OSCE

Organization for Security and Co-operation in Europe

Mission to Croatia

H e a d q u a r t e r s

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EXECUTIVE SUMMARY

1. Both in terms of policy statements and actions, efforts by the Government of Croatia to fulfil the mandate of the OSCE Mission to Croatia were particularly significant during the reporting period from mid-December 2003 to the beginning of July 2004. The new centre-right Government which came into office on 22 December committed itself to achieving greater progress on remaining post-conflict issues, in particular with regard to promoting the reintegration of Serb refugees, minority rights, co-operation with the ICTY and regional co-operation.

2. The Government's added attention to the Mission's mandate is linked to three developments. First, the mandate was given added priority by the new Prime Minister, Dr. Ivo Sanader of the Croatian Democratic Union (HDZ), through consistent efforts to bring his party, which was also in power throughout the 1990s, into the political mainstream. Second, the results of the parliamentary elections in November 2003 prompted the HDZ, which became the largest party but without an absolute majority, to enter into formal agreements with parliamentarians representing national minorities. In particular, the agreement with the Serb parliamentarians contained extensive commitments to issues related to minority rights and refugee return. Third, the widely shared objective of European and Euro-Atlantic integration has raised the responsiveness to political conditionality in securing Croatia's membership in the EU and NATO.

3. Croatia's European integration efforts were given an important boost of support on 20 April as a result of the European Commission's (EC) positive *Opinion* on Croatia's EU membership application and the decision by the European Council on 18 June to grant Croatia the formal status of an EU candidate country with negotiations to start in early 2005. The Council stated that Croatia must maintain full co-operation with the ICTY, and do more *inter alia* to support minority rights, refugee return, judicial reform and regional co-operation, areas where the Mission is active in providing advice and assistance to the Government.

4. Immediately upon coming into office, the new Government expressed its willingness to reconcile with the country's minorities. The new Prime Minister has on several occasions called on Serb refugees to return to their homeland. During a visit in May with the OSCE Chairman-in-Office to one of the war-affected areas where refugee return is still seen as a threat, Prime Minister Sanader became the first Croatian Head of Government to visit the home of a Serb returnee and challenged the local authorities to look to the future and not to the past. Leading Serb representatives have expressed satisfaction with the Government's policy, including progress on property reconstruction assistance to refugees and property repossession that has taken place as a result of the agreement with the Serb parliamentarians.

5. In most cases, the Government has now articulated appropriate responses or put in place mechanisms to address outstanding mandate issues, but many of these approaches must still be tried and tested. A climate conducive to sustainable refugee return requires greater Government initiative to promote interethnic reconciliation and trust-building in many war-affected communities. Remaining administrative, bureaucratic and other obstacles to return still need to be removed. Certain types of international assistance and advice, supported by monitoring at the field level, need to be continued by the international community in order to guarantee that these efforts are successful within a limited time-frame.

6. The most significant obstacle to refugee return remains the issue of *housing* to those refugees who lived in socially owned housing with *occupancy/tenancy rights* (OTR) and wish to return to Croatia. Two different housing programmes for refugees in this category are now in place but have not yet been implemented. A publicity campaign is being launched in neighbouring countries in order to inform refugees about the programmes and application procedures. The Mission and its international partners have focused on the need to design a programme that will ensure that all refugees who wish to return have access to housing, while the European Court of Human Rights is likely to decide soon whether OTR terminations were legally justified.

7. Efforts to co-ordinate the *repossession of occupied private property* are being improved through the work of a new Government commission. Of approximately 3,500 properties that were occupied by temporary users at the beginning of 2004, about 2,300 remained occupied as of June. Yet the legal regime on property repossession still favours the interests of the temporary occupants of private property over the rights of the owners. Further, many Serb property owners find that their repossessed properties have been looted and others are being forced by courts to pay temporary users for so-called "investments" in properties. Many business and agricultural properties remain occupied.

8. Progress on *reconstruction assistance* is satisfactory. The firm majority of recipients are now Croatian Serbs. Approximately 5,200 claims for reconstruction, mainly from Croatian Serb refugees abroad, still remain to be processed. In addition, the previously closed application procedure has been reopened for six months as a result of the HDZ agreement with the Serb parliamentarians. While reconstruction assistance is also provided for property destroyed by terrorist acts in areas that remained under Government control during the armed conflict, it is difficult for such property owners to receive compensation.

9. Croatia's overall *minority rights regime* is framed within the Constitutional Law on the Rights of National Minorities (CLNM). Implementation of the CLNM has primarily involved minority representation at all levels of elected government and the election of advisory minority councils. Programmes to ensure adequate minority representation in the State administration and the judiciary remain to be implemented. The Government established a Commission in April to monitor implementation of the National Programme for Roma.

10. The first concrete efforts aimed at systemic *judicial reform* are now being undertaken. Reducing the case backlog of approximately 1.5 million cases remains a major task. Delays in judicial proceedings continue to pose a significant problem and infringe on substantive rights, while other aspects of the right to fair trial, particularly the right to an impartial tribunal, are not being addressed by the judicial reform plans. Croatia still has no free legal aid system in civil cases other than that provided through the Croatian Bar Association. The Constitutional Court is now deemed by the European Court of Human Rights to be a more effective domestic remedy for fair trial questions but the Court may as a result become overburdened with additional cases that would limit its ability to deal with substantive human rights questions. The need for compliance with recommendations of Ombudsman has been stressed by the Parliament.

11. Croatia now maintains full *co-operation with the ICTY*. The ICTY Chief Prosecutor has, however, stated that Croatia still has to locate and transfer fugitive General Ante Gotovina to The Hague. In the event that the ICTY Trial Chamber decides to transfer the case of General Mirko Norac, it would set a precedent as the first ICTY indictment transferred to a national jurisdiction. Mission reports on *domestic war-crime prosecutions* state that additional reforms and actions are needed to in order to ensure a uniform standard of criminal responsibility and a single standard of justice for victims. International legal assistance on war-crime cases between Croatia, Bosnia and Herzegovina, and Serbia and Montenegro will be of increasing importance.

12. In preparation for presidential and local *elections* in 2004 and 2005, respectively, the Government needs to realize a series of pending reform measures identified in international election observation reports on elections in Croatia in 2000, 2001 and 2003.

13. The new Government is implementing the previous Government's *police reform* programme. Community policing remains the most advanced police reform initiative. The Ministry of the Interior has agreed to the Mission's proposal to create a Road Map towards the development of a modern European police service.

14. Changes are being realized to legislation in support of *freedom of the media*. International recommendations were incorporated into the new Law on Media, while those on other laws are still pending, in particular the need to shield radio and television and the oversight body for electronic media from the possibility of direct political interference. International experts have noted the potential threat posed to journalists in the remaining criminal provisions on libel. Croatian media still lacks a self-regulatory system to effectively adjudicate complaints against the media. Croatia now has for different nationwide televisions channels, of which two are private, but the privatization process of State-owned newspapers has become controversial. Inflammatory reporting against Serb returnees continues to be used by local media in some areas.

15. The state of *civil society* in Croatia remains transitory with NGOs only gradually focusing on overarching societal issues. The Government is developing new support mechanisms for NGOs. A Government decision in May to significantly increase the tax burden on some NGOs remains as a sensitive and unresolved issue. The Government is currently finalizing new provisions and legislation designed to improve the wider regulatory framework on financial and other support to civil society activities.

RETURN AND REINTEGRATION

Overview

16. Approximately 110,000 Croatian Serbs are registered as having returned to Croatia, while approximately 208,000 remain outside of the country.[1] Thus, approximately 3,000 additional Croatian Serbs have registered their return to Croatia since the end of the last reporting period, i.e. November 2003. A recent survey conducted by a Zagreb-based polling agency suggests that a large number of Croatian Serbs still outside Croatia have integrated into their places of exile, primarily as a result of long periods of displacement and the persisting obstacles to return to Croatia. Around 14 per cent said they are considering returning to Croatia while approximately 42 per cent stated that access to housing would have a positive impact in deciding whether to return.[2]

17. The same survey demonstrated that psychological obstacles to return also exist, such as the fear of discrimination on the part of local authorities, and the lack of transparency in the arrest of ethnic Serbs on suspicion of war crimes. The Mission's observations confirm the validity of these concerns. Although local authorities in the war-affected areas have generally become more welcoming towards refugee return, there are still many cases of local discrimination against Serbs. Examples include Serb returnees having difficulties in regularizing their status upon return with the local police, as well as difficulties in applying for building material for repair of their looted homes. Similar problems are experienced in some areas when Serb returnees request that electricity be restored in order to make their homes habitable. The security situation in return areas remains largely satisfactory, but isolated incidents still take place.

18. A solution to the refugee-return issue requires that all those who want to return to Croatia have access to adequate housing. This is still not the case, although significant progress has lately been made on reconstruction and repossession of private residential properties. The EC

concluded in April that the Government "… has put in place provisions to provide housing solutions to refugees and [internally displaced persons] [IDPs] who wish to return. However, the implementation of these provisions, with the exception of the Government's reconstruction programme, has to be accelerated and improved".[3] The legal regime on property repossession continues to favour the interests of temporary occupants of private property over the rights of the owners of occupied property. There is still no significant progress on implementation of the housing programmes for former tenants of socially owned housing with occupancy/tenancy rights (OTR) who wish to return. The last category encompasses those Serb refugees and IDPs who left the urban areas of Croatia as well as persons who never left Croatia but were forcefully evicted.

19. Other legal and administrative issues exist that adversely affect the return process and the full respect for acquired rights.[4] These include difficulties Serbs face in having working years recognized that were completed in the so-called "*Republika Srpska Krajina*" on the territory of Croatia during the period January 1992 until August 1995 as well as in the Danube Region of Eastern Slavonia before the region was peacefully reintegrated in January 1998; and the lack of a firm Government commitment to assist refugees and IDPs in repossessing their occupied non-residential properties such as occupied business premises and agricultural land.

20. In June 2004, the Mission and its international partners suggested that the Government re-establish a regular working-level consultation mechanism aimed at providing advice and expertise to the Government to address remaining legal and other impediments to return.[5] This will compliment the regular joint meetings of the Heads of the Mission, the Delegation of the EC and the UNHCR Office with relevant Government authorities.

Housing to Former Occupancy/Tenancy Rights (OTR) Holders

21. The need to provide housing to former OTR holders is the most important outstanding Government commitment in support of sustainable return of refugees and IDPs. The large-scale termination of OTR during and after the armed conflict almost exclusively affected Serbs. Exact figures for the entire country cannot be determined, but OTR for more than 23,000 households were terminated through court rulings outside the Areas of Special State Concern (ASSC), that is, primarily in the urban areas that remained under the control of the Government during the armed conflict. As stated in the 2003 Annual Report of the Ombudsman, which was made public in May 2004, the number of complaints from Croatian Serb refugees in Bosnia and Herzegovina and Serbia and Montenegro are increasing and relate primarily to terminated OTR.

22. The Government has established two different programmes designed to provide housing to former OTR holders. The programmes became formally operational in 2000 and in 2003, respectively, but both have yet to show any visible results.[6]

23. Former OTR holders from *inside* the ASSC were made eligible for State housing through amendments in 2000 and 2002 to the 1996 Law on the ASSC (LASSC).[7] However, these persons received the lowest priority granted to eligible housing beneficiaries under this law. Housing that is currently available is instead being used to accommodate temporary users of occupied properties that belong to Serbs.

24. Former OTR holders from *outside* the ASSC, including Croatia's larger cities, were made eligible for State housing in June 2003 through a *Conclusion* of the Government. The decision provides housing options for a part of the more than 23,000 above-mentioned

households. While application procedures started in March 2004, the programme has not yet been publicized widely. Potential beneficiaries must apply for housing by the end of 2004. They must state that they want to live in Croatia and they cannot already own residential property in former Yugoslavia. The Mission, the Delegation of the EC and the UNHCR Mission have suggested an extension of the deadline in light of the significantly delayed launching of the application procedure and the lack of information to beneficiaries at the onset.

