



## **Report of the OSCE Mission to the Republic of Croatia on Croatia's progress in meeting international commitments since March 2001**

**12 November 2001**

### **Introduction**

1. This Ninth Progress Report, the first one to be issued after the Mission's Five-Year Report (24 May 2001), takes into account specific events and issues between 12 March – 12 November 2001. The Report has been finalized following Croatia's signing of the Stabilization and Association Agreement (SAA) with the European Union, which marked an historical step in the country's efforts to deepen its involvement with Euro-Atlantic institutions. By signing the SAA, Croatia recommitted itself to implementing democratic reforms, respecting international human rights and legal standards as well as enhancing co-operation with its neighbours. Fulfilment of the Mission's mandate will greatly enhance Croatia's progress within the SAA since mandate-related issues directly parallel SAA commitments.
2. The Report notes a number of positive developments. These include new or amended legal acts and revamped institutional processes, such as the handling of war crimes and amnesty cases, as well as police reform and performance. Government officials and the President have continued to support and promote these positive reforms through public statements.
3. The Report also highlights areas where progress still needs to be accomplished. As in the previous reporting period, progress on the core issues of property restitution, reconstruction of houses destroyed by so-called "terrorist acts," resolution of lost occupancy/tenancy rights as well as the implementation of the convalidation law has been slow and halting. Initiatives launched by the Government to deal with these issues still have to take hold in a consistent fashion. As the resolution of these issues continues to directly influence the return process, they will constitute major challenges in 2002.
4. The Report notes that progress was made in improving certain laws, including the Constitution, and in applying existing legal acts in a more even-handed and impartial manner, such as the 1996 Law on General Amnesty. Yet, it also records that insufficient action was undertaken to remedy discriminatory provisions in existing laws or to eliminate the discriminatory heritage of conflict-related legislation. Legal reforms with regard to the rights of national minorities as well as in the field of mass media, for example, are still outstanding. Only limited progress has been made to overcome the deficiencies in the administration of justice, while courts remain understaffed and burdened by operational problems in addition to a tremendous backlog of pending cases.
5. At the political level, a debate on war crimes committed during the armed conflict finally emerged after the arrest of several Croats suspected of war crimes against Serbs, as well as the issuance of ICTY indictments against one active and one former General. The national leadership responded decisively in support of the independence of the Croatian judiciary and reiterated its readiness to co-operate with ICTY. Popular response indicated understanding for the Government's co-operation with ICTY and position on war crimes.
6. Co-operation and the exchange of information between the Mission and the Ministry of the Interior continued. Such collaboration is of additional importance since serious incidents in several multi-ethnic areas, including deliberate planting of explosive devices in areas targeted for return, detrimentally affected the public perception of security. The maintenance of proportionality of Serb police officers in the Danube Region, in accordance with the Erdut Agreement, must still be resolved.

7. The nation-wide local elections in May denoted a maturing democratization process in Croatia. Progress was made with regard to decentralization through a new Law on Local Self-Government, vesting local authorities with new competencies. Consequently, local authorities in the border regions intensified cross-border contacts in Bosnia-Herzegovina and Yugoslavia. Finally, authorities at all levels, regardless of their political affiliation, could make more efficient use of non-governmental organizations to establish a solid civil society base for Croatian democracy.

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## **Post-Conflict Normalization**

### **I. Return**

8. **Overview:** Beginning with the Knin decisions in March, and throughout the reporting period, the Government took several actions aimed at facilitating the return of the Serb refugee population to and within Croatia. Despite these and other Government initiatives in the areas of property repossession and reconstruction, minority return is still hampered by legal and administrative obstacles and hostile attitudes adopted by some local officials.<sup>1</sup> While more than 700 properties were reposessed during the reporting period, the repossession of a further 10,000 occupied properties, equal access to reconstruction assistance, and lost occupancy/tenancy rights, according to non-governmental sources, affecting between 50,000 and 60,000 mostly Serb households, remain outstanding.

9. At time of writing, the Government was finalizing an agreement on return issues with Bosnia-Herzegovina. It has also initiated an exchange of data on the status of property held by occupants in each country, as well as having established a fund for reconstruction assistance for 500 Bosnian Croat families choosing to return to their place of origin.<sup>2</sup>

10. The return of Croatian citizens is often delayed since the prescribed deadlines for issuing travel documents are not respected by authorized bodies. In turn, the right to return for former habitual residents remains conditional upon the approval of the Ministry of the Interior and the Office for

<sup>1</sup> During the first ten months of this year 8,429 returns have been registered compared with 16,232 over the same period last year. This brings to 86,275 the total registered returns from more than 300,000 Serbs displaced within and outside of Croatia during and after the armed conflict. This is in stark contrast to the total number of Croat returnees, of which 199,897 from a total of 220,000 have returned (Source: Ministry for Public Works, Reconstruction and Construction, Department for Expellees, Returnees and Refugees [still referred to as ODPR], 1 November 2001).

<sup>2</sup> There remain 170,455 Croats from Bosnia-Herzegovina and Yugoslavia in Croatia, 20,455 of which have retained refugee status. All others have received Croatian citizenship (Source: ODPR, 1 November 2001). Finding accommodation for these displaced Croats in Croatia remains an important part of the Government's efforts to deal with the human tragedy of the armed conflict.

Displaced Persons and Refugees (ODPR).<sup>3</sup> These procedures contravene Croatia's commitments to allow for unconditional return.

