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FOR REFUGEES

Kroatien (??)

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| FN-MISSIONEN GENEVE | | |
| BILAG | | |
| 15 MAJ 2000 | | |
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Dear Mr. Ankerstjerne,

With reference to your letter of 19 April 2000 regarding statements made by the United Nations High Commissioner for Human rights (HCHR) in Croatia on the General Amnesty Law¹ and the implications for safe return to Croatia, we appreciate the opportunity given by the permanent Mission of Denmark to comment on the situation for returnees to Croatia.

Reference is made to the *Programme for the Return and Accommodation of Displaced Persons, Refugees and Resettled Persons* (the Return Programme) that the Government of Croatia adopted in June 1998 with the objective of establishing mechanisms that guaranteed the physical return of refugees from countries of asylum. Once applicants were cleared for return, they could return via UNHCR convoy or travel on their own with a one-way travel document. According to Government figures as of February 2000, over 38,000 individuals had returned according to these Procedures.

Refugees applying for return through the procedures endorsed by UNHCR and the Office for Displaced Persons and Refugees (ODPR) are normally informed whether s/he has a criminal case pending or if a sentence had been passed through the established procedures². However, the procedure of information had been until recently extremely long. The Ministry of Interior would advise ODPR and UNHCR of the existence of a record in the police files on a potential returnee but it would take some time before the Ministry of Justice could provide the particulars regarding the administration of justice process (whether any procedure has been initiated, whether the individual has been amnestied, the nature of the offence, etc). This limited the ability of the potential returnees to make an informed choice about return. As the procedure was extremely time-consuming, it led to a number of cases being "deferred" for several months at a time. Recently, UNHCR received assurances from the Croatian Government that this situation will be rectified and in fact the Government has already taken steps to do so.

Of particular importance in the context of return has been the implementation of the 1996 Law on General Amnesty. The Legislation applies to persons accused of or sentenced for criminal acts in connection with aggression, rebellion or armed conflict between 17 August 1990 to 23 August 1996. Criminal investigations or proceedings related to such acts were to be nullified and any detained persons to whom the amnesty applied were to be released.³ Under the Law, those combatants who

¹ Which entered into force on 5 October 1996.

² An application for return is sent from ODPR to the Ministry of Interior in order to verify whether there is a file against the individual concerned in the records of the Ministry. If it is confirmed that a police record exists, the request is then forwarded to the Ministry of Justice, Administration and Local Self-government which is in charge of keeping criminal records for verification of the type of charges brought against the individual, the stage at which the procedure stands and possible application of the Law on General Amnesty in the case of the concerned individual.

³ Under the law, criminal prosecution would not be instituted and subsequent criminal procedure(s) would not be initiated. If any criminal prosecution had been initiated it would be halted; if it was ongoing, it would be terminated ex officio by the ruling of the court. Those already in prison were released by the ruling of the

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did not violate the laws and customs of war and/or commit common crimes such as murder and theft of property are entitled to be amnestied. The amnesty process is considered a key component of post-conflict normalisation in Croatia, especially in the formerly occupied areas. At the same time, impartial war crimes prosecution in accordance with international standards is regarded as a core component of successful confidence building, and a crucial measure to eliminate "collective responsibility" for the violent crimes that were committed during the armed conflict. Those individuals that committed war crimes should be held accountable for their acts whenever prosecution is appropriate. In late 1997, the Government of Croatia established a list of 25 persons who were charged for war crimes. New indictments may be initiated when new substantial evidence is brought to light. The exact number of convictions for war crimes in absentia since 1991 in Croatia is still unknown.

In view of its importance, OSCE and the HCHR have paid particular attention to the implementation of the Amnesty Law. As part of their Mandate they have worked towards a uniform and transparent implementation of the Law. In the past, however, both HCHR and OSCE have expressed concerns regarding the non-uniform and non-transparent implementation of the Law⁴ although the Law itself is considered to adhere to international standards and has been approved by the Council of Europe. Under the former Government, prosecution of war crimes remained a significant obstacle for both, return and continued minority residence in Croatia. According to OSCE and HCHR, a person who may have committed an amnestied crime in Croatia may not have been guaranteed a fair trial. Moreover, there was a lack of transparency as to which criminal acts were covered by the Amnesty Law.

Under the former government, there were indeed cases of indictments issued after clearances from the Ministry of Interior were received that no charges or indictments were pending⁵. Such treatment constituted a deterrent to the return of ethnic Serb refugees. It was noted by HCHR that male ethnic Serb refugees who were of draft age (between 18-60 years of age) during the conflict appeared to be at higher risk of such unfair treatment. There were, nevertheless, cases where women were sentenced for war crimes.

However, since the establishment of the new Government in February 2000, Croatia has renewed its commitments to comply with international standards regarding administration of justice and has resumed full co-operation with the International Criminal Tribunal for Former Yugoslavia (ICTY) in The Hague, which is, in itself, a standard for impartial war crimes prosecution. Co-operation includes a commitment to notify ICTY in a timely manner before new indictments are issued. Croatia has also ceased to dispute the jurisdiction of The Hague Tribunal over operations "Flash" and "Storm", undertaken in May and August 1995. We understand that ICTY has offered to provide full assistance to Croatia if requested. These and other positive developments⁶ have contributed to improve the conditions for safe return.

During a recent meeting with the Representative of UNHCHR regarding the content of your letter, HCHR indicated that they did not categorically state that Croatia "would not be considered safe for refugees, irrespective of status, to return to Croatia at the present time". Rather, HCHR's position is that the application of the Amnesty Law and judicial procedures had not always met international standards and they cautioned against an outright conclusion that the recent changes in the

court. Moreover, the State Prosecutor's Office is not in a position to lodge an appeal against the court's decision brought in favour of perpetrators of criminal acts on the condition that a court granted amnesty according to the law, as was the case under the previous two Amnesty Laws.

⁴ See Reports E/CN.4/1999/42 of 20 January 1999, A/54/396, S/1999/2000 of 24 October 1999, E/CN.4/2000/39 of 28 December, 1999

⁵ Report of the OSCE Mission to the Republic of Croatia on Croatia's progress in meeting international commitments since May 1999 (Progress Report No. 5), 28 September 1999.

⁶ Such as the recent decision (February 2000) of the Croatian Supreme Court related to "Sodolovci Group" accused of war crimes, by which the case was returned to the Osijek County Court for retrial. Members of the "Group" were released from detention.

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Government in Croatia will immediately lead to changes in the administration of justice. In view of past experience, the implementation of this Law will have to continue to be monitored closely. Deviations will be pointed out for the international community to put pressure on the Government of Croatia to comply with commitments to abide by international standards.

Given UNHCR's Mandate and responsibility to ensure that return takes place in safety and dignity, UNHCR liaises closely with OSCE and HCHR in monitoring the safety of the returnees. Very few returnees to date have been detained. Because the success of the Return Programme hinges on the application of the law in a balanced non-discriminatory manner UNHCR follows closely instances of detention of returnees to ensure that the person is given a fair trial with adequate representation. UNHCR is also conscious that in questions regarding violations of international humanitarian and human rights law, a delicate balance has to be achieved between ensuring amnesty for those who deserve it and prosecution of perpetrators of war crimes.

While monitoring of returnees by UNHCR, OSCE and NGOs in areas of return indicates that there is still a gap between Government's policies and the views of local politicians, we can still conclude that Croatia is generally safe for return. Nevertheless, individual refugee claims should continue to be assessed carefully taking into account past experiences that may give rise to a well-founded fear of persecution.

Yours sincerely,



Sina Ljungdell
Bureau for Europe

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