the Covenant? Drawing attention to reports that individuals had been locked up or given compulsory medical treatment to "cure" them of being gay, despite the decriminalization of homosexuality, he asked whether the Government was aware of any such cases and, if so, what action it was taking.

14. **Ms. Keller** asked whether the new Anti-Discrimination Act included protection from, and remedies for, discrimination in the private sector and enquired about the number, nature and outcome of any claims brought under that legislation. She requested details of any prosecutions under the Criminal Code for acts of discrimination and an explanation as to why incidents apparently motivated by anti-Serb discrimination had been prosecuted as minor offences, rather than under specific provisions of the Criminal Code. What measures were being taken to ensure that the police and local authorities responded promptly and appropriately to incidents with an ethnic dimension? She asked whether the Labour Code provided remedies for victims of discrimination in the workplace and whether current legislation still gave priority to those who had served in the Croatian armed forces during the war in obtaining employment in public services and enterprises exclusively or predominantly owned by the State. She also requested further details on the national anti-discrimination programme referred to in paragraph 14 of the State party's written replies.

15. With regard to discrimination against members of the Serbian minority, particularly in terms of tenancy rights, she asked what activities were prescribed by the action plan for the accelerated completion of housing of refugees within and outside areas of special State concern. She also asked whether the action plan would expedite the process of issuing first-instance decisions on reconstruction applications for post-war damage to property, expedite the appeal procedure when first-instance decisions on such reconstruction applications were negative, expedite decisions on applications by former tenancy rights-holders for housing in areas of special State concern, and result in amendments to the priority list governing the provision of housing in those areas so that former tenancy rights-holders would be accorded the same status as other groups. What was being done to restore the lost tenancy rights of Croatian Serbs forced to flee during the war?

16. She requested examples of how the State party's courts were applying the definition of hate crime contained in the Criminal Code. With regard to the Amnesty Law referred to in the written reply to question 11, she requested clarification of its provisions and scope, together with statistical data on the number of amnesties granted. She also asked for clarification of the criterion for beginning a criminal proceeding against a person suspected of a war crime, described in paragraph 96 of the written replies, and queried whether it was too strict to be applied at an early stage of proceedings.

17. **Ms. Majodina** requested further information on the results of special measures taken to promote gender equality and on the status of women in the private sector, in the light of NGO reports that women, especially those of childbearing age, often faced

discrimination in obtaining employment and that stereotypes of women as reproductive vehicles abounded, notably within the education system. In addition to taking legislative measures to eliminate discrimination, what was the Government doing to challenge discrimination and stereotypes in practice? She also drew attention to NGO reports that the criminal justice system did not protect women from violence because victims, sceptical of the system's effectiveness, often failed to report incidents. She suggested that insufficient training on gender awareness was being provided to police officers responsible for dealing with such offences, the majority of whom were male.

18. **Ms. Wedgwood**, having made reference to her past experience of working alongside citizens of the State party and her work in the International Criminal Tribunal for the former Yugoslavia, said that that experience had convinced her that reluctance on the part of Governments to release information could work to their own detriment, while a cooperative and forthcoming approach could be beneficial for all concerned.

19. She asked if Croatia had any lustration procedure, for example, for removing national and local officials suspected of involvement in unsavoury wartime activities from their posts. Members of minorities would be discouraged from returning to their homes if they found that, for example, a police chief who had been involved in ethnic cleansing at the time when they had fled was still in a senior post in their town or locality when they returned.

20. She recommended that the State party should adopt a general suspension of the statute of limitations, such as existed for war crimes, for all homicides and serious physical crimes committed during wartime. Such a suspension would be wise in order to allow more time to determine whether wartime crimes could be prosecuted and should indeed be classified as war crimes. She drew attention to a number of killings alleged to have taken place in Sisak, of which only one had led to prosecution. Action by the State party on the matter at the present time could avert the need for an international historical review commission to take it up in the future.

21. She took note of the information in paragraph 99 of the written replies that, of the 630 persons convicted of war crimes in the State party, 465 had been convicted in absentia. It was her understanding that the contumacious nature of those in absentia convictions meant that they were provisional, and that if the convicted person returned to the country the case would automatically be reopened. She therefore questioned why it was necessary to renew such proceedings with a view to vacating the convictions, as described in paragraph 100 of the written replies, when the convicted parties had not returned to the country. To do so would seem to send an unwelcoming message to potential returning minorities.