**11. Property Repossession:** The Government announced in October that it would complete by the end of 2002 all administrative activities affecting outstanding cases of property repossession falling under the Law on Temporary Take-Over and Administration of Specified Property, which was revoked in 1998. The Mission notes that this deadline will be extremely difficult to respect since the legislative and administrative framework lacks consistency and transparency, and encourages discriminatory application. Further, the Government has stated that it has not yet obtained outside funding to complete its programme for alternative accommodation. The Government has to date failed to address other important categories of occupied properties, such as illegally occupied property, property allocated by other bodies, as well as the repossession of agricultural land and movable property including agricultural equipment.

12. The Mission continued to observe double standards in the processing of property repossession claims. In general, Croat owners in the Danube Region have access to courts, allowing them to repossess their property quickly. In contrast, Serb owners are mostly denied such access in central and southern Croatia, while their properties cannot be repossessed until alternative accommodation is first provided to the temporary Croat users.<sup>4</sup> The Mission is aware of twenty cases in this reporting period in which alternative accommodation required by Croatian regulations was not provided to evicted Serb occupants. In seventeen of these cases, a place in collective centres was offered instead. By contrast, to date Croat temporary users have not been required to vacate occupied property if only collective centre space is available.

13. The general policy of the state-owned electric company (HEP) of disconnecting electricity upon the repossession of property by Serb owners continued. Despite repeated communications with Government and company officials at both the local and national levels, HEP authorities still insist that owners must pay debts incurred by former temporary users. This is regardless of the fact that the state took responsibility for all property considered "abandoned" during and after the conflict, and despite the common practice that a person who incurs a debt is responsible to pay it.<sup>5</sup>

**14. Occupied Properties:** In May the Government completed a survey of occupied properties falling under the Law on Temporary Take-Over and Administration of Specified Property.<sup>6</sup> The

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<sup>3</sup> Point 13 of the Procedures for Return within the Return Programme states that all categories of persons defined by the 1951 Geneva Conventions who do not have Croatian Documents may return under specific ODPR authorization and upon clearance by the Ministry of Interior. In practice, however, the Ministry often claims that there are no records of the applicants' pre-war residence in Croatia. In most of these cases residence status was unilaterally cancelled by the Ministry, and on this basis they are denied the right to return.

<sup>4</sup> In the Danube Region, formerly under the UNTAES before peaceful reintegration on 15 January 1998, most owners are Croats while the majority of occupants are Serbs. As one example, an elderly Serb couple, displaced from Topusko in central Croatia, is currently occupying someone else's apartment in Vukovar. The Vukovar Municipal and County Courts ordered them to be evicted without the provision of alternative accommodation. At the same time, the couple continues to be denied repossession of their own property in Topusko. In another particularly illustrative case in October, after more than three months of interventions by the Mission and other international partners with local officials as well as at the highest Government levels, a Serb owner finally repossessed his property in Glina, central Croatia. His house had been assigned to a Bosnian Croat who had never occupied it and lived and worked elsewhere in Croatia. These and other cases demonstrate the inefficiency of the existing mechanism of property repossession.

<sup>5</sup> The Mission attempted to intervene in one particularly egregious case in which the accumulated debt of the user amounted to 13,000 DEM. The amount is considered by HEP to be the liability of the legal owner, who has since repossessed his house.

<sup>6</sup> At the completion of the property survey in May 2001, 9,937 properties were assessed as still occupied, 3,502 were found to be in the possession of their owners and 4,903 were empty (Source: ODPR, 1 November 2001). Of the occupied properties, 2,166 were identified as cases of multiple and illegal occupancy. The survey did not target properties allocated by bodies other than Housing Commissions under the Law on Temporary Take-Over and Administration of Specified Property, as well as properties that were occupied by persons who never received any permit for temporary use. In this regard the Mission is aware of, *inter alia*, 1,796 occupied properties in Petrinja in central Croatia and 205 apartments in Beli Manastir in the Danube Region not covered by the survey, even though a number of these were allocated under the Law. In addition, housing units allocated by the so-called "Republika Srpska Krajina" were not covered.

Mission welcomed the survey since it determined the status of 18,300 homes predominantly allocated for temporary use to Croats. Beginning in June, in order to implement the survey results, the Ministry for Public Works, Reconstruction and Construction instructed local Housing Commissions to facilitate repossession of multiple and illegally occupied as well as empty properties. The Ministry also sent letters to multiple occupants who had received governmental reconstruction assistance, instructing them to vacate the properties within ten days or face lawsuits for reimbursement for that assistance. While some have followed the Ministry's instructions, most of the concerned occupants have not moved out and no lawsuits have yet been filed by the Government. While Housing Commissions are tasked to file lawsuits for evictions when temporary users refuse to move out, most Housing Commissions failed to take legal action in this reporting period.

**15. Alternative Accommodation:** The Government continued to insist on the provision of alternative accommodation before repossession, a stand that negatively affects Serb owners. This self-imposed principle blocks property repossession and denies owners their inherent property rights. The Government estimated that between 5,000-7,700 alternative housing units would be required in order to facilitate property repossession by Serbs that were allocated under the Law on Temporary Take-Over and Administration of Specified Property. Housing Commissions have been ordered by the Government to prioritize those users eligible for alternative accommodation presently living in 3,700 Serb properties for which repossession claims have been filed. In order to increase the stock of alternative accommodation, the Government is currently conducting separate surