

Représentation Permanente de la République de Croatie auprès du Conseil de l'Europe

Strasbourg, le 20 février 2006

Monsieur le Secrétaire Général,

J'ai l'honneur de porter à votre connaissance la lettre qui vous est adressée par Madame Kolinda GRABAR-KITAROVIĆ, Ministre des Affaires étrangères et des intégrations européennes de la République de Croatie, en réponse à votre enquête.

Les réponses détaillées aux questions posées sont jointes à la lettre.

L'original de la lettre parviendra par la voie postale ultérieurement.

Je vous prie, Monsieur le Secrétaire Général, de bien vouloir agréer l'expression de ma plus haute considération.



*Daniel BUČAN
Ambassadeur
Représentant Permanent*

Monsieur Terry DAVIS
Secrétaire Général
du Conseil de l'Europe
CONSEIL DE L'EUROPE



Republika Hrvatska
Ministarstvo vanjskih poslova i europskih integracija
Ministrica

Zagreb, 16 February 2006

Dear Secretary General,

Thank you for your letter of 21 November 2005 and your prompt initiative undertaken under Article 52 of the European Convention on Human Rights.

Regarding your request for explanation of the manner in which Croatian law and practice ensure effective implementation of rights and freedoms guaranteed under the European Convention on Human Rights, notably with respect to persons suspected of involvement in the acts of terrorism, the Government of Croatia has prepared a detailed answer, enclosed herewith.

I am very glad to inform you that in the period from 1 January 2002 the Republic of Croatia as the High Contracting Party to the European Convention on Human Rights has not found that any public official or other person acting in an official capacity has been involved in any manner – whether by action or omission – in the unacknowledged deprivation of liberty of any individual.

The Republic of Croatia can also confirm that no such deprivation of liberty has occurred by or at the instigation of any foreign agency on the state territory nor is any official investigation relevant to this matter under way.

I trust that our answer will contribute to the significant efforts of the Council of Europe to ensure respect for human rights in all circumstances as well as to address compliance of national legislation and practice with the provisions of the Convention and its additional Protocols.

Sincerely yours,


Kjetil Grub – Kitarović

Mr. Terry Davis
- The Secretary General
of the Council of Europe

Explanation of the manner in which Croatian internal law ensures the effective implementation of the provisions of the European Convention on Human Rights and its additional Protocols as interpreted by the European Court of Human Rights

Croatian internal law ensures the effective implementation of the provisions of the European Convention on Human Rights and its additional Protocols as interpreted by the European Court of Human Rights with regard to the following issues:

- I status of the European Convention on Human Rights and its additional Protocols in the Republic of Croatia and their implementation in Croatian legal system;
- II explanation of the manner in which Croatian internal law ensures that acts by officials of foreign agencies are subject to adequate controls;
- III explanation of the manner in which Croatian internal law ensures that adequate safeguards exist to prevent unacknowledged deprivation of liberty of any person within its jurisdiction;
- IV explanation of the manner in which Croatian internal law provides adequate response to any alleged infringements of Convention rights of individuals, notably in the context of deprivation of liberty;
- V explanation of the manner in which Croatian internal law provides adequate compensation to the injured persons

I Status of the European Convention on Human Rights and its additional Protocols in the Republic of Croatia and their implementation in Croatian legal system

The Republic of Croatia is a High Contracting Party to the European Convention for the Protection of Human Rights and Fundamental Freedoms along with accompanying Protocols¹, 4, 6, 7 and 11 to the Convention since 5 November 1997. On 3 February 2003 the Republic of Croatia ratified the Protocol No. 12 to the Convention relating to non-discrimination (in force since 1 April 2005) and Protocol No. 13 to the Convention relating to the abolition of death penalty in all circumstances (in force since 1 July 2003). The Republic

of Croatia has ratified Protocol No. 14 amending the control system of the Convention on 30 January 2006.

Under Article 140 of the Croatian Constitution: "*ratified and officially published international agreements, which are in force, are part of the internal legal order of the Republic of Croatia and are above law in terms of legal effect*". That means that the European Convention on Human Rights with its additional Protocols is directly applicable and could be applied before the national courts.

Furthermore, the Law on Courts in its Article 5 explicitly states that: "*The Courts shall administer justice according to the Constitution, law and international treaties that are part of the national legal order of the Republic of Croatia.*"

II Explanation of the manner in which Croatian internal law ensures that acts by officials of foreign agencies are subjects to adequate controls

Croatian criminal legislation applies to anyone (any individual or legal entity, domestic or foreign) that commits a criminal offence within its territory, aboard a domestic vessel, aboard a domestic civil aircraft while in flight or aboard a domestic military aircraft, regardless of its location. That means that foreign as well as domestic agencies are subject to control on equal basis, if suspected that there has been a violation of criminal law.

In practice this means that if the police in Croatia suspect that a foreign citizen or agency has deprived a person of liberty (or that they have committed any other illegal act prohibited by the Criminal code), they would conduct an investigation in accordance with the Criminal Procedure Act. Following the investigation the State Attorney would decide if there are enough elements to further persecution. The Croatian Criminal Procedure Act prescribes conditions of arrest and custody, consistent with Article 5 of the ECHR.

A problem could occur if a foreign agent who has diplomatic status in Croatia would deprive someone of liberty. In that case the jurisdiction of the Republic of Croatia would be limited by the provisions of the Vienna Convention on Diplomatic Relations which regulates the status of persons holding diplomatic immunity.

Below please find relevant provisions of the criminal legislation in Croatia:

Criminal Code**Article 13**

(1) *The criminal legislation of the Republic of Croatia shall apply to anyone who commits a criminal offense within its territory.*

(2) *The criminal legislation of the Republic of Croatia shall also apply to anyone who commits a criminal offense aboard a domestic vessel, regardless of the location of such a vessel at the time the criminal offense is committed.*

(3) *The criminal legislation of the Republic of Croatia shall also apply to anyone who commits a criminal offense aboard a domestic civil aircraft while in flight, or a domestic military aircraft, regardless of the location of such an aircraft at the time the criminal offense is committed.*

Criminal Procedure Code**Article 171**

(1) The Ministry in charge of justice affairs shall organize and govern the criminal register in such a manner as to enable the courts and the State Attorney Service to have direct access to the data in real time.

(2) The Minister of Labour and Social Welfare shall issue regulations on a register for educational measures.

III Explanation of the manner in which Croatian internal law ensures that adequate safeguards exist to prevent unacknowledged deprivation of liberty of any person within its jurisdiction

Under the Constitution of the Republic of Croatia freedom and personality of everyone are inviolable and no one may be deprived of liberty, nor may his/her liberty be restricted, except upon a court decision in accordance with law. Maltreatment, medical or scientific experimentation without consent as well as forced labor and arrest or detainment which is not in accordance with law, are prohibited by the Constitution.

Here are the relevant provisions of the legislation in Croatia:

Constitution**Article 22**

Freedom and personality of everyone shall be inviolable.

No one shall be deprived of liberty, nor may his liberty be restricted, except upon a court decision in accordance with law.

Article 23

No one shall be subjected to any form of maltreatment or, without his consent, to medical or scientific experimentation.

Forced and compulsory labor shall be forbidden.

Article 24

No one shall be arrested or detained without a court warrant. Such a warrant shall be read and served on the person being arrested.

The police may arrest a person without a warrant when the person is reasonably suspected of having committed a serious criminal offence defined by law. The arrested person shall be promptly informed, in understandable terms, of the reasons for the arrest and of his rights determined by law.

Any person arrested or detained shall have the right to take proceedings before a court, which shall decide without delay on the legality of the arrest.

Article 28

Everyone shall be presumed innocent and may not be considered guilty of a criminal offence until his guilt has been proved by a final court judgment.

Article 29

Everyone shall have the right to the independent and fair trial provided by law which shall, within a reasonable term, decide upon his rights and obligations, or upon the suspicion or the charge of a penal offence.

In the case of suspicion or accusation for a penal offence, the suspected, accused or prosecuted person shall have the right:

- to be informed in detail, and in the language he understands, within the shortest possible term, of the nature and reasons for the charges against him and of the evidence incriminating him,
- to have adequate time and opportunity to prepare his defense,
- to a defense counsel and free communication with him, and to be informed of this right,
- to defend himself in person or with the assistance of a defense counsel of his own choice, and if he lacks resources to engage a counsel, to have a free counsel under the terms specified by law,
- to be tried in his presence if he is accessible to the court,
- to interrogate or have the prosecution witnesses interrogated and to demand the presence and hearing of the defense witnesses under the same circumstances as for the witnesses for the prosecution,
- to free assistance of an interpreter if he does not understand the language used in the court.

The suspected, accused and prosecuted person shall not be forced to confess his guilt.

Evidence illegally obtained shall not be admitted in court proceedings.

Criminal proceedings shall only be initiated before the court of justice upon the demand of an authorized prosecutor.

Criminal Procedure Act**Article 6**

(1) A person arrested under suspicion of having committed an offence shall be promptly informed of the reasons for his arrest, that he is under no obligation to testify, that he is entitled to the legal assistance of a defence counsel of his own choice, and that the competent authority shall upon his request inform his family or other person designated by the defendant that he is under arrest.

(2) Arrest is every measure or action that includes the compulsory detention of a person under suspicion of having committed an offence.

Article 97

(1) Any person may prevent the flight of a person who is in the act of committing a criminal offence subject to public prosecution.

(2) A person is considered to be caught in the act of committing a criminal offence when he is noticed by somebody while committing a criminal offence or if he is immediately after the commission of the criminal offence caught under circumstances indicating that he is the one who has just committed a criminal offence.

Article 98

(1) -

(2) Police authorities are entitled to arrest:

- 1) a person who is in the act of committing an offence subject to public prosecution;*
- 2) a person against whom there are grounds for suspicion of having committed an offence subject to public prosecution, if any grounds exist for ordering detention referred to in Article 192 of this Act.*

Article 106

(1) If there are circumstances referred to in Article 105 paragraph 1 subparagraphs 1 and 3 of this Act, the court may order house arrest if the purpose of ordering detention may be achieved by prohibiting the person from leaving the apartment or other premises he occupies.

(2) In the ruling ordering house arrest the court may, with the person's consent, order the application of an external electronic or video surveillance for the duration of the house arrest on all openings of the apartment or other premises he occupies.

(3) If this Act does not contain any special provisions on house arrest, the provisions on detention shall adequately apply to ordering, vacating and prolonging house arrest. The Minister in charge of justice affairs shall, with consent of the Minister of the Interior, adopt special regulations governing the implementation of measures referred to in paragraphs 1 and 2 of this Article in more detail.

Article 123

(1) Supervision over the execution of detention shall be carried out by the president of the court having jurisdiction.

(2) The president of the court or the judge designated by him shall be bound to visit the detainees at least once a week and, if he considers it to be necessary without the presence of the guards, shall inform himself about the prisoners' food, how their other needs are satisfied and how they are treated. The president of the court or the judge designated by him shall be bound to undertake measures necessary to remove improprieties seen while touring the prison. The president of the court may not designate the investigating judge to supervise the execution of the detention on his behalf.

(3) The president of the court and the investigating judge or the president of the panel or the single judge conducting the proceedings regardless of the supervision referred to in paragraph 2 of this Article may at any time visit detainees, speak with them and receive their complaints.

(4) If the judge from paragraph 2 of this Article during the visit or upon the complaint of a detainee determines that the term of detention ordered by the ruling on detention has expired or that a lawful decision on the deprivation of liberty does not exist, he will immediately order the release of the detainee.

Unlawful Deprivation of Freedom
Article 124

(1) Whoever unlawfully detains, keeps detained or in some other manner deprives another person of the freedom of movement or restricts it in some other way shall be punished by imprisonment for three months to three years.

(2) If the criminal offense referred to in paragraph 1 of this Article is committed by an official person in the execution of his duty or public authority, such a person shall be punished by imprisonment for three months to five years.

(3) If the criminal offense referred to in paragraphs 1 and 2 of this Article is committed against a child or a juvenile, or if the unlawful deprivation of liberty lasts more than fifteen days, or is committed in a cruel manner, or if the health of a person is severely impaired due to unlawful deprivation of liberty, or if other serious consequences are caused, or if the offense is committed on the basis of membership of a group or of a criminal organization, the perpetrator shall be punished by imprisonment for three to ten years.

(4) If, by the criminal offense referred to in paragraph 1 of this Article, the death is caused of a person who was unlawfully deprived of liberty, the perpetrator shall be punished by imprisonment from three to fifteen years.

(5) An attempt to commit the criminal offense referred to in paragraph 1 of this Article shall also be punished.

IV Explanation of the manner in which Croatian internal law provides an adequate response to any alleged infringements of Convention rights of individuals, notably in the context of deprivation of liberty

International treaties ratified and published in accordance with the Constitution are part of Croatian internal legal order and are in terms of legal effect above law. This means that the provisions of the European Convention on Human Rights are directly applicable in national courts and thus protected on many levels of the Croatian judicial system.

Article 20 of the Constitution states that anyone (any individual or legal entity, domestic or foreign), who violates the provisions of the Constitution concerning the human rights and fundamental freedom shall be held personally responsible and may not be exculpated by invoking a superior order. Furthermore, criminal proceedings in Croatia are instituted by the State Attorney's Office on his own motion in the interest of the Republic of Croatia and all its citizens.

Moreover, whoever (any individual or legal entity, domestic or foreign) unlawfully detains, keeps detained or in some other manner deprives another person of the freedom of movement or restricts him/her in some other way shall be punished by imprisonment for three months to three years, for three months to five years if committed by an official person,

and for three to ten years if committed against a child or juvenile or in a cruel manner or if committed on the basis of membership of a group or of a criminal organization.

Here are the relevant provisions of the legislation in Croatia:

Constitution

Article 20

Anyone who violates the provisions of the Constitution concerning the human rights and fundamental freedoms shall be held personally responsible and may not be exculpated by invoking a superior order.

Criminal Code

Article 8

(1) Criminal Proceedings for criminal offenses shall be instituted by the State Attorney's Office on his own motion in the interest of the Republic of Croatia and all its citizens.

(2) Exceptionally, for certain criminal offenses, it may be prescribed by statute that criminal proceedings shall be instituted by a private charge, or that the State Attorney's Office shall institute criminal proceedings following a motion.

The Principal and Accomplices

Article 35

(1) The principal is a person who commits a criminal offense by his own act or omission or through another agent.

(2) Co-principals of a criminal offense are two or more persons who, on the basis of a joint decision, commit a criminal offense in such a way that each of them participates in the perpetration or, in some other way, substantially contributes to the perpetration of a criminal offense.

(3) Accomplices are: the instigator and the aider or abettor.

(4) The instigator and aider or abettor are accomplices who, without control over the perpetration of a criminal offense, contribute to its perpetration by instigation or by aiding and abetting.

Instigation

Article 37

(1) Whoever intentionally instigates another to commit a criminal offense shall be punished as if he himself committed it.

(2) Whoever intentionally instigates another to commit a criminal offense whose attempt is punishable shall be punished as for the attempt of such a criminal offense even if the offense itself has not been attempted.

(3) In the case of an inadvertent attempt of instigation, the court may remit the punishment of the instigator.

V Explanation of the manner in which Croatian internal law provides an adequate compensation to the injured persons

Croatian internal law provides following possibilities for obtaining compensation to the injured persons:

Criminal Procedure Act

Article 127

(1) The defendant, injured person, subsidiary prosecutor, private prosecutor, defence counsel, legal guardian, legal representative, witness, expert witness, interpreter and expert (Article 198), regardless of the outcome of the criminal proceedings, shall pay expenses for bringing them before the court, for postponing the investigatory action or trial and other expenses in the proceedings caused by their culpability as well as a proportional amount of the lump sum.

(2) A separate ruling shall be rendered on expenses referred to in paragraph 1 of this Article, except when expenses which are covered by a private prosecutor and defendant are decided upon in a decision on the subject matter of the case.

Article 128

(1) When the court finds the defendant guilty, it shall state in the judgment that he must pay the costs of the criminal proceedings.

(2) A person charged with several offences shall not bear the costs regarding the offences for which he was acquitted if these costs can be separated from the overall costs.

(3) In a judgment pronouncing several defendants guilty, the court shall order what proportion of the costs each of the defendants shall pay, and if this is not possible, the court shall order that the defendants shall be jointly liable for the costs. The payment of the lump sum shall be determined separately for each defendant.

(4) The court may, in a decision on costs, decide that the defendant shall not pay the entire or partial sum of the costs of the criminal proceedings referred to in Article 125 paragraph 2 subparagraphs 1 to 6 of this Act and the fee and necessary expenses of the appoint defense counsel if payment of these costs could imperil the maintenance of the defendant or persons he is bound to maintain. If these circumstances are determined after the decision on costs is rendered, the president of the panel may, in a separate ruling, dispense the defendant from the duty to bear the costs of the criminal proceedings.

Article 132

The Minister in charge of justice affairs shall issue more detailed regulations regarding the costs of the criminal proceedings.

Finally, we are pleased to inform you that in the period from 1 January 2002 the Republic of Croatia as the High Contracting Party to the European Convention on Human Rights has not found that any public official or other person acting in an official capacity has been involved in any manner – whether by action or omission – in the unacknowledged deprivation of liberty of any individual. The Republic of Croatia can also confirm that no such deprivation of liberty has occurred by or at the instigation of any foreign agency on its state territory nor is any official investigation relevant to this matter under way.