22. In connection with paragraph 101 of the replies, she failed to understand why no particular statistics were available on the number of prosecutions conducted before the special war crimes chambers. She requested that such statistics be provided promptly.

23. In relation to the difference of opinion, referred to in paragraph 107 of the replies, between the State party's military experts and the Office of the Prosecutor of the International Criminal Tribunal for the former Yugoslavia concerning the case of Ante Gotovina, she asked whether the State party had considered employing international experts, who could operate under attorney-client privilege, to take part in document searches. In her view, to do so would considerably raise the level of confidence in the conclusions of such searches.

24. Noting the importance of symbolism in the State party's region, where the situation was still fraught, she drew the delegation's attention to the possible undesirable consequences of visits by prominent officials to Croatian prisoners on trial for war crimes in The Hague.

25. In view of the problems relating to intimidation of witnesses encountered in a number of war crimes prosecutions against Croatian citizens, she asked what provision had been made for witness protection and whether it allowed the option of relocation outside the country. With regard to the events of the Medak Pocket, which had led to the prosecution of two Croatian generals in connection with torture, murder and indiscriminate artillery attacks, she asked why one of those generals, Rahim Ademi, had been acquitted and the other, Mirko Norac, had received a sentence of just seven years. In relation to the war crimes case against Branimir Glavaš, she understood that the identities of protected witnesses had been revealed, leading to their intimidation and endangerment; she asked how that had happened and what was being done to prevent similar occurrences in future. Apart from its consequences for war crimes cases, intimidation of witnesses was itself a serious crime. In that connection she drew attention to the death threats received by a journalist who had been covering the Glavaš case.

26. It was her understanding that approximately half of the returns of Serbian refugees to the State party had been merely pro forma: after a visit to the homes from which they had fled in Croatia, they had gone back to Serbia or the Republika Srpska. She asked what programmes the State party was undertaking to protect returnees and suggested that such programmes should include the deployment of federal police to ensure the safety of returning Serbs in the towns in Krajina where they were mostly concentrated. She was also concerned at the difficulties faced by returnees trying to reclaim tenancy rights and farmland.

27. **Mr. Thelin** said that his own experience of the region went back to 1997 and he had served as a judge in a number of the region's war crimes tribunals. He welcomed the great progress made by the State party over the preceding 10 years and acknowledged the difficult task it faced in healing the wounds of war. He also welcomed the efforts it had made to join the EU, since the accession process put pressure on the Government to ensure that human rights issues were addressed honestly and forcefully.

28. With reference to question 12 of the list of issues, he expressed concern at reports that prosecutions of crimes committed against Croatian Serbs resulted in convictions disproportionately less often than those committed against Croatians. He requested further evidence from the State party to address the concerns regarding that issue and stressed that the same crime must always carry the same sentence.

29. He took note that, according to paragraph 97 of the written replies, among persons prosecuted for war crimes in the State party, 630 had been convicted and 550 had either been acquitted or had their cases dismissed. He requested a further breakdown of those statistics indicating how many cases from the latter category corresponded to acquittals and how many to dismissals on technical or other grounds. He also requested a further statistical breakdown of the acquittals and dismissals, indicating how many of those cases had been against Croatians and how many against Croatian Serbs. He would welcome a comprehensive study, conducted by an independent body, of all war crimes convictions so as to be able to determine whether there was any bias.

30. In view of the small number of cases brought before the State party's special war crimes chambers in recent years, he would appreciate confirmation that the chief State prosecutor was free of any political ties and able to make decisions without being subject to political influence.

31. He noted that the Glavaš case had been brought to a close in May 2009 by a conviction in the special war crimes chambers, but that the sentence could not be enforced since Mr. Glavaš had left the country. He asked what measures the Government was taking to bring Mr. Glavaš back to Croatia to serve his sentence.

32. **Mr. Pérez Sánchez-Cerro** took note of the State party's efforts to meet EU human rights standards and of the fact that it was a signatory of the most important human rights treaties. He encouraged the Government to also ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

33. He understood that, while the current Constitution did not specifically recognize minorities, a reform process was under way and would change that situation. He suggested that, as part of the same process, there should also be a reform of the Criminal Code to incorporate measures against racism, discrimination and intolerance, and that efforts should be made to disseminate awareness among the judiciary, the police and the general public of the importance of tackling those problems.