25. The scale of the programmes will depend on the number of applications. A Government information campaign, designed to assist refugees in Bosnia and Herzegovina and Serbia and Montenegro in applying, was delayed but is finally scheduled to be launched in July with the assistance of the UNHCR offices in the region. The Government has stated its intention to purchase 400-500 apartments in 2004 in order to rent them to former OTR holders *outside* the ASSC. Most of these apartments need to be constructed before they can be allocated to beneficiaries. Approximately €3 million has been allocated in the 2004 State budget for a first payment by the Government under a loan scheme that would allow the State to purchase these apartments. The Government stated in March 2004 in a letter to the Delegation of the EC that funding will be made available in 2004 to earmark approximately 1,600 apartments to former OTR holders from inside the ASSC.[8] The Mission has recommended that the issue of State housing for those former OTR holders inside and outside the ASSC who intend to return be included as a priority issue in the mandate of the new Commission for the Return of Displaced Persons and Refugees and the Return of Property (see item 29 below).

26. The Mission continues to monitor court-ordered evictions of Serbs, which are being enforced on the basis of old OTR terminations. These cases primarily involve persons who are living in State-owned property, particularly in property belonging to the Ministry of Defence. Some terminations are still today resulting in the eviction and displacement of families from their homes. In some cases, the Government continues to insist on evictions on the basis of judicial terminations that are contrary to a decision of the Constitutional Court.[9]

27. In the Danube Region, where OTR were not terminated either *ex lege* or through individual court proceedings, former OTR holders enjoy *de jure* the status of protected lessees.[10] This status was recognized on different occasions by the Vukovar Municipal Court[11] and by the Constitutional Court.[12] However, this status is today disregarded in practice by authorities in the City of Vukovar. In particular, such protected lessees have been refused access to their previous homes after the reconstruction of municipal apartment buildings.[13]

28. The programmes designed to provide social housing to former OTR holders inside and outside the ASSC do not address the issue of whether OTR terminations during and after the conflict were legally justified. This issue is the subject of a pending case at the European Court of Human Rights, which is likely to be decided in the near future.

Property Repossession

29. A new co-ordination body called the 'Commission for Expellees, Refugees and the Return of Property' was established on 12 March.[14] Reporting directly to the Prime Minister, the Commission is tasked to accelerate the property repossession process in line with the commitments and deadlines laid out in the *Agreement on Co-operation between the future Government of the Republic of Croatia and the Representatives of the Serb Independent Democratic Party in the Croatian Parliament*.[15] The Commission co-ordinates and

supervises the work of the State administration in regard to property restitution and reconstruction of residential properties. The Commission supervises *inter alia* the Department for Expellees, Returnees and Refugees of the Ministry for Maritime Affaires, Tourism, Traffic and Development. The Head of this Department is a member of the Commission.

30. The Government has intensified efforts to return Serb-owned private properties that remain occupied by temporary users, most of which are Croat refugees from Bosnia and Herzegovina. The number of such occupied properties thus decreased from approximately 3,500 on 1 January 2004 to approximately 2,300 on 1 June. Property repossession has been most successful in central Croatia, while the Government has also taken action aimed at accelerating repossession in the Dalmatian inland, which has remained relatively slow.[16] At the moment, alternative housing has been approved for the majority of the eligible temporary occupants. The Government expects that the remaining temporary occupants will receive an administrative decision for alternative housing before the end of August.[17] The alternative housing is either constructed or purchased by the Government. The shortage of quality alternative housing available for Government purchase (usually houses belonging to Croatian Serbs) remains an obstacle to final repossession, especially in southern Croatia. The new Commission has toured the Knin area of southern Croatia and the Sisak area of central Croatia and helped solve the majority of cases related to illegally occupied properties (a smaller number of cases in which temporary use was not sanctioned by the State at the outset) which existed in these areas.[18]

31. The return process is still being retarded because many repossessed properties are rendered uninhabitable through damage or looting. As a result, owners are prevented from physically moving into their repossessed houses immediately after administrative take-over. This prolongs displacement or forces owners to sell their properties to the State at low prices due to the damage. Owners of damaged or looted properties have the right to apply for building material, and a growing number of owners have resorted to this option. Many local officials remain unaware of this right available to owners, or they do not promote it. The delivery of construction materials for this category of beneficiaries has not yet started.[19]

32. Financial compensation for the continued use of private housing is guaranteed in the LASSC for those owners who were not able to repossess their houses before 31 December 2002. In practice, compensation is only being paid to a small portion of the total number of eligible beneficiaries.[20] The relevant Ministry states that compensation can only be granted to owners who specifically opted for financial compensation in a survey that was undertaken at the end of 2002.[21]

33. There are also many cases of illegal use of private business premises and agricultural land, most of which were originally allocated by the State for "temporary use".[22] These properties are used mainly by Croat settlers from areas of Croatia that were unaffected by the armed conflict and who were never themselves displaced. In many cases, owners have no other option than protracted and expensive private lawsuits to secure the return of their properties.

34. There are several recent examples of courts compelling owners to pay temporary users, including illegal occupants, for "investments" in properties that the temporary users claim to have made while the properties were occupied.[23] The Mission is not aware of any case where such investments were agreed upon with the owner. The Parliament has also prevented

owners from exercising significant ownership rights, including requests for compensation from occupants for the prolonged use of their property.[24] Thus, while the State itself took over the administration of these properties and allocated them for temporary use, it does not take responsibility for resolving this inequity. By contrast, the State is obliged by the Parliament to reimburse the occupants in cases where courts have already ruled in favour of rent payments to owners for the prolonged use of private property. This amounts to more than 50 cases to date.

35. Delays continue as a rule in court proceedings initiated to repossess private property.[25] Further delays occur in the execution of court verdicts. The ECHR sanctioned Croatia twice in 2004 for unreasonable delays in the execution of similar verdicts, finding that the delays violated the right to home as well as the right to fair trial.[26] The ECHR agreed in 2004 to decide whether judicial delays in the return of private property violate the right to property itself.[27]

Reconstruction of Destroyed Residential Properties

36. Croatian Serbs now constitute the firm majority of current beneficiaries of the Government's reconstruction programme. The homes of most eligible Croats have already been reconstructed. About 70 per cent of the more than 8,000 houses which received State reconstruction assistance in the course of 2003 and the beginning of 2004 are owned by Croatian citizens of Serb ethnicity. The Government decided in March, pursuant to the *Agreement on Co-operation between the future Government of the Republic of Croatia and the Representatives of the Serb Independent Democratic Party in the Croatian Parliament*, to extend the deadline for the application for State-provided reconstruction assistance until 30 September 2004. Several thousand potential beneficiaries who missed the previous deadline at the end of 2001, or did not consider this option at the time because of a less favourable return climate, will now be allowed to file first-time reconstruction claims.

37. Approximately 5,200 claims for reconstruction, mainly filed abroad by Croatian Serb refugees before the previous 2001 deadline, still remain to be processed by the relevant Ministry.[28] The main impediment to the processing of these claims is the large number of incomplete files (for example, documents proving ownership and other required information are missing in approximately 4,000 cases) and the difficulties in contacting the applicants who are mainly displaced in Serbia and Montenegro and Bosnia and Herzegovina. The *Agreement* foresaw that all remaining reconstruction claims should be processed before 30 April 2004.[29] The tight deadline reportedly caused some local offices to dismiss valid applications outright.[30]

38. Reconstruction assistance is also provided for property damage resulting from terrorist acts that occurred in Government-controlled areas during the conflict.[31] Damages caused by terrorist acts, as opposed to war-related activities, were inflicted primarily on Serb-owned properties. The relevant 2003 law provides that property owners who originally sought compensation through civil lawsuits that were suspended indefinitely by the Parliament in 1996 should instead seek a remedy under the Law on Reconstruction.[32] It has proved difficult in practice, however, for property owners to receive reconstruction assistance as compensation. As mandated by law, local courts have dismissed long-pending lawsuits, in at least one case assessing the State's court costs against the property owner.[33] It is anticipated that the relevant Ministry will deny some claims because the property is not eligible for reconstruction according to the criteria established in the Law on Reconstruction. In that event, the property owner would no longer have a right to claim compensation either from the

court or the Ministry, although a valid claim existed when the original civil suit was initiated. The law's elimination of such civil claims, viewed as property interests for purposes of the European Convention on Human Rights, without any form of available remedy has resulted in new complaints being initiated at the ECHR by those whose claims have been extinguished.[34]

Unconditional Return

39. The 2003 Law on Foreigners, which is in force since 1 January 2004, allows for the re-establishment of the status of permanently residing foreigner for individuals, mainly Croatian Serbs, who were deregistered when they fled their homes during the armed conflict and have not yet acquired Croatian citizenship. This category of individuals could previously return to Croatia and register only if they could prove they had secured permanent accommodation and sufficient income to sustain their stay in Croatia. The deadline for such applications is 31 December 2004. Field reports have shown that the new alleviating provisions are not uniformly applied by the Ministry of the Interior in the whole territory of Croatia.[35] The Mission is consulting with the Ministry in order to overcome irregularities in regard to the Law's correct and fair implementation, and is considering requesting an extension of the deadline together with the OSCE and UNHCR Missions and the Delegations of the EC in Croatia and the neighbouring countries.

Regional Return-Related Activities

40. The Government continues to provide some reconstruction assistance in Bosnia and Herzegovina.[36] Interest among Bosnian Croats to return to Bosnia and Herzegovina is, however, very low; more than half of the potential beneficiaries are persons displaced internally in Bosnia and Herzegovina.

41. The OSCE Missions to Bosnia and Herzegovina, Croatia, and Serbia and Montenegro continue to co-operate on return-related issues in order to ensure consistency of advice and assistance provided to the host Governments. The Principals of the OSCE Missions, the Delegations of the EC and the UNHCR Offices in the three countries meet on 22 June in Zagreb and decided to further enhance their interaction and co-ordination. The three HoMs briefed on the status of the implementation of the Joint Action Plan on regional co-operation and return and further courses of action.

42. As the OSCE Focal Point, the Mission contributes to the Migration, Asylum, Refugees Regional Initiative (MARRI) of the Stability Pact for South-eastern Europe, in particular its 'Access to Rights' component. The Mission supports MARRI efforts to assist the three Governments in establishing a more comprehensive mechanism for data exchange.

43. The Law on Asylum entered into force on 1 July.[37] According to the UNHCR, the Law provides a good basis for the establishment of a national asylum procedure based on international standards. The previously applicable law defined refugees in a manner significantly different than the 1951 Geneva Convention on Refugees and caused the Ministry of the Interior to reject all requests for asylum. Implementation to date includes the formation of an Asylum Unit within the Ministry of the Interior and the issuance of administrative regulations and forms. The UNHCR has identified a number of outstanding issues, primarily the lack of clarity in outlining the rights and obligations of asylum seekers and the establishment of a separate Asylum Reception Centre.

JUSTICE AND THE RULE OF LAW

Rights of National Minorities

44. Croatia's overall minority rights protection regime is framed within the Constitutional Law on the Rights of National Minorities (CLNM) which was adopted in December 2002.[38] Implementation of the CLNM has to date primarily involved minority representation at all levels of elected government. No steps have yet been taken toward implementation of the CLNM's guarantees related to minority representation in the State administration and the judiciary.[39] The Mission and the OSCE High Commissioner on National Minorities will explore, together with the Government, modalities for the development of prospective plans for recruitment and hiring of qualified individuals representing minorities.

45. Implementation of the electoral guarantees in the CLNM was completed in February 2004 with elections for both the Councils for National Minorities (CNMs) and minority representatives in local and regional self-government councils where minority under-representation remained following local elections in May 2001.[40] Prime Minister Ivo Sanader twice called on national minorities to vote, but turnout was very low. Funding and concrete "get-out-the-vote" efforts were primarily undertaken by Croatia's lead election-support NGO, *GONG*, to which the Delegation of the EC and the Mission provided funding. In anticipation of nation-wide local elections in 2005, the Mission will undertake efforts together with the Government and minority organizations to enhance minority voter education and registration.

46. CNMs have yet to become a significant voice for minority concerns. Their work to date has largely focused on the formal processes of establishment and funding.[41] The national-level CNM has primarily focussed on distributing Government funds to minority associations.[42] In order for CNMs to be able to stimulate participation of minorities in public life, both minority and government representatives must become more pro-active and assume greater responsibility for their future development. The Mission has supported the development of the CNMs through various measures.[43] The establishment of the CNMs has sparked a discussion on the interaction between CNMs on the one hand, and minority NGOs on the other, in promoting minority rights

47. The Government established a Commission in April 2004 to monitor implementation of the National Programme for Roma, comprised of representatives of the Government, NGOs and the Roma minority.[44] In response to a Commission deadline, most relevant ministries provided draft action plans by 1 May for the implementation of various aspects of the Programme as well as a Roma-related World Bank project.[45] On the basis of these drafts and other input from the Roma community, the Commission will develop a unified action plan by 15 December. Implementation of the Programme has started at the national level but not yet locally. The Mission continues to monitor implementation at all levels.

48. In March 2004, the Government organized a training seminar for Roma youth on the subject of participation in State- and local-level decision-making processes with the support of the Council of Europe (CoE) and the Mission. In May 2004, the Government organized a similar seminar with the support of the CoE and the Open Society Institute.

49. In April the Government submitted its second Report on the Implementation of the Framework Convention for the Protection of National Minorities to the CoE. The Report represents the joint work of Government bodies and national minority institutions and representatives. The Report focuses on legislation, in particular implementation of the CLNM. It also summarizes Government-sponsored activities aimed at preserving minority

culture, language and customs, including an overview of the education schemes in which approximately 11,000 minority pupils of primary and secondary schools, excluding Roma children, are currently enrolled. The Report acknowledges existing impediments that limit national minorities in fully exercising their rights, specifically in terms of employment and reconstruction of devastated property in war-affected areas.

50. In their assessment of the Report, minority representatives encouraged the Government to strengthen and secure the greater involvement of minority organizations in the work of State bodies. The Government was also encouraged to educate the public toward the goal of eliminating minority stereotypes. Other recommendations included calls to address legal gaps related to refugee return and the promotion of the use of languages and script of minorities.

51. Some issues regarding minority education remains open, in particular for the Serb minority in the Danube Region. For example, Serb requests for separate schools, to which they are entitled under the special arrangements governing the Danube Region, are still pending. At the same time, he Mission continues to advocate the development of minority education in a way that discourages segregation of minority students. A related development is the continued resistance to so-called "re-integrated teachers" in the Danube Region**.** These teachers, of either Serb or Croat ethnicity, resided in the Serb-occupied territories such as Baranja and Knin during the conflict and were later "taken over" by the Croatian school system. In some instances, Croat parents withdraw their children from class rather than have them taught by such teachers. The Mission is seeking to address this issue with the Ministry of Education as well as with local authorities.

Judiciary and the Administration of Justice

52. The Ministry of Justice initiated the first concrete efforts aimed at systemic reform of the judiciary in 2004, many of which are financed through the EC CARDS programme. A first outline of the Ministry's plans was issued in May.[46] A CARDS-funded foreign expert has begun to develop a pilot curriculum for the Judicial Training Academy which should be operational in 2005.[47] Other projects focus on court administration and IT upgrading for courts. Ministry-sponsored legislation adopted in January 2004 allows for the transfer of cases from overburdened courts to less burdened ones.[48] While certain technical reforms can be accomplished within the three-year period contemplated by the Ministry, the overall implementation will extend over a much longer period.

53. Reducing the case backlog of approximately 1.5 million cases is a primary focus of judicial reform.[49] While backlog reduction is most frequently discussed in technical terms as improvement in the "efficiency" of the judiciary, it is in fact legally necessary in order to comply with the fair trial requirement that courts have to decide cases within a reasonable amount of time.[50]

54. Several indicators suggest that delays in judicial proceedings continue to pose a significant problem and infringe on substantive rights.[51] These include the increased number of judgments by the Constitutional Court in 2003 and the first five months of 2004, finding unreasonable delays in the local courts and Supreme Court.[52] The Ombudsman also observed an increased number of complaints related to such delays, including disputes before the Administrative Court.[53] Similarly, the EC's *Opinion* on Croatia's EU membership application concluded that citizen's rights are not fully protected by the Croatian judiciary and reiterated the need to simplify court procedures, limit abuse of procedures and strengthen enforcement procedures.[54]

55. Other aspects of the right to fair trial, particularly the right to an impartial tribunal, are not addressed by the judicial reform plans. Such issues are of concern, particularly with regard to impartiality in the adjudication of war crimes as well as legal questions related to Serb refugees and displaced persons. Attention to this issue is warranted in the form of training, codification of judicial ethics and professional responsibility, and recusal provisions. Of note, the ECHR will review whether the Constitutional Court's recusal rules provide sufficient protection to guarantee the impartial composition of the Constitutional Court's panels.[55] No reform measures have been adopted for the Administrative Court to address deficiencies that prevent it from providing certain fair trial guarantees.[56] The Mission's judicial reform activities focus on strengthening the capacity of domestic human rights institutions. This includes the Constitutional Court and the Ombudsman. The Mission continues to facilitate several projects intended to improve public awareness of and access to those institutions.[57]

56. As noted in the EC's *Opinion* on Croatia's EU membership application, Croatia has no system for free legal aid in civil cases other than that provided pursuant to the *pro bono* obligation of members of the Croatian Bar Association (HOK).[58] A proposal under consideration for 2004 EC CARDS project funding would facilitate development of a free legal-aid scheme. The judicial reform plan includes the adoption of a new law on free legal aid. Given the absence of a free legal-aid system, the decision of the HOK in June to significantly re-structure its fee scale and increase the tariffs for legal services raises concern about the access to court of poor people, including refugees and displaced persons.[59]

57. In the past six months there has been an observable impact of judgments by the European Court of Human Rights (ECHR) on the Constitutional Court's fair trial jurisprudence.[60] The Court's actions come in apparent response to ECHR decisions indicating that the Constitutional Court was an ineffective remedy for certain fair trial issues.[61] As a result, the Constitutional Court has changed several aspects of its practice related to fair trial bringing it largely in line with ECHR "pilot cases".[62] It is a welcome development that the Constitutional Court is increasingly deemed to be an effective domestic remedy for fair trial questions. However, unless judicial reforms are consolidated in the lower courts, the Constitutional Court could become burdened with such cases to the extent that its ability to deal with other substantive human rights questions in a timely manner could be jeopardized.

58. On several occasions in 2004, the Constitutional Court invalidated new laws or regulations soon after their adoption on the basis of procedural and substantive flaws.[63] This indicates a need for the Parliament to consider more thoroughly constitutional and human rights requirements when adopting legislation.

59. On certain issues, however, the Constitutional Court has demonstrated a preference for invalidating individual applications of a law, rather than reviewing the constitutionality of the law as written, even where the issue has already been decided by the ECHR. For example, in March 2004 the Court found that the suspension of one court case pursuant to 1996 legislation violated several aspects of the right to fair trial, but did not review the constitutionality of the law as applied to all such cases.[64] This decision is consistent with a pattern of non-review of conflict-related legislation on the grounds that the issue is moot as a result of the Parliament's adoption of new legislation.[65] By failing to decide challenges to legislation, the Constitutional Court has ceded the determination of certain aspects of constitutionality to the Parliament. This casts doubts on the Constitutional Court's ability to

serve as a consistent effective domestic remedy and to fully comply with the exigencies of ECHR precedent.

60. The ECHR continued in 2004 to accept complaints invoking the lack of effective domestic remedies to challenge the lack of access to court.[66] Furthermore, it has also found that the Constitutional Court is not an effective remedy to challenge other substantive human rights issues because its jurisdictional statute only contemplates complaints against a decision of a State authority rather than general conditions.[67]

61. An important fair trial issue that remains unaddressed by the Constitutional Court is the delay in the enforcement of court verdicts. The ECHR issued two negative judgments in 2004, *Cvijetic v. Croatia* and *Pibernik v. Croatia*, noting that the Constitutional Court had not decided complaints against such delays. Indeed, the Constitutional Court has ruled that it lacks jurisdiction to address this issue.[68]

62. Three aspects of the ECHR's case law involving Croatia are particularly noteworthy for purposes of reform. First, the ECHR has issued repetitive decisions on the same questions suggesting that no domestic remedies have been put in place after the ECHR's first "pilot" decisions. Second, the ECHR has observed that the Constitutional Court does not serve as an effective domestic remedy for some human rights violations, possibly due to restrictions in its jurisdictional statute. Third, a majority of applications accepted for review involve legal issues related to the armed conflict and concern primarily members of national minorities. These observations underline the need for review of the statute regulating the Constitutional Court's jurisdiction to enable that Court to supervise the full range of human rights standards.[69] The failure of the Government, the State Attorney and the Supreme Court to follow the Constitutional Court's judgments also presents a fundamental challenge to the Court's constitutional role and the rule of law.[70] The Parliamentary Committee on Human and Minority Rights adopted a resolution in June calling for such reform after a hearing where a Mission report on ECHR cases involving Croatia was presented.

State Administration and the Ombudsman

63. The EC has designated improved co-operation with the Ombudsman as a short-term priority for Croatia.[71] The eight-year mandate of the Ombudsman for human rights expired on 28 June, however, without the appointment of a new Ombudsman.[72]

64. In his 2003 Annual Report to the Parliament, adopted in April, the Ombudsman for human rights issues reported a more than 50 per cent increase in the number of complaints in comparison to 2002, largely as a result of outreach activities outside of the capital. The presentation coincided with the first annual reports of two specialized Ombudsman institutions established in 2003, the Ombudsman for Children and the Ombudsman for Gender Equality. The Parliament stressed in a resolution the need for compliance with Ombudsman recommendations and the recommendations of an independent external expert analysis jointly commissioned by the ODIHR and the Mission in 2003.

65. According to the 2003 Annual Report, most complaints are related to social welfare entitlements and property and housing rights. Nearly one third of all complaints were lodged during ten field visits by the Ombudsman funded through a Mission project by the Government of Norway.[73] The visits were the first of their kind since the Ombudsman institution was established in 1992, enabling citizens outside the capital to file complaints in person and facilitating Ombudsman contacts with local authorities and State institutions.

Field visits also facilitated an increase in the number of complaints from Croatian Serb refugees in Bosnia and Herzegovina and Serbia and Montenegro, primarily on the issue of terminated occupancy/tenancy rights.

66. Among other concerns, the Ombudsman noted that administrative proceedings, including disputes before the Administrative Court, frequently take an unreasonable amount of time to be decided and are not implemented by certain administrative bodies. A large portion of complaints relate to the failure of State bodies to meet legal deadlines and more generally the non-responsiveness by these bodies to the public.

International Co-operation on War-Crime Prosecution

67. The Chief Prosecutor of the ICTY stated in April 2004, immediately prior to the release of the EC's *Opinion* on Croatia's EU membership bid, that Croatia was now co-operating fully with the ICTY. The Chief Prosecutor reiterated that Croatia still had to locate and transfer fugitive General Ante Gotovina to The Hague. Her view was that the Croatian authorities had enhanced their efforts to locate Gotovina and she hoped that this would continue and result in his transfer to the ICTY in the near future.

68. The Chief Prosecutor's favourable assessment of Croatia's co-operation with the ICTY followed the voluntary surrender of eight indictees: former Croatian Army Generals Ivan Cermak and Mladen Markac in February 2004;[74] and six former Croatian Army and Bosnian Croat officials in March 2004.[75] While the Government facilitated these voluntary surrenders, Prime Minister Ivo Sanader argued that the indictments contained some "completely unacceptable" allegations. The Minister of Justice announced that the Government would provide legal and logistical support to the indictees and visited the indictees during a trip to The Hague in late June. On 30 June, the Government issued a formal decision establishing a council to act in the capacity of "friends of the court" in the ICTY proceedings against Cermak and Markac. President Stjepan Mesic stated that ICTY indictments would have been unnecessary if the Croatian judiciary had responded in a timely way and prosecuted war crimes committed by members of the Croatian Armed Forces. The Parliament held a special debate on war-crime indictments and co-operation with the ICTY on 2 July, and adopted a conclusion in support of the Government's positions on full ICTY co-operation, which also including the need to defend the truth of the Homeland War.

69. In late June, the ICTY sentenced Milan Babic, a former Serb political leader in the so-called "*Republika Srpska Krajina*", to 13 years imprisonment for crimes against humanity against Croats and other non-Serbs between August 1991 and February 1992.

70. In March the UN Security Council (UNSC) repeated its call for renewed efforts to ensure the timely implementation of the ICTY Completion Strategy.[76] The UNSC reiterated its position that the "… strengthening of competent national judicial systems is crucially important to the rule of law in general and to the implementation of the ICTY … completion strategy in particular."[77] Both the ICTY President and the Chief Prosecutor reported to the UNSC on 29 June on their progress toward implementation of the Completion Strategy *vis-à-vis* each national jurisdiction, including the transfer of cases related to medium- and low-level accused persons. The ICTY President noted that there are still doubts that credible war-crime trials can take place in Croatia and Serbia and Montenegro. In relation to Croatia, the President cited EC and Mission concerns about the capacity and impartiality of parts of the Croatian judiciary, but he went on to quote the Mission's assessment that "there is no reason to believe that the Croatian judiciary would not be able to handle a limited number of cases in

a fair and efficient way, particularly if assigned to those judges and prosecutors who have already received special training and resources". The ICTY Chief Prosecutor indicated that the support of the international community including regional organizations such as the OSCE was of paramount importance.

71. In late May, the ICTY issued an indictment against former Croatian Army General Mirko Norac for alleged crimes in 1993 against Serb civilians.[78] Croatia was ordered to surrender Norac for his first appearance before the Tribunal on 8 July. The ICTY Chief Prosecutor indicated that she would request that the ICTY Trial Chamber join the Norac indictment with that of former Croatian Army General Rahim Ademi indicted in 2001 and transfer the indictment to Croatia for trial.[79] In the event the Trial Chamber decides to transfer the case, it would set a precedent as the first ICTY indictment transferred to a national jurisdiction. The ICTY Chief Prosecutor indicated that she looked to the Mission to provide monitoring of such transferred cases.

72. In anticipation of the transfer of cases from the ICTY to Croatia, the Ministry of Justice and the ICTY began a three-part training programme in May for judges and prosecutors from four courts that are given extraterritorial jurisdiction of war-crime proceedings under legislation adopted in late 2003.[80] These courts, with the exception of Osijek, have not conducted a significant number of war-crime proceedings. Most war-crime trials in Croatia will continue to be pursued in courts other than the four courts, even though relevant judicial officials from those courts are not currently scheduled to receive training.

73. The domestic judiciary's capacity to adequately address cases transferred from the ICTY will depend on the impartiality of judges; the compatibility of Croatian law and practice with the law and jurisprudence of the ICTY; the judicial knowledge and skills of judges and prosecutors; and co-operation with judicial authorities of neighbouring States of the former Yugoslavia through international legal assistance.

74. Based on its assessment of deficiencies in domestic proceedings gained through its trial monitoring,[81] the Mission has advised both the ICTY and the Ministry of Justice on the content of the training activities, focusing on the need to address the issue of impartiality of the judiciary, witness protection, use of expert witnesses, sentencing and mitigating circumstances, and training of defence attorneys.[82]

War-Crime Trials in Domestic Courts

75. In late June, at a joint press conference with the Minister of Justice, the HoM presented two reports based on the Mission's country-wide trial monitoring. While acknowledging recent improvements, the reports concluded that additional reforms were needed to provide for impartial adjudication of war crimes in all Croatian courts. These observations should serve as the basis for the development of further reform efforts to achieve the Government's stated objective of a uniform standard of criminal responsibility regardless of national origin, as well as a single standard of justice for victims. The Mission has advised that reform measures should apply equally to all war-crime proceedings in Croatia, not only those originating from the ICTY, which will constitute a relatively small part of the domestic caseload. To do otherwise could result in a two-tier system of justice.

76. Croatian authorities continued with the prosecution of war crimes in courts across the country.[83] The national origin of defendants and, possibly even more importantly, that of victims continued to affect war-crime proceedings. While there is no imperative that an equal

number of Serbs and Croats should face prosecution for war crimes, both statistical and case review by the Mission demonstrates that a single standard of accountability is not yet in force.[84] As in previous years, Serbs constitute the vast majority of suspects at all stages of criminal procedure.[85] The number of Croats facing war-crime prosecution decreased in 2003 and in the first six months of 2004 compared to 2002.[86]

77. The Chief State Prosecutor travelled to a number of local prosecutors' offices to personally supervise the review of long-pending war-crime charges. In 2003 the State abandoned a significant number of charges, primarily against Serbs, during or before trial due to lack of evidence.[87] This trend continued in the first six months of 2004 with seven of 19 arrested Serbs later released with charges dropped.[88] Although unsubstantiated charges are eventually dropped, the review of old indictments ordered by the Chief State Prosecutor is generally only triggered after an arrest, which leads to detentions and judicial proceedings. Fewer *in absentia* proceedings were conducted in the first six months of 2004, with two of 9 Serbs convicted *in absentia*.[89]

78. In early April, the Osijek County Court issued a verdict in a significant war-crime trial, concerning the killing of 19 Serb and Hungarian civilians in 1991 in Paulin Dvor in Eastern Slavonia. The court convicted a Croat defendant to 12 years imprisonment.[90] Criminal impunity remains, however, for the subsequent attempt to conceal this war crime by the transport of the bodies across the country in 1997, reportedly because the domestic law does not sanction such conduct as a war crime and the statute of limitations had expired for the lesser crimes.

79. The problems in trial courts related to impartiality as well as applicable legal standards and procedures continue to be corroborated by the significant reversal rate by the Supreme Court of war-crime verdicts from these courts.[91] The primary source of reversible error was the trial court's failure to properly establish the facts. Since the beginning of 2004, the Supreme Court reversed seven of 15 trial court verdicts and remanded the cases for re-trial.[92] Of note, the Supreme Court upheld in late June the conviction of Mirko Norac and two others for war crimes against Serbs in 1991.[93]

80. The system for obtaining international legal assistance from neighbouring states, in particular Serbia and Montenegro does not always function adequately, frustrating proceedings in Croatian courts.[94] Co-operation related to international legal assistance between Croatia, Bosnia and Herzegovina, and Serbia and Montenegro will be of increasing importance not only in domestic cases but also in cases transferred to national judiciaries by the ICTY.

81. A new witness protection law took effect on 1 January 2004. A comprehensive witness protection programme is, however, not yet in place. The importance of providing sufficient resources for the full implementation of the witness protection programme was highlighted by the State's acknowledgement in late April 2004 of its civil liability for the death of an ICTY informant who was murdered in Gospic after the State had assumed responsibility for his protection.[95] Criminal impunity remains for the perpetrators of this murder.[96] During the reporting period, at least one trial against Croats was disrupted by demonstrations in support of the defendants and with interferences in the procedure.[97]

ELECTORAL REFORM

82. In anticipation of the forthcoming presidential and local elections in 2004 and 2005, respectively, a renewed discussion has emerged on the need for further reform of election-related legislation.[98] In the past, Government efforts to correct deficiencies were made only shortly prior to elections, causing uncertainty regarding new procedures and requirements. Efforts by the Government to implement the proposed reforms would be in line with the election-related norms, commitments and principles established in the OSCE/ODIHR 2003 Progress Report 'Existing Commitments for Democratic Elections in OSCE Participating States'.[99]

83. In the short-term, three outstanding issues require particular attention. The first arises from recent decisions of the Constitutional Court regarding provisions in both the Law on the Election of Members of Representative Bodies of Local and Regional Self-Government Units and the Law on the Election of the President of the Republic of Croatia. Pursuant to concerns brought by *GONG*, Croatia's lead election-support NGO, the Constitutional Court recently annulled articles in both laws determining the range of people entitled to submit a constitutional complaint over irregularities in the candidacy process.[100] There is currently no valid provision in either law protecting voters' rights in this respect.

84. The second issue relates to the procedure for regulating the representation of national minorities in local and regional self-government units. According to the CLNM, minority representation depends on the population thresholds that are based on the official census results from 2001. The results are to be updated prior to each election to conform to the last confirmed voters' list of any given unit. There is nothing to indicate that such adjustments have occurred prior to elections in 2003 and 2004. It is unclear which State body is responsible for the adjustments, and how they will be realized.

85. The third issue is the establishment of a permanent State Election Commission (SEC) or election administration. The President of the Supreme Court, who also acts as the head of the current non-permanent SEC, recently launched an initiative to relieve the burden on judges at the national and local level which results from their electoral duties in the SEC and in constituency, city and municipal election commissions. His proposal to establish a permanent election administration body is supported by both *GONG* and the ODIHR and has wide political and civil society support. A permanent body would arguably better ensure the conduct of elections; it would also be consistent with the Government's commitment to judicial reform, in allowing the judiciary to focus on court procedures. This issue has not been explicitly mentioned, however, in any Government programme of judicial reform. Given the broad support, the Government has stated that a bill drafted by the Central State Office for Administration to establish a permanent SEC was pending, but the current status of the proposed bill is unknown. A Parliamentary Conclusion in April 2003 obliged the Government to draft a law on a permanent SEC within 60 days.

86. In the longer term, three further areas warrant reform. First, both *GONG* and the ODIHR have consistently stressed the need for greater transparency of campaign financing in local, presidential and parliamentary elections.[101] As the law currently stands, the provisions of relevant laws do not set limits for individual contributions and campaign spending, nor do they specify the procedure for auditing campaign accounts or include specific disclosure requirements for funding sources.[102] None of the laws designate a body with responsibility for scrutinizing accounts or penalizing irregularities. Relevant legislation requires only outline data from political parties about the amount and origin of funds intended to be spent

over the campaign period.[103] While the Law on Political Parties does include provisions requiring the submission of audited annual accounts to the Parliament, its requirements do not seem to apply to independent lists or individual candidates.[104] The Government has expressed an intention to amend this law to improve transparency of financing.

87. Second, technical provisions in the laws regulating local, presidential and parliamentary elections need to be harmonized, also including elections for Councils for National Minorities (CNMs). Operational and technical procedures for all elections should allow for the simultaneous staging of elections, such as the joint parliamentary and CNM elections initially proposed last year. This could be achieved through the drafting of one technical law applicable for all elections and incorporating mandatory instructions, as proposed by *GONG*.

88. Third, the 1992 Law on Voters' Lists should be reformed to allow for the centralized holding and more efficient updating of the lists. This is particular important for minority voters as well as out-of-country voters.[105] The Government has indicated that the Law on Voters' Lists is to be amended, but has not confirmed the nature or timing of the planned amendments. The Parliament obliged the Government in April 2003 to propose amendments to the Law on Voters' Lists within 60 days.

89. The Government should also review other election-related ODIHR recommendations, in particular as they relate to supporting the electoral participation of the Serb refugee population in Bosnia and Herzegovina and Serbia and Montenegro. These efforts would include detailed provisions on out-of-country voting, clearer guidelines on identity documentation, and a reassessment of the location and number of polling stations for out-of-country voters in order to enable disadvantaged voters, i.e. Croatian Serb refugees, to cast their ballots more easily.

POLICE ISSUES

Police Reform and Restructuring

90. Upon coming into office in December 2003, the new Minister of the Interior reaffirmed the Government's commitment to the ongoing police reform programme 'Action Strategy - Community Policing'. The programme addresses six areas: Reform of the Operational and Preventive Work of Uniformed Police; Advancement and Development of Crime Prevention; Organization of Communal Prevention; Reform of Public Relations; Reform of Police Education; and Internal Democratization of the Police. A revised programme was submitted to the Minister in April for approval.

91. The Ministry of the Interior agreed in early 2004 to the Mission's proposal to develop a "Road Map" in order to outline the development of a modern European police service in Croatia. The Road Map is intended to complement current police reform measures and allow these developments to be placed within a broader inter-agency context. The Mission organized a five-day workshop in May with key participants from relevant ministries, State bodies, the judiciary and civil society.

92. Following a six-month assessment of the human resource management system within the Ministry of the Interior undertaken jointly by the Mission and the Ministry, a follow-up workshop was conducted in March. This assessment has facilitated relevant structural and organizational changes within the Ministry, with the aim of creating a human resource management system in line with European standards. The Mission continues to emphasize

the importance of further efforts to ensure adequate representation of national minorities in the police in line with the Constitutional Law on the Rights of National Minorities.

93. Following the adoption of the Law on Witness Protection in 2003, the Mission provided advice and assistance to the Ministry of the Interior on the establishment of a Witness Protection Unit, in line with the Government's efforts to fight major and organized crime and terrorism.

94. The introduction of community policing remains the most advanced among all police reform measures. Approximately 270 so-called "Contact Officers" have to date been deployed throughout the country. The Ministry of Interior has committed itself to a training programme for Contact Officers in 2004/2005, although there have been delays. In conjunction with the Mission, the Croatian Police have continued to make presentations to officers in the field and at organized public forums to prepare communities for the introduction of community policing. Additional assistance and advice has been provided by Germany and the Mission for the establishment in September 2004 of 'Preventive Councils' in 12 cities and towns. The Councils, which comprise representatives from the local communities, will formulate community-based crime prevention initiatives. The Mission's assistance in the introduction of community policing also supports its core objective of improving the conditions for refugee return, since a police responsive to community needs has a particularly important role in communities affected by the war.

Police Management and International Co-operation

95. The Director General of the Croatian Police and several persons from senior police management were changed following the change of government in December 2003. The Minister of the Interior announced that knowledge, skills and experience are the only criteria being used for appointing persons to senior police positions.

96. The Mission continues to emphasize the importance of isolating the Police from any possible political influence by ensuring full transparency and civilian control. The Police Directorate has proposed that a focal point, with the rank of Deputy Director General of Police, be appointed to more effectively co-ordinate contacts with the Ministry of Interior and international organizations.

97. Croatia has committed itself to supporting the conclusions of the Regional Conference on Border Security and Management that took place in May 2003 in Ohrid, the former Yugoslav Republic of Macedonia. The conclusions called for joint regional training of border police in the countries of South-eastern Europe. Croatia hosted a subsequent workshop in April 2004 on regional cross-border co-operation in the region.

98. In March 2004, the Interior Minister's Collegium accepted the final report of the 'Twinning Project Integrated Border Management - Border Police' with the objective of achieving an efficient system of state border supervision in line with EU standards and the Schengen legal system. The Mission will advise the Croatian Border Police during the second phase of the project to support the envisioned establishment of an independent Border Police Service.

Security Situation

99. The general level of security in Croatia remains good. Ethnically related incidents occur sporadically, but appear to be the exception. These incidents are usually directed against Serb

returnees and most often take place in the Zadar hinterland. Tension exists in some places as a result of ongoing war-crime arrests and prosecutions. The need to provide adequate security to witnesses of major crime cases remains an issue.

FREEDOM OF THE MEDIA

Legislation Related to Reform of Media

100. The new Government committed itself in February 2004 to bringing the Law on Croatian Radio-Television (HRT), the Law on Media, the Law on Electronic Media and libel legislation in line with recommendations from the OSCE, the Council of Europe (CoE) and the European Commission (EC). Experts commissioned by the three organizations provided a report in March which outlined their recommendations. The Government's commitment was reflected in the EC's *Opinion* on Croatia's EU membership bid. To date, those recommendations have been most prominently reflected in the Law on Media, while changes to other media laws are still outstanding.

101. A new *Law on Media* was adopted on 30 April after the Constitutional Court had annulled the previous Law on the grounds that it was not adopted by a qualified majority as constitutionally required for organic laws. Most OSCE/CoE/EC expert recommendations were taken into account, but further expert analysis highlighted some remaining points of concern, in particular the requirement for journalists to disclose their sources under certain circumstances by request from the Office of the Chief State Prosecutor and the removal in the final draft of reference to Article 10 of the European Convention on Human Rights. The Ministry of Culture replied that the new law offered greater protection than Article 10 and does not prescribe penalties for journalists' who refuse to reveal their sources. The Croatian Journalists' Association also voiced its concern over the disclosure provision.

102. The OSCE/EC/CoE experts also made recommendations to a new draft *Law on HRT*. In the Law on HRT that was adopted in February 2003, OSCE/CoE recommendations to enhance the role of civil society in the oversight body were not taken into account. A new HRT Programme Council was only appointed after an eight-month stalemate in the Parliament. A Government-appointed working group produced a new draft with a larger role for civil society in appointing the Council, while the opposition maintained that the changes amounted to political interference. The OSCE, the CoE and the EC stressed that while changes to the Law were expected, it was also important to ensure stability at the HRT at a time of increased competition. Responding to this concern, the Government has delayed the preparation of a new draft until HRT senior staff were appointed. The draft, which had not yet been submitted by the end of June, will be reviewed by OSCE/CoE/EC experts. Meanwhile, the HRT Programme Council re-elected the HRT Director General and appointed senior management at HRT.

103. According to the OSCE/CoE/EC recommendations, the Government was to give the highest priority to changes to the *Law on Electronic Media* governing *inter alia* the rights and obligations of electronic media broadcasters**.** The main issue of concern in the current Law remains the provisions regulating the independence and the appointment of the Council for Electronic Media. In addition, the Law does not conform to standards set out in the European Convention on Trans-Frontier Television, which Croatia ratified in 2001. The Government has not yet submitted a new draft. Meanwhile, the Government appointed a new Council for Electronic Media on the basis of the current Law in a procedure that was widely criticized for not being transparent.

104. The OSCE/CoE/EC experts also assessed that provisions in the Criminal Code on libel could cause violation of certain rights under Article 10 of the European Convention on Human Rights. They confirmed earlier recommendations that libel should be addressed exclusively through civil procedures. A new Criminal Code which included provisions that widened the scope of criminal responsibility for journalists was adopted in July 2003 but annulled by the Constitutional Court on procedural grounds in November 2003. A revised proposal in April 2004 included some changes to the libel provisions, such as reinstating a provision limiting criminal responsibility for journalists only in cases where libel was found to be intentional, but did not exclude criminal responsibility for libel altogether. The criminal provisions on libel continue to be used in proceedings against journalists.[106]

105. The adoption of the *Law on Access to Information* in October 2003 does not seem to have led to a significant improvement of the public's access to information. The Croatian Journalists' Association stated in May that, since the change in government in December 2003, access to information had diminished. A group of seventeen prominent NGOs called "The Public has the Right to Know" has drafted amendments to the Law and will launch a public awareness campaign.

Media Development

106. On 30 April a new private television station, RTL Croatia (HRTL), began broadcasting nationwide. HRTL won the bid to broadcast on the frequency formerly used by the third programme of Croatian Television. Croatia has now three nationwide television stations broadcasting on four channels and a regional network of television stations. HTV news, which previously had little competition, has recently seen its ratings drop significantly but still remains the most watched current affairs programme in Croatia.

107. The State also owns two major newspapers which it has pledged to privatize. Despite the postponement of the tender a number of times, the privatization of the country's third-largest daily *Slobodna Dalmacija* is underway. The highest tender was submitted *Europa Press Holding* (*EPH*), which already publishes several Croatian weeklies and three daily newspapers. However, the privatization was again put into question following the adoption of the new Law on Media containing an anti-concentration limit of 40 per cent of the market share of the total number of sold daily or weekly publications sold. Though the Croatian Privatisation Fund has conditionally accepted the *EPH* bid, it will only be accepted once the Agency for the Protection of Market Competition assesses that the *EPH* does not exceed the 40 per cent limit.[107] The future of the other State-owned and heavily subsidized daily, *Vjesnik*, is still uncertain, although the Government has pledged to privatize it.[108]

108. Croatian media still lacks a self-regulatory system to effectively adjudicate complaints against the media. Media professionals and other leading representatives of the civil society sector believe that a press or media council is required to improve media quality and adjust the media sector to European standards, in particular on professional and ethical standards. The Mission is considering how the OSCE could support the development of such a body.

109. Many local authorities continue to co-own local electronic and print media. This constitutes a potential impediment to ensuring editorial independence and often results in political pressure on local media or refusal by local authorities to co-operate with other media which do not support their policies.[109] While local journalists generally do not perceive overt limitations to their freedom of expression, self-censorship continues, and investigative journalism is rare and discouraged at the local level.[110] In some areas, local media continue to

use inflammatory language against Serbs and returnees.[111] On 3 May, the Croatian Journalists' Association warned about an increase in the number of attacks against journalists.

CIVIL SOCIETY IN CROATIA

110. The civil society sector in Croatia continues to be marked by transition. NGOs are still in the process of shifting from activities related to humanitarian assistance to advocacy on societal issues. The uneven distribution of Government funding and the lack of co-operation from local governments with NGOs on issues of local concern has been slowing down this process in some areas.

111. The small number of NGOs focused on overriding societal issues tend to be located in the urban areas where the international community is also situated. This fact is one of many indicators that continue the dependency of NGOs on foreign assistance as well as the dominating position that larger urban NGOs have in securing foreign support at the expense of the development of civil society actors in smaller rural communities.

112. Co-operation with local government authorities, which is a pre-requisite for a strong and effective civil society, is sporadic. As a result of poor economic development and shortage of funding to local governments themselves, local authorities often regard NGOs as competitors for scarce resources rather than community partners. In addition, there is little understanding among citizens of what NGOs can do to improve their daily lives. This is a reflection of the failure of many NGOs to elaborate long-term strategies for sustainability.

113. The Government has established the National Foundation for Civil Society Development to support the development of a domestic civil society structure, and in particular to provide technical assistance and training to NGOs. The Foundation was formally established in October 2003, but its activities were officially presented on 2 June 2004. With the aim of supporting long-term capacity-building as well as inter-sector co-operation at the local level, the Foundation has engaged four regional co-ordinators in Osijek, Zadar, Cakovec and Crikvenica.

114. On 11 June, five tenders were launched by the Foundation for financial support to civil society organizations in areas such as civic initiatives, community development, and non-profit entrepreneurship in targeted areas. In addition, three ministries (Education, European Integration, and Foreign Affairs) published their own calls in mid-May to NGOs to submit project proposals in their respective areas of responsibility.

115. The Government passed a controversial decision in May to revoke the 22 per cent value-added tax exemption on foreign donations to a sizable portion of the non-profit civil society actors in Croatia.[112] NGOs and other civil society actors working on human rights, minority rights, women's rights, democratization and other such similar issues must now calculate this tax into the their remaining 2004 activities.[113] In contrast, humanitarian, religious, and sports organizations continue to be exempt from this tax. While discriminating between NGOs, the Government's decision is also likely to discourage foreign actors from making donations to NGOs in Croatia. A group of well-established NGOs approached the Ministry of Finance in protesting the tax and have set up a joint working group with the Ministry to discuss the issue further and identify possible solutions.

116. The financial and other difficulties faced by many NGOs also relate to shortcomings in the wider regulatory framework regulating support to civil society actors and their activities. Clearer legal and procedural standards are required to ensure equal access to all available Government funding to the civil society sector. Some new provisions and legislation are being prepared in order facilitate the work of the NGO sector, in particular the Code of Positive Practices, Standards, and Criteria for the Realization of Financial Support to NGO Programmes and Projects and the Law on Voluntarism.

117. Since many important NGOs and other civil society actors continue to be adversely affected by diminishing funding from the international community in Croatia, an action plan for donor co-ordination was developed in February by the international community, including the Mission.[114] One of the action plan's main priorities is to develop a comprehensive strategy to encourage domestic donors to contribute more to the development of the civil society sector. The Mission's own activities in support of civil society were refocused at the end of 2003 towards supporting long-term capacity-building and intersectoral co-operation among and between NGOs and government institutions and bodies.

ENDNOTES

[1] 188,675 in Serbia and Montenegro and 19,027 in Bosnia and Herzegovina, respectively.

[2] The PULS agency made these findings on the basis of a sample of 1,000 Croatian Serbs who fled Croatia during and after the armed conflict and who currently reside in Serbia and Montenegro.

[3] Commission of the European Communities. Communication for the Commission, '*Opinion on Croatia's Application for Membership of the European Union*', Brussels, 20 April 2004, COM(2004) 257 final: page 29.

[4] These include the regulation of citizenship or the status of permanently residing foreigner for those who have not yet acquired Croatian citizenship, and the re-establishment of health insurance and care.

[5] Co-operation with the Government in this field has been hampered since the work of the joint Working Group on Legislation, which brought together representatives of the Government and the international community, was suspended in January 2003 by the Zagreb-based international community, pending a renewed commitment to co-operation on the part of the Government. There has not been any progress on several issues on the Working Group's agenda, which was agreed with the Government in May 2002. These agenda items include in particular: the validation of employment-related documents; the establishment of a comprehensive solution to property repossession (including business premises and agricultural land); and compensation for terrorist acts caused by the Croatian armed forces and police.

[6] Further, while the provision of housing to former OTR holders *inside* the ASSC is regulated by the LASSC, the programme for former OTR holders from areas *outside* the ASSC does not have the force of law. The LASSC neither limits the period for applications nor the number of applications per former household of OTR holders from *inside* the ASSC, whereas the deadline for beneficiaries from *outside* the ASSC is 31 December 2004. In addition, former OTR holders from *inside* the ASSC can only submit one application per former household.

[7] Former OTR holders were addressed as potential beneficiaries by the amendment to the LASSC in July 2000, although not mentioned explicitly, but mentioned explicitly in an amendment to the Law in July 2002.

[8] If this measure is undertaken, a significantly higher priority will thus be given to these persons in practice. Potential beneficiaries of this programme have not yet received accommodation while application procedures are ongoing. The Mission has not yet received comprehensive data from the Government on the state of the application procedure inside the ASSC.

[9] The Constitutional Court determined in a series of decisions that application of Article 102a of the Law on Housing Relations, which stipulates termination of OTR if the holder participated in enemy activities against Croatia, in the absence of a criminal conviction for enemy activity, was unconstitutional. See U-I-116/1992, dated 24 June 1992 [unpublished]; U-III-326/1995, dated 24 February 1999 [unpublished]; U-III-457/2000, dated 13 December 2000 [Official Gazette 131/00]; and U-III-435/2000, dated 17 May 2000 [Official Gazette 56/00].

[10] The concept of OTR was abolished in 1996 by the Law on the Lease of Apartments. OTR holders that did not purchase their apartments in this region became protected lessees. However, at that time the Danube Region was not under the control of the Government, given the fact that the peaceful reintegration of the Region was realized only in January 1998 following the end of the mandate of the UN Transitional Administration in Eastern Slavonia (UNTAES).

[11] Since January 1998 until today, OTR holders of flats located in the Danube Region who had been previously expelled from those areas filed several law suits with the Vukovar Municipal Court requesting the eviction of temporary users. The plaintiffs (primarily ethnic Croats) in these court proceedings based their requests on the fact that they were OTR holders. The court systematically ordered the eviction of the temporary users of those apartments, reasoning that OTR holders, i.e. plaintiffs, had acquired legal status of protected lessees.

[12] The Constitutional Court, in its Decision from 31 March 1998 on the constitutionality of the Article 30 of the Law on Lease of Apartments in the Liberated Areas, reasoned that the legal system of Croatia no longer recognizes the institute of OTR as they were transformed into protected lease.

[13] After the recent reconstruction of several apartment blocks in Vukovar, former OTR holders who used to occupy apartments in these buildings were refused access to their pre-war apartments as they would have been previously entitled to as protected lessees. Instead, they were invited to apply for State housing like any other former OTR holder in Croatia.

[14] The 14-member Commission is chaired by Ms. Gordana Turic, a former HDZ parliamentarian. The Commission is comprised of State Secretaries and Assistant Ministers of relevant ministries, such as the Ministry of Justice and the Ministry for Maritime Affairs, Tourism, Transport and Development; the Deputy

Chief State Prosecutor; the Director of the State Agency for Real Estate Transactions (APN); the Mayor of Vukovar; and two parliamentarians.

[15] The *Agreement* was signed in December 2003 by Prime Minister Designate Ivo Sanader and the three parliamentarians representing the Serb minority in Croatia. The *Agreement* addresses return-related topics such as property restitution, the application deadline for State-provided reconstruction assistance, the provision of housing to former OTR holders, as well as issues related to the full implementation of the CLNM.

[16] Out of 2,335 still-pending cases of repossession nationwide, 1,435 are located in southern Croatia. Due to the especially difficult situation in wider Knin area, the Ombudsman submitted a special report to the Government, requesting the implementation of urgent operative and legal measures in order to regulate the provision of housing care to refugees and returnees in this area.

[17] Approval of a model of alternative housing by the relevant Ministry is the first administrative step in securing State-owned temporary or permanent accommodation to the eligible occupant.

[18] Out of the 413 cases of illegal occupancy which were pending prior to the establishment of the Commission, 134 still need to be solved as of 1 June.

[19] Field monitoring by the Mission confirms that many local officials, mainly those seconded temporarily by the Ministry for Maritime Affairs, Tourism, Transport and Development, remain unacquainted with the provisions in the LASSC which entitles owners of looted properties to apply for building material upon their repossession. Further, Article 18, paragraph 7 of the Law specifically foresees that "[a] temporary user shall be accountable for the damage that occurred through his fault [to] the facility he received for temporary possession and use".

[20] To date, approximately 1,000 of 3,900 potentially eligible owners have received compensation payments for the State use and granting of their properties to temporary users regularly or as a one-time-payment after repossession.

[21] The survey was conducted by the regional offices of the relevant Ministry in the counties. Potential beneficiaries were invited in writing to appear in person at the regional offices or to send a representative. Many owners who are still displaced in Serbia and Montenegro and Bosnia and Herzegovina did not receive these invitations due to the fact that they had changed addresses or could not afford to travel to Croatia.

[22] The 1995 Law on Temporary Take-Over and Administration of Specified Property foresaw the allocation of such properties on a temporary basis. However, these occupations became illegal following the Parliament's adoption in 1998 of the Government's Return Programme. The Mission provided the Commission for Expellees, Refugees and the Return of Property with a non-exhaustive sample of such cases of private business premises and agricultural land allocated by the State for "temporary use". The list included 12 of a total of 41 cases that already had been resolved by various means. In the meantime, the Ministry has reported to the Mission further cases which according to Government data had been resolved. The Mission's spot checks in the field, however, revealed that not all of these cases had indeed been resolved.

[23] For example, the Municipal Court in Daruvar, Western Slavonia, ordered an owner to pay €5,300 to the occupant for his house; the owner is now facing seizure and sale of the house by court action. In one highly publicized case, the Municipal Court in Korenica, south-central Croatia, ordered an owner to pay €30,000 for investments made by the occupant.

[24] 1999 Authentic Interpretation of the Croatian Parliament of Article 14 Law on the Status of Expellees and Refugees.

[25] As of late April, state attorneys throughout the country were involved in approximately 760 cases seeking property repossession. Approximately one fifth of these cases were pending before local courts, of which approximately six per cent were resolved with verdicts granting repossession (source: Office of the Chief State Attorney). Delays in repossession stem from a number of sources; for example, in Benkovac, eight of 12 cases scheduled for hearing in April 2004 were postponed for reasons including the failure of both the state attorney and the occupants to provide required documentation. At the same time, the courts and state attorneys spend time and resources on cases that are dismissed due to the occupants' voluntary abandonment of the houses or closed because occupants and owners enter into contractual agreements. In addition, local state attorneys contend that they cannot request execution of verdicts for repossession because they lack information about the identity and/or current whereabouts of some property owners. In an effort to resolve such cases, the Mission has in co-operation with neighbouring OSCE Missions and NGOs publicized a list of 90 such cases, of which to date approximately 15 owners have been located.

[26] *Cvijetic v. Croatia* (Application No. 71549/01) and *Pibernik v. Croatia* (Application No. 75139/01).

[27] *Kostic v. Croatia* (Application No. 69265/01).

[28] The Ministry has included approximately 8,500 houses to be reconstructed or to be granted cash grant in lieu of reconstruction in the programme for 2004/2005. Since most of the Croat owners were granted reconstruction assistance it is estimated that 70 per cent of the beneficiaries are Serbs.

[29] The deadline was subsequently extended to 30 September 2004 by an internal instruction issued on 12 May by the Deputy Prime Minister.

[30] The Mission has shared with the Ministry of Maritime Affairs, Tourism, Transport and Development seven cases of negative decisions recently issued by the State Administration Office for Reconstruction in Gospic where the war-damage assessment had been reportedly conducted very superficially and led to a wrong categorization of the damage sustained by the houses.

[31] The Law on Responsibility for Damage Caused by Terrorist Acts and Public Demonstrations (Law on Terrorist Acts) provides a civil remedy for seeking compensation for personal injury that resulted from terrorist acts, including those during the conflict as well as subsequently. In at least one case, violence that resulted in the death of a Serb returnee was found as the basis for an award of State compensation for personal injury from terrorist acts. In April 2004 the Gospic County Court confirmed the decision of the Otocac Municipal Court awarding approximately €43,000 in compensation to the family of a Serb man killed near Otocac in February 1999 by a mine intentionally concealed near his home. The courts determined that the incident was not isolated but was directed against a larger number of people and resembled other incidents in the same community that were investigated over a period of several years, thus amounting to an act of terrorism. However, no individual has been held criminally responsible for this death.

[32] The Parliament adopted the Law on Terrorist Acts in July 2003, more than seven years after it suspended all pending lawsuits seeking compensation for damages caused by terrorist acts under Article 180 of the Law on Obligations. The Parliament acted in response to two negative judgments by the ECHR in *Kutic v. Croatia* and *Kastelic v. Croatia* finding that the indefinite suspension of pending court claims violated the right of access to court. As of late June, the Government concluded eight friendly settlements for identical complaints, paying a total of €45,000 in non-pecuniary damages for judgments and friendly settlements on this question. It is likely that additional friendly settlements on this same issue will be forthcoming.

[33] To date, the Mission is aware that municipal courts in Buje, Virovitica, Zadar and Zagreb have dismissed civil claims. These claims had been initiated in the early to mid-1990s, suspended for up to seven years, and then dismissed upon re-commencement because the law no longer allows a civil claim for property damage but only for personal injury. In at least one case, the Zagreb municipal court in March 2004 awarded approximately €13,000 in court costs to the State to be paid by the property owner. See *Busic v. Croatia*. To date, the relevant Ministry has not issued decisions in most of the hundreds of property compensation claims forwarded by the Chief State Attorney. According to Mission information, the Ministry handles such claims in a manner similar to all other reconstruction requests, although the claims have been pending in court in some instances for more than a decade.

[34] Included among those who no longer have a valid claim under the Law on Terrorist Acts is the applicant in *Kastelic v. Croatia* who received a judgment against Croatia from the ECHR.

[35] A recent survey conducted by the Mission in 18 different police stations nationwide showed that, in violation of the Article 115 of the Law on Foreigners, 16 of them still request proof of secured permanent accommodation and financial means from citizens applying for the reinstatement of their status of permanently residing foreigner. Police authorities in Osijek also demand that potential applicants state the reason for their departure from Croatia.

[36] The relevant Ministry has so far provided approximately 350 Croat families with building material for their homes in Bosnia and Herzegovina.

[37] The EC identified implementation of the Law on Asylum, including the establishment of a temporary reception centre, as a short-term priority in the *Council Decision on the principles, priorities and conditions contained in the European Partnership with Croatia*, Brussels, 20.4.2004 COM (2004) 275 final: page 6.

[38] Two other laws more specifically regulate minority language use and education in national minority languages.

[39] The EC highlighted implementation of this guarantee as a short-term priority in the *European Partnership* with Croatia. See endnote no. 37; page 6. Minority representatives also highlighted this outstanding issue in their assessment of Croatia's second Report on the Implementation of the Framework Convention for the Protection of National Minorities to the Council of Europe.

[40] Following first-time elections in May 2003 for approximately 170 CNMs and 40 individual minority representatives, additional CNM elections were conducted in February 2004 in 20 counties, 47 cities and 47 municipalities. Although minorities had the potential to elect a maximum of 291 councils and 101 minority

representatives, only 115 councils and 27 minority representatives were elected. In the elections conducted for local and regional self-government units where minority under-representation remained, Serb and Roma voters elected minority councillors in 18 of 19 units.

[41] CNMs face difficulties co-operating with local authorities. Although in some areas good co-operation between CNMs and local authorities has been established, in most areas co-operation and the allocation of resources is slow or inconsistent. (For example, in Daruvar local authorities granted free access to public media to the Czech minority, but denied it to the Serb minority). Recognizing that some under-resourced local self-governments had difficulty meeting their obligations from existing budgets, the Government allocated special funds in early 2004 for minority support activities.

[42] In late April, the national-level CNM distributed approximately €3 million in Government funds to over 100 minority associations for numerous small-scale "grass roots" projects, primarily for cultural events and minority publications. The national-level CNM allocated approximately €13,500 for CNM development or projects.

[43] In a joint effort with the national-level CNM and an NGO, the Mission financed several trainings in late 2003 on CNMs on their rights and responsibilities as well as practical skills. Subsequently, the Government organized similar training seminars. The Mission will jointly fund additional CNM trainings in 2004 together with the Government Office for National Minorities.

[44] Implementation of the National Programme, especially the provision of financial support at the national and local level, anti-discrimination measures aimed at fostering employment opportunities, and increased access to education and improving housing conditions, was recognized as a medium-term priority in the *European Partnership* with Croatia, as cited in endnote no. 37.

[45] Among the issues the Commission is intended to address is the disparate negative impact on the Roma minority of existing practices and law. For example, the Constitutional Court in late 2003 upheld the Ministry of the Interior's denial of citizenship to a Roma woman who was a long-term resident of Croatia (see U-III-1918, dated 17 December 2003 [Official Gazette 2/04]). Although a pre-war resident with children and a common law husband who are Croatian citizens, the woman was required to apply as a foreigner for naturalization and thus to satisfy the requirement of familiarity with the Croatian language and script. The Constitutional Court, in a divided grand chamber decision, confirmed that the woman could properly be denied citizenship because she was illiterate.

[46] Croatian Justice Reform Update (Initial Report). Ministry of Justice, Newsletter No. 1, 15. 05.2004. The outline builds upon the Judicial Reform and Operational Plans of the prior Government.

[47] The Judicial Training Academy supersedes the former Centre for Professional Training of Judges and Judicial Officials.

[48] The transfer of cases by the Supreme Court upon the request of a local court was made possible through amendments to the Law on Courts and the Court Rulebook. According to the Supreme Court, more than 16,000 labour disputes were transferred as of May 2004 from municipal courts in Zagreb as well as 2000 cases of pending appeals in labour disputes.

[49] In 2003 the total number of undecided cases continued to increase despite the reform measures undertaken by the Ministry of Justice. Source: joint press statement of the Presidents of the Higher Courts in Croatia, *Jutarnji List*, 14 April 2004.

[50] Article 29, Constitution of the Republic of Croatia; Article 6.1 European Convention on Human Rights.

[51] See e.g., *Pibernik v. Croatia* and *Cvijetic v. Croatia* in which the ECHR found that procedural delays resulted in violations of the right to home. See also *Kostic v. Croatia* in which the ECHR will decide whether procedural delays violate the right to property.

[52] Since March 2002 when the Constitutional Court's statute was amended to explicitly grant jurisdiction over excessive length-of-proceedings complaints, the Court has received an increasing number of this type of complaint. In 2002, the Court received 453 such complaints and issued six judgments finding unconstitutional delays. In 2003, the Court received 557 such complaints and issued 42 negative judgments. In the first five months of 2004, it received 111 such complaints and decided 36 cases finding excessive length of proceedings. The Constitutional Court's determinations of the length of proceedings at domestic courts will be reviewed by the ECHR in several cases. See *Hajdukovic v. Croatia* (Application No. 1393/03) and *Ljubicic v. Croatia* (Application No. 1382/03).

[53] See the Croatian Ombudsman's 2003 Annual Report, March 2004. Although the jurisdiction of the Ombudsman is largely limited to administrative bodies, this institution continues to receive complaints from the public related to problems in the judiciary.

[54] See EC *Opinion* as cited in endnote no. 3: pages 18-20.

[55] See *Meznaric v. Croatia* (Application No. 71615/01) in which the ECHR agreed to review whether the fair trial guarantee of an impartial tribunal was violated by the participation of a Constitutional Court judge in the Court's decision on a case in which he had previously represented one of the parties. Provisions of the Constitutional Law on the Constitutional Court did not foresee recusal of the judge in this situation.

[56] See Constitutional Court U-I-754/1999, dated 8 November 1999 [Official Gazette 171/99], as noted in the EC *Opinion* as cited in endnote no. 3: page 16.

[57] The Government of Norway has supported this project through the Mission in 2003 and 2004.

[58] EC *Opinion* as cited in endnote no. 3: page 21-22.

[59] The ECHR has determined that lack of access to legal aid in some civil cases can result in a violation of the right of access to court. In *Airey v. Ireland*, the ECHR stated that: "Article 6 paragraph 1 may sometimes compel the State to provide for the assistance of a lawyer when such assistance proves indispensable for an effective access to court either because legal representation is rendered compulsory, as is done by the domestic law of certain Contracting States for various types of litigation, or by reason of the complexity of the procedure of the case". That the indigent applicant could represent herself before the court was not sufficient to overcome the violation of access to court because she was not able to effectively represent herself (Application No. 00006289/73). The HOK's decision to re-structure its fee scale appears to have been taken in consultation with the Ministry of Justice at least in part as a means to eliminate the financial incentives for lawyers to delay cases because their fees are tied to the number of actions undertaken. In particular, the ten-fold increase in the fee for submitting a constitutional complaint (from €65 to €650) raises particular concern since that Court has no filing fees in order to ensure access by all regardless of financial means.

[60] For additional information on the cases against Croatia before the ECHR, please see the Mission's ECHR Background Report, forthcoming.

[61] For example, see *Soc v. Croatia* (Application No. 47863/99) and *Kastelic v. Croatia* (Application No. 60533/00).

[62] See for example U-IIIA-905/2003, dated 5 May 2004 [Official Gazette 58/04], in which the Constitutional Court found excessive length of proceedings, although the underlying case had been resolved while the complaint was pending at the Court. See also U-IIIA-829/2002, dated 31 March 2004 [Official Gazette 44/04], in which the Constitutional Court held in March 2004 that a local court's application of 1996 legislation suspending all pending court proceedings seeking Government compensation for damage caused by terrorist acts caused unconstitutional delay as well as a denial of the right of access to court in an individual case.

[63] See U-II-1744/2001, dated 11 February 2004 [Official Gazette 21/04], in which the Constitutional Court invalidated the 2001 Decision on the Manner of Work of the Parliament at the Sessions Closed for Public, confirming the constitutional obligation of the Parliament to hold public sessions. See U-I-3438/2003, dated 28 January 2004 [Official Gazette 15/04], in which the Constitutional Court invalidated the Law on Media on the grounds that the Parliament adopted the legislation without the constitutionally required number of votes. See U-I-3824/2003, dated 28 April 2004 [Official Gazette 55/04], in which the Constitutional Court found that the criteria for distinguishing between those businesses that could and could not be open on Sundays and holidays violated the principle of equality of entrepreneurs and contradicted the principles of legal certainty and legitimate expectations.

[64] The Constitutional Court explicitly held that four years of inactivity that resulted from a local court's suspension of the individual case, pursuant to legislation suspending all such pending court proceedings seeking Government compensation for damage caused by terrorist acts, were not attributable to the court but resulted from the Parliament's intervention. One of the two dissenters opined that the Constitutional Court should have declared the legislation unconstitutional. See U-IIIA-829/2002, dated 31 March 2004 [Official Gazette 44/04].

[65] The Constitutional Court has jurisdiction to address human rights complaints against legislation even if it has been repealed while the claim has been pending before the Court [Articles 56 and 57 Constitutional Law on the Constitutional Court]. Nonetheless, when presented with direct constitutional challenges to legislation itself the Constitutional Court in a series of cases dismissed such complaints as mooted due to the adoption of intervening legislation [see U-I-73/1996 *et al*., dated 17 December 2003 (unpublished)]. Other examples include: in 2002 the Court dismissed challenges to the so-called "Return Programme" following the adoption of the successor Law on Areas of Special State Concern that repealed parts of the Programme. See U-I-1744/2001 dated 11 February 2004 [Official Gazette 29/04]. See also U-I-1270/1997, dated 7 October 1998 (unpublished), dismissing a request for review of the 1995 law terminating occupancy/tenancy rights *ex lege* due to the Parliament's repeal of that law in 1998.

[66] See for example *Plavsic v. Croatia* (Application no. 13862/02).

[67] See *Cenbauer v. Croatia* (Application no. 73786/01).

[68] The Constitutional Court has determined that it lacks jurisdiction to review complaints challenging the excessive length of enforcement proceedings. See e.g., U-IIIA-1319/2002, dated 16 May 2003 [Official Gazette 106/03], and U-IIIA-1165/2003, dated 12 September 2003 [Official Gazette 156/03].

[69] On 2 June the Parliamentary Committee on Human Rights and the Rights of National Minorities discussed a Mission-prepared background report on cases against Croatia before the ECHR. The Committee adopted a series of conclusions recommending *inter alia* a review of the jurisdictional statutes of the Constitution as well as the Administrative Court and harmonization of certain legislation with human rights standards. These conclusions are consistent with the recommendations adopted in May 2004 by the Council of Europe's Committee of Ministers.

[70] For example, the Constitutional Court issued a judgment in 2004 on an issue of law concerning the privatization of property owned by the Ministry of Defence that it had first decided in 1997, then in 2002, and again in 2003. See U-III-754/2000 dated 16 October 2003 [Official Gazette 171/03] and U-III-86/2001 dated 17 September 2003 [Official Gazette 159/03].

[71] Stated in the *European Partnership* as cited in endnote no. 37: page 7.

[72] Article 3 of the Law on the Ombudsman specifies a term of eight years for the Ombudsman and the three Deputies. The Parliament appointed the former Ombudsman effective 28 June 1996 and the three Deputies effective 1 December 1996.

[73] The Government of Norway has also pledged similar support through the Mission in 2004.

[74] Cermak and Markac are indicted for committing war crimes against Serb civilians in 1995 during and after Operation Storm in the area of Knin (southern Croatia). Both pled not guilty in March and remain in detention as the Trial Chamber denied their requests for provisional release in late April 2004. Both agreed to additional interviews with the Chief Prosecutor in June.

[75] Six Croats, Jadranko Prlic, Bruno Stojic, Slobodan Praljak, Milivoj Petkovic, Valentin Coric, and Berislav Pusic, are indicted for participating in a "joint criminal enterprise" together with Croatia's former President, Dr. Franjo Tudjman, the former Minister of Defence, Gojko Susak, the former Chief of Staff of the Croatian Army, Janko Bobetko (all deceased), as well as other high-ranking officials from both Croatia and Bosnia and Herzegovina for committing *inter alia* crimes against humanity on the territory of Bosnia and Herzegovina. The indictment further alleges that the joint criminal enterprise had as its purpose the intention to ethnically cleanse Bosnian Muslims in parts of Bosnia and Herzegovina and to create a "greater Croatia". All six pled not guilty in early April 2004 and remain in detention.

[76] The ICTY Completion Strategy, first set forth in UNSCR 1503, contemplates the following schedule: all investigations to be completed by the end of 2004; all trials to be completed by the end of 2008; and all proceedings completed by the end of 2010.

[77] UNSCR 1534.

[78] Norac is currently serving a 12-year prison sentence following his conviction together with two others in March 2003 by the Rijeka County Court for having committed war crimes in 1991 in the Gospic area. The Supreme Court confirmed all three convictions on 24 June.

[79] Transfer of indictments from the ICTY to a national jurisdiction is provided for in Rule 11 *bis* of the ICTY's Rule of Procedure and Evidence.

[80] The Law on the Implementation of the Statute of the International Criminal Court and Criminal Prosecution for Acts against War and Humanitarian International Law (Law on the ICC) came into effect on 12 November 2003. It provides *inter alia* extraterritorial jurisdiction for war-crime proceedings to county courts in Rijeka, Split, Osijek and Zagreb in addition to territorial jurisdiction otherwise provided to all county courts in the Law on Criminal Procedure.

[81] See the Mission's Background Report: Domestic War Crime Trials 2002; Background Report: Domestic War Crime Trials 2003, dated 22 June 2004; and Supplementary Report: War Crime Proceedings in Croatia and Findings from Trial Monitoring, dated 22 June 2004.

[82] The US Department of State pledged approximately €1.4 million for capacity-building and upgrading various aspects of the judiciary in anticipation of the transfer of ICTY cases.

[83] During 2003, war-crime proceedings were conducted in 12 courts, the greatest number in the Osijek County Court (seven trials), followed by courts in Zadar (six trials), Sibenik (four trials), and Vukovar (four trials). In the first six months of 2004, proceedings were ongoing in 11 courts (the greatest number in Vukovar and Osijek with six trials each and Zadar [five trials]). The Law on the ICC has thus far not been used by the Chief State Prosecutor or the President of the Supreme Court to initiate or move cases to the four extraterritorial county courts (see endnote 80).

[84] The EC acknowledged that "[s]tatistical dat[a] suggest that a single standard of criminal responsibility is not yet applied equally to all those who face war crime charges before Croatian courts. Defendants of Serb ethnicity are disadvantaged at various stages of judicial proceedings compared to Croats". The EC concluded that "[s]ome improvements have been achieved in recent years, but further reform is necessary in order to reach the even-handed administration of criminal justice in war crimes cases". See reference in endnote no. 3: page 31. The UN Committee against Torture in May 2004 issued Conclusions and Recommendations on the Report of Croatia and "expressed concerns among other things, about the reported failure of the State party in connection with torture and ill treatment which reportedly occurred during the 1991 - 1995 armed conflict in the Former Yugoslavia, to carry out prompt, impartial and full investigations, to prosecute the perpetrators and to provide fair and adequate compensation to the victims".

[85] In 2003, Serbs represented 31 of 37 arrested, 186 of 198 under judicial investigation, 48 of 53 indicted, 84 of 101 on trial, and 30 of 37 convicted. Of the 30 Serbs convicted, 27 were convicted *in absentia*. Excluding cases where charges were dropped, the conviction rate of Serbs in 2003 was 94 per cent (30 of 32) while the conviction rate of Croats was 71 per cent based on a small number of cases (five of seven). In the first six months of 2004, Serbs represented 19 of 20 arrested, 137 of 148 under judicial investigation, three of three indicted, 83 of 102 on trial, and 10 of 12 convicted. Of the nine Serbs convicted only two were convicted *in absentia*. Four of seven individuals acquitted were Serbs.

[86] During 2002, 17 Croats faced judicial investigation, nine in 2003 and nine in the first six months of 2004; 13 Croats were indicted in 2002, four in 2003, and none in first six months of 2004; 22 Croats stood trial in 2002, 14 in 2003, and eight (four of whom were tried with Serbs for crimes against Croats) in the first six months of 2004. The Chief State Prosecutor reported in his 2003 Annual Report that the approximately 4700 war-crime charges brought since 1991 were almost exclusively directed against Serbs. In addition, the Chief State Prosecutor stated that no war-crime charges were brought in relation to acts committed during the Croatian military and police operations *Storm* and *Flash*. However, he stated that 1492 individuals were convicted for having committed "common" crimes (murder, robbery, theft, etc.) after the completion of the military and police operations. Notably, however, incidents during the conflict involving Croatian Army personnel are emerging in civil cases in which persons who suffered property damage or personal injury, primarily Serbs, are seeking compensation for damages under the 2003 Law on Responsibility for Military and Police Damages. For example, in April the Novska Municipal Court awarded more than €72,600 to the family of three civilians killed by Croatian Army solders in a private house in Novska in December 1991. The court determined that the killings should be considered "non-war damage" for which the State bears no civil liability under the Law. The court noted that the soldiers, who were tried at the Zagreb Military Court for murder in December 1992, were amnestied prior to conclusion of the trial in November 1992. The judgment is pending on appeal before the Sisak County Court. The State Attorney challenged the judgment on several grounds, including statute of limitations. Similarly, the Zagreb Municipal Court in July awarded approximately €92,500 in damages to the family of a Serb man killed in 1992 by military police. A perpetrator was court martialed and sentenced to prison, a verdict upheld by the Supreme Court, but later pardoned by the former late President Dr. Franjo Tudjman.

[87] In 2003, 23 per cent (12 of 53 persons) of all individuals whose trials were concluded had charges dropped almost exclusively due to lack of evidence. (Eleven of those 12 individuals were Serbs, five of whom had charges dropped when the act was re-qualified as armed rebellion with the subsequent application of amnesty.)

[88] Six of 12 Serbs against whom charges were dropped after arrest were returnees.

[89] In contrast during 2003, 90 per cent of Serbs convicted (27 of 30) were convicted *in absentia*.

[90] Ivankovic's co-defendant was acquitted.

[91] Notable cases include the Supreme Court's second granting of the prosecutor's appeal against the acquittal in 1992 by the Karlovac County Court of a police officer, Mihajlo Hrastov, accused of killing 13 unarmed Yugoslav soldiers. The Supreme Court also reversed in 2004 the conviction of Svetozar Karan, a Serb returnee, by the Gospic County Court, in which the trial court relied on notions of collective guilt and criticized Government support to Serb returnees. Notably the judge who authored the verdict in the first Karan trial is currently sitting on a panel of the Gospic County Court for the war-crime trial of Dane Serdar. The Supreme Court also granted in late 2003 the prosecutor's appeal in the so-called "Sodolovci" case. In this case, two Serbs will be tried for a fourth and fifth time respectively since 1995 without having received a final verdict.

[92] By comparison, the Supreme Court reversed 95 per cent (18 of 19) of individual verdicts in 2002; in 2003, it reversed 50 per cent (14 of 28).

[93] However, the Supreme Court rejected the prosecutor's request to increase the sentences to the maximum of 20 years, finding *inter alia* that the defendants' participation in the Homeland War was appropriately considered by the trial court as a mitigating circumstance for purposes of reducing the punishment. In addition, the Supreme

Court upheld in 2004 the conviction of Fikret Abdic by the Karlovac County Court for crimes committed in Bosnia and Herzegovina as well as two other guilty verdicts.

[94] A request sent in March 2003 by the Ministry of Justice to the relevant Ministry in Serbia and Montenegro was not processed for more than one year, after which time the trial court decided in April 2004 to conclude the trial without the witness testimony sought. The defendant, Savo Gagula, was acquitted at the Bjelovar County Court. In the "Paulin Dvor" case, witness testimony was taken in two courts in Serbia and Montenegro, but the Croatian local prosecutor was not present while the testimony was taken.

[95] The State agreed to pay approximately €73,000 to settle a civil lawsuit initiated by Milan Levar's surviving family members. Levar was widely known to have co-operated with the ICTY in providing information related to war crimes against Serbs in the Gospic area of south-central Croatia during the armed conflict.

[96] The importance of witness protection was also highlighted by a prosecution witness in the trial against two former Croat police officers who testified before the Sisak County Court that he was contacted by three high-ranking Croatian Army officers, two of which are retired, prior to giving his testimony. The witness testified upon questioning by the court that a former Army official threatened his family and him.

[97] For example, during the trial in May 2004 in Sisak against two former Croat police officers, supporters of the defendants applauded the accused and interrupted prosecution witnesses during their testimony. Neither the judges nor court police took measures to maintain order in the courtroom. The defendants were acquitted in late June.

[98] Presidential elections must be held no earlier than 16 December 2004 and no later than 15 January 2005, according to the terms of the 1992 Law on the Election of the President of the Republic of Croatia and the Croatian Constitution. The first fully-fledged round of local elections to simultaneously include the election of requisite minority representatives since the CLNM came into force is scheduled to take place on 22 May 2005.

[99] Online at: http://www.osce.org/documents/odihr/2003/10/772_en.pdf

[100] Constitutional Court Decisions U-I-2494/2002, dated 24 March 2004 (OG 43/04), and U-I-2945/2002, dated 11 May 2004 (OG 69/04).

[101] See ODIHR Election Reports on Croatia from 1997 to 2004, online at: http://www.osce.org/odihr/index.php?page=elections&div=reports&country=hr

[102] See the following ODIHR Reports for review and recommendations regarding campaign financing: 2000 Final Report on Elections to the House of Representatives in Croatia, 2-3 January 2000; Final Report on the Extraordinary Presidential Elections in Republic of Croatia, 24 January and 7 February 2000; Final Report on Local Government Elections in the Republic of Croatia, 20 May 2001; Final Report on the Parliamentary Elections in the Republic of Croatia, 23 November 2003.

[103] See Article 33, Law on the Election of Representatives to the Croatian Parliament.

[104] See Articles 20, 21 and 22 of the Law on Political Parties.

[105] If centralized, information could be more easily updated and monitored, for example to identify whether persons are enrolled in two different places.

[106] For example, an award-winning journalist from Croatian Radio, Ljubica Letinic, is standing trial for criminal charges of libel as a result of a lawsuit by a prominent politician of the HDZ, Branimir Glavas. Similarly, the Editor-in-Chief of *Feral Tribune* is facing criminal libel charges.

[107] In the meantime, the Government appointed a new Management Board at *Slobodna Dalmacija* in early June.

[108] The Government replaced *Vjesnik's* editorial management on 11 May.

[109] For example, the Mayor of Slavonski Brod stated on one occasion that he would never make a personal visit to the local radio station Radio Brod because of the directors' politics, which are not in line with the policy of the town. The County Prefect of Sisak Moslavina County harshly criticized editors and journalists of the daily newspaper *Jutarnji List*, accusing them of unprofessional and negative reporting during a public session of the County's Economic and Social Council. Journalists continue to complain about the management of Radio Otocac and Radio Sinj, both co-owned by local authorities.

[110] A prime example is the journalist from *Slobodna Dalmacija* that uncovered the story that the former Assistant Minister of the Interior, Mr. Stipe Cacija, had never paid alimony for his 18-year old son. Subjected to numerous threats, both before and following the release of the story, the journalist was eventually placed under 24-hour police surveillance. The story, however, did result in the dismissal of the Assistant Minister.

[111] Local weeklies in Zadar continue to publish inflammatory articles suggesting that the international community discriminates against Croats and openly favours Serbs. This refers in particular to *Zadarski Regional*, which usually portrays Serbs as either being responsible for atrocities during the armed conflict or as returnees who should be mocked and not taken seriously.

[112] The 1997 Law on Value-Added Tax granted exemption only to certain types of NGOs such humanitarian, religious, educational, and sports organizations. The exemption was later extended in 2001 by ministerial decree to other non-profit civil society actors working on human rights, minority rights, women's rights, democratization and other such issues. That ministerial decree has now been revoked. The exemption allowed these actors to avoid paying tax on certain imported goods or humanitarian assistance and when delivering goods and services in Croatia paid through foreign donations.

[113] At a joint meeting on 13 May with a group of NGO representatives, the Minister of Finance stated that the original 2001 decision was in fact contrary to the law and thus it was revoked.

[114] In February 2004, the Civil Society Donor Co-ordination Steering Committee, with the financial assistance of the Delegation of the EC in Croatia, hired a consultant to produce the action plan.