

CROATIA

CESCR E/2002/22 (2001)

884. The Committee considered the initial report of Croatia on the implementation of the Covenant (E/1990/5/Add.46) at its 69th to 71st meetings, held on 19 and 20 November 2001, and adopted, at its 83rd and 84th meetings, held on 28 November 2001, the following concluding observations.

A. Introduction

885. The Committee welcomes the initial report of the State party, which was prepared in conformity with the Committee's guidelines.

886. The Committee notes with appreciation the high quality of the written and oral replies given by the State party, as well as the open nature of the constructive dialogue with the delegation, which included senior experts. It welcomes the willingness of the delegation to provide further information in writing in response to those questions that could not be answered during the dialogue.

B. Positive aspects

887. The Committee welcomes the succession of the State party to the six major international human rights treaties, including the Covenant, and the fundamental human rights conventions of ILO. The Committee notes with satisfaction that, in accordance with article 140 of the State party's revised Constitution (2001), international agreements to which the State is a party enjoy supremacy over domestic laws and can be directly applied in domestic courts. It welcomes the fact that the Covenant has in some instances been invoked in court proceedings. The Committee also welcomes the efforts being made to provide training to judges in the applicable international human rights standards. In addition, it welcomes the explicit enumeration of a number of economic, social and cultural rights in the revised Constitution.

888. The Committee notes with satisfaction that many of the pre-independence laws and post-independence transitional measures are being amended or superseded by new laws that better conform to international human rights principles. Laws have been enacted or amended to make a number of specific types of violence against women an offence prosecutable by the public prosecutor ex officio, and the National Policy for the Promotion of Gender Equality 2001-2005 and the proposed amendments to the laws governing elections have among their aims the promotion of political participation by women. In addition, the Committee welcomes the recent amendment of former article 210 of Labour Act No. 758/95, by which failure by an employer to pay salaries to his or her employees within 30 days is now recognized as a valid ground for the employees to go on strike.

889. The Committee notes that the State party is benefiting from international assistance with respect to the broad questions of democratization, human rights, reconstruction and development, which affect the enjoyment of many economic, social and cultural rights. It also notes that sizeable assistance programmes are being provided by donor States and international and regional

organizations. It welcomes the collaboration between the State party and the Office of the United Nations High Commissioner for Human Rights.

C. Factors and difficulties impeding the implementation of the Covenant

890. The Committee recognizes that Croatia is in a state of transition, recovering from armed conflict, which is causing complex socio-economic, political and other difficulties in the implementation of the rights provided for in the Covenant, including a breakdown of the social welfare system, acute levels of unemployment and extensive damage to the nation's physical infrastructure. One legacy of the war has been a high level of violence, both physical and verbal, in the public and private spheres. This problem of violence, including that directed against women, members of trade unions, and members of certain ethnic groups, has been exacerbated by the weak economy.

891. The Committee notes that the large numbers of internally and externally displaced persons has created additional strains on the State party's resources. The Committee also notes the high proportion of elderly persons living in, or seeking to return to, the State party, which places high demands on the output of a proportionally smaller economically active population, through the pension system, health-care system and other social welfare programmes.

D. Principal subjects of concern

892. The Committee notes with concern that measures to promote ethnic harmony appear to be inadequate and are impeded by continued application of discriminatory laws, policies and practices. It is concerned by reports that private acts of discrimination and ethnically-motivated violence are frequently not adequately addressed by the competent authorities.

893. The Committee notes with concern that many displaced ethnic Serbs continue to face legal and administrative difficulties in attempting to repossess their former homes. The Committee is also concerned that while the process of repatriation and relocation of ethnic Serbs has begun showing signs of improvement, the results and the pace of their return and the settlement of their property and tenancy claims in relation to those of other displaced Croatians reveal that ethnic Serbs continue to face excessive obstacles to their return. The Committee is deeply disturbed that these obstacles have resulted in the violation of the rights of many Serbs under articles 2 and 11 of the Covenant.

894. The Committee expresses particular concern that the granting of citizenship under the Law on Croatian Citizenship (1991) has not been governed by fair and objective non-discriminatory criteria based on pre-war residence and connections to Croatia, and as a result has heavily favoured ethnic Croats. The Committee notes with concern that the inability to prove habitual residence negatively affects the possibility of obtaining Croatian nationality for persons from certain minority groups who left during the war and wish to return to Croatia.

895. The Committee is deeply concerned about the scale of unemployment in the State party, which creates conditions in which the right to work cannot be enjoyed by a considerable part of the population, particularly in those areas with large numbers of returnees. The Committee is also

concerned about reports of discrimination in employment on the basis of gender, age and ethnic origin.

896. The Committee expresses concern that women are generally employed in lower-paying and lower status jobs and are poorly represented in public service and office. There continues to be no legal prohibition against sexual harassment in the workplace. Despite the welcome inclusion of offences of sexual violence in the reformed Criminal Code (1999) and the offences of marital rape and domestic violence in the new Family Law (1999), the lack of sensitization concerning such crimes among the police and the lack of effective procedures to deal with those crimes leave women with little practical protection against violence in the home.

897. The Committee is concerned that Croatia is reported to be a major transit point for human trafficking, especially of women. The Committee regrets that it has received no information on the nature, extent or causes of the phenomenon of human trafficking.

898. The Committee is alarmed at the large backlog of cases before the courts, estimated at 1 million cases in a country with a population of about 4.8 million people, which impedes access to justice. The Committee is also concerned that many court decisions that are favourable to minorities, particularly ethnic Serbs, are not implemented by the responsible enforcement agencies. The obstacles faced by many ethnic Serbs with regard to occupancy rights and the difficulty they encounter when seeking redress through the courts is illustrated, in particular, by Application No. 45943/99, Rudan v. Croatia, recently decided by the European Court of Human Rights. The facts of that case demonstrate the legal and administrative obstacles facing a Serb family appealing the unilateral termination of occupancy rights. Although the Court declared this case inadmissible ratione temporis, the Committee notes that the events detailed in that case have occurred since 1992, when the Covenant was in force in Croatia, and that the situation persists today.

899. The Committee notes with concern that the legal criteria for establishing trade unions are unduly narrow and do not conform to article 8 of the Covenant. It is also concerned that the required minimum number of employees necessary for the formation of a trade union is too restrictive.

900. The Committee notes with concern that there are no reliable data with which the State party can identify the most disadvantaged and marginalized groups.

901. The Committee is concerned about the deterioration in the general standard of living in the State party, which has ensued in part from economic instability, high levels of unemployment, non-payment of salaries of many workers, the unrecovered pension payments made by Croatians prior to independence and the destruction during the war of vital infrastructure and settlements that have not yet been reconstructed. The Committee is concerned that some reconstruction efforts appear to have been disproportionately benefiting certain ethnic groups.

902. With respect to the right to education, the Committee commends the near-achievement of universal and free compulsory primary education, in conformity with article 14 of the Covenant. However, the Committee is concerned by reports that some children from certain minority groups, in particular the Roma, and children of undocumented aliens may not be going to school. The

Committee is concerned about reports that the curriculum and textbooks used in schools contain derogatory references to minority groups.

E. Suggestions and recommendations

903. The Committee urges the State party to undertake a comprehensive review of the phenomenon of all forms of discrimination within the meaning of article 2 of the Covenant and the relevant provisions of other international human rights treaties to which the State is a party, particularly the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights. The Committee recommends that the necessary measures, including legislative reforms, be taken to ensure that the rights of all minority groups are enjoyed throughout the territory, without discrimination, in accordance with article 2 of the International Covenant on Economic, Social and Cultural Rights.

904. The Committee urges the State party to take effective measures to accelerate the return and reintegration into Croatian society of all Croatian refugees without discrimination, particularly of ethnic Serbs, by expediting the restitution of their housing, arranging for adequate alternative accommodation or providing them with compensation when restitution is not possible, as explained by the Committee in its General Comment No. 7 (1997) on the right to adequate housing (art. 11, para. 1, of the Covenant).

905. The Committee urges that the State party establish objective criteria for the granting of citizenship to those wishing to obtain citizenship, in particular to those who left during the war and wish to return to Croatia, irrespective of ethnic origin, and that the Law on Croatian Citizenship be amended accordingly. It further recommends that the State party ratify the 1961 Convention on the Reduction of Statelessness.

906. The Committee encourages the State party to continue its efforts to reduce unemployment and promote entrepreneurship. In so doing, the State party should ensure that all such measures, including training of prospective employees and placement of job-seekers with potential employers, are undertaken in a non-discriminatory manner.

907. The Committee strongly recommends that the State party undertake a comprehensive review of the situation of women in all aspects of life, as members of the family, in the workforce and as public servants, in order to assess those situations in which women are at a disadvantage and to develop appropriate laws and policies to address their inequality.

908. The Committee recommends that the State party take measures to make sexual harassment in the workplace a prosecutable offence.

909. The Committee recommends that all present and future policies, laws and practices be reviewed in the light of their potential effects on women and that appropriate measures be taken to ensure that women are not disadvantaged.

910. The Committee recommends that the State party include in its second periodic report detailed

information on the nature, extent and causes of the human trafficking taking place in its territory.

911. In view of the very large number of persons affected in the areas of occupancy rights, acquisition of citizenship and other matters resulting from the war and the aftermath of independence, the Committee is of the opinion that the burden on the court system could be significantly reduced by adopting non-discriminatory laws and by streamlining legal and administrative procedures accordingly.

912. The Committee recommends that the State party arrange to provide extensive human rights training for members of all professions that have a direct role in the promotion and protection of human rights, including judges, lawyers, the police and the military. Instruction on the Covenant should be part of such training.

913. The Committee strongly recommends that the State party review its criteria for establishing trade unions in accordance with article 8 of the Covenant and with the appropriate ILO conventions to which it is a party.

914. The Committee urges the State party to structure its data collection efforts in the future in such a way as to be able to identify clearly the most disadvantaged and marginalized groups of society. It calls on the State party to conduct studies of all its laws, policies and practices with a view to assessing their effects on those groups, especially with regard to those areas that most directly affect their basic living conditions, such as employment, housing restitution, relocation, tenancy rights, health care, naturalization and education. All data should be disaggregated by minority groups, as well as by gender, religion, disability and any other relevant criteria that will help the State party develop targeted programmes to help those most in need.

915. The Committee recommends that the State party reinforce its efforts to address the high level of unemployment.

916. The Committee recommends as a matter of urgency that the State party continue its negotiations with the relevant authorities to ensure that Croatians who made pension contributions prior to independence are able to benefit from their pensions.

917. The Committee recommends that the State party carefully review the probable effects of its plans to privatize portions of the national health-care system on the most disadvantaged and marginalized sectors of society, including, in particular, the unemployed and underemployed, the homeless and those living in poverty.

918. The Committee urges the State party to ensure that the content of education is directed, in accordance with article 13, paragraph 1, of the Covenant, to strengthening respect for human rights and fundamental freedoms, to enabling all persons to participate effectively in a free society and to promoting understanding, tolerance and friendship.

919. The Committee recommends that immediate steps be taken to ensure that all children residing within the territory of the State party, regardless of their ethnic origin or the status of their parents,

are able to go to school and are protected from discrimination.

920. The Committee urges that the educational curricula of schools at all levels be reviewed with a view to promoting human rights education, mutual understanding, tolerance and friendship, in accordance with article 13 of the Covenant. Conversely, any educational material that is discriminatory or derogatory towards others should be removed. The Committee recommends that the State party take guidance in such educational reform from its General Comment No. 13 (1999) on the right to education (art. 13 of the Covenant) and by Committee on the Rights of the Child General Comment No. 1 (2001) on the aims of education (art. 29, para. 1, of the Convention on the Rights of the Child).

921. The Committee strongly recommends that the State party establish an inclusive procedure through which the views of non-governmental organizations can be taken into account during the preparation of future reports. The next periodic report should be widely circulated among all interested sectors of civil society and their input solicited.

922. The Committee requests the State party to disseminate the present concluding observations widely, including among government agencies and the judiciary, and to inform the Committee in its second periodic report of the steps taken to implement them.

923. The Committee requests the State party to submit its second periodic report by 30 June 2006.