34. He congratulated the State party on the reported halving of the backlog of court cases, which had caused considerable problems for the administration of justice. He believed that that backlog might be linked to a lack of specific training for judges in issues of human rights protection, racism and intolerance. He recommended that special training programmes, independent of the judicial academy, should be organized in that connection for all those involved in the judicial system. He welcomed the numerous ongoing reviews of convictions that had been reached in absentia, which infringed the right to a defence.

35. He expressed grave concern regarding the manner in which some children had been treated in mental health detention facilities in Croatia. He called upon the Government to follow the example of other countries, such as the Czech Republic, in abandoning such practices.

*The meeting was suspended at 5 p.m. and resumed at 5.20 p.m.*

36. **Mr. Turkalj** (Croatia) said that refugees were indeed returning to his country and expressed the view that there was no need for the use of special federal police units to ensure their safety since the rule of law was fully established in Croatia. Crimes against returning refugees were few in number and the police had responded promptly in each case. The level of representation of Croatian Serbs in police forces had been increased; in Vukovar and Eastern Slavonia, for example, it was even higher than the proportion of Serbs in the population as a whole.

37. **Ms. Radić** (Croatia), responding to the question about the individual communication submitted to the Committee by Mr. Vojnović, a holder of tenancy rights in Croatia, said that the complainant had failed to exhaust domestic remedies. On receiving his housing application in Croatia, the authorities had recognized his right to accommodation in January 2009 and had provided him with an apartment in Zagreb. The Committee would shortly receive her Government's official response to its Views.

38. The Government was according top priority to issues pertaining to the return of refugees. Its efforts to date had been acknowledged by numerous international organizations, most recently the European Commission. The last group of refugees whose return had not yet been arranged were holders of tenancy rights in the former Yugoslavia. To facilitate their return, the Government had set up the housing programme for former holders of tenancy rights within and outside areas of special State concern. It had also enacted legislation and adopted appropriate rules and regulations, and also the action plan for the accelerated completion of housing within and outside areas of special State concern for refugees – former holders of tenancy rights. By the end of 2008 positive decisions had been taken on 5,000 cases involving former holders of tenancy rights. Cases decided after that date would come under the 2010 housing programme. To date, roughly 63 per cent of the 5,000 rights holders had been provided with an apartment in Croatia. The target figures had been achieved in 2007 and 2008, but the target of 1,200 families for 2009 had not been met on account of the economic recession. Some 2,000 apartments were currently under reconstruction. The housing programme, which had been launched prior to 2007, had so far

provided housing for 6,500 families. By the end of 2010, it was planned to house 8,300 families.

39. A total of 8,300 appeals concerning reconstruction had been filed, but only about 5,000 related to reconstruction as such. The others would be dealt with under a different heading. The number of lawyers working on the cases had been increased from 5 to 15 in September 2008 and the number of cases had been reduced by 3,500 since then. It was hoped to clear the backlog in the near future and to complete the reconstruction programme. More than 146,000 houses had been rebuilt to date. Some were owned by ethnic Croatians and others by members of the Serb minority. One organization that supported tenancy rights had brought an action against Croatia at the European Court of Human Rights. Croatia had challenged the allegations, pointing out that no lawyer from the former Socialist Republic of Croatia had treated tenancy rights as property rights. They were characterized as leases under classical civil law. The authorities were currently providing returnees to Croatia with something comparable to a lease, for which they paid a symbolic sum, equivalent to about one third of a euro. They thus enjoyed similar conditions to those prevailing in 1991. The same applied to persons whose property had been nationalized under the communist regime.

40. The issue of compensation for loss of tenancy rights also arose in the case of refugees who did not wish to return to Croatia. Talks had recently been initiated with Serbia on the subject and a technical meeting was envisaged to establish the exact number of refugees involved. Serbia had been citing a figure of between 70,000 and 80,000 for several years, but UNHCR had recently reported that some 25,000 persons were registered both as refugees in Serbia and as returnees in Croatia.

41. **Mr. Turkalj** (Croatia) said that the Covenant was taught as part of the regular curriculum at every law school in Croatia. The training programme for civil servants also included a section on international treaties. The Committee's concluding observations would be published on the website of the Ministry of Justice and included in the 2010 curriculum of the judicial academy.

42. **Ms. Demser** (Croatia) said that she had so far identified three court judgements in which the Covenant or other international treaties had been invoked. The first was a Supreme Court judgement of April 2008 dismissing an appeal on the ground that article 17 of the Covenant prohibited arbitrary or unlawful interference with a person's privacy, family and correspondence as well as unlawful attacks on his or her honour and reputation. The Court had stated that international treaties formed part of the legal system and prevailed over domestic law.

43. Two other Supreme Court rulings in which international treaties had been invoked dated from 1999. In one case the Court had granted an appeal by the Public Prosecutor's Office against a county court judgement, quashing the first-instance judgement and referring it back to the court concerned for a retrial. The Court had declared in its reasoning that the interpretation of the facts of the case by the first-instance court had been erroneous and that a war crime had indeed been committed against the civilian population, citing, in particular, an article from the European Convention on Human Rights prohibiting unlawful deprivation of liberty. The second judgement had involved the granting of a constitutional complaint on the ground that articles 2, 14, 18, 19, 25 and 26 of the Covenant had been violated.

44. **Mr. Turkalj** (Croatia), responding to the question whether the granting of special rights to minorities might entail discrimination against other members of the population, said Croatia's political position was that affirmative action must be taken in support of minorities.



45. With regard to the participation of the Roma national minority in political decision-making, the Commission for Roma was composed of representatives of relevant ministries and of the Roma community and was chaired by the Prime Minister. The Commission discussed all issues of relevance to the community, including health care, development of Roma settlements and education. The Commission visited the settlements once every three months. The Roma community thus had access to a direct channel for the enunciation of their problems and the identification of solutions.

46. Other relevant institutions were the Office for National Minorities, a governmental body, and the Council for National Minorities, whose members were elected by members of national minorities. A member of the Roma community had been elected to the Croatian parliament in the most recent elections.

47. **Ms. Siklić-Odak** (Croatia) said that members of the Roma community and of other national minorities enjoyed a constitutionally-guaranteed right to representation in State bodies. They were also entitled to representation in municipal bodies in towns where they accounted for at least 15 per cent of the population and in local bodies in counties where they made up 5 per cent of the population. The Government kept comprehensive records of public-sector employment of national minorities and adopted an annual employment plan. They accounted for 4.13 per cent of the total number of employees. Although the numbers were increasing, the rise in general unemployment had adversely affected recent trends. Moreover, according to the figures for 2008, the number of candidates had fallen short of that required. As a result, very few members of the Roma community were employed in the civil service and administrative bodies at the local and regional levels. With a view to encouraging candidates from minorities to apply for posts, information was regularly posted on the website of the Ministry of Administration and prospective candidates were reminded of the entitlement of members of national minorities to be admitted to the civil service, on condition, of course, that they met the requirements for the post concerned.

48. **Ms. Jakir** (Croatia) said that action in support of education for members of the Roma national minority formed part of the Government's comprehensive policy of social integration. The policy covered the entire spectrum of education from kindergarten to university. Although preschool education was not mandatory, the State allocated budgetary funds to local communities to provide preschool education for Roma children with a view to ensuring their full integration. The number of Roma children enrolled in elementary education had tripled to 3,940. They were entitled to grants for high school and university education. One of the top priorities was to reduce the dropout ratio through active involvement with families and communities.

49. **Mr. Socanać** (Croatia), referring to the Committee's concluding observations on Croatia's previous report, in which it had stated that article 17 of the Constitution relating to states of emergency was not entirely compatible with the requirements of article 4 of the Covenant in that the constitutional grounds justifying a derogation were broader than the "threat to the life of the nation" mentioned in article 4, said that article 17 of the Constitution stipulated that individual rights and liberties could be restricted in three cases: war, an immediate threat to the independence and unity of the State, and a major natural disaster. Article 16 (2) of the Constitution stated that any such restriction must be proportionate to the circumstances of each case.

50. With regard to the Committee's concern that non-derogable rights did not seem to include the rights under articles 8 (1 and 2), 11 and 16 of the Covenant, he emphasized that any violation of those rights would be treated as a criminal offence and would be punishable even in a state of emergency. Regulations in Croatia could not be invoked in support of a derogation from constitutional provisions. Article 100 (2) of the Constitution authorized the President, on a proposal by the Prime Minister, to adopt regulations with the force of law, but article 100 (3) stipulated that all such regulations must be ratified by

parliament as soon as possible. The relationship between articles 16 and 17 of the Constitution would be discussed by a working group that had been established to consider institutional reforms.

*The meeting rose at 6 p.m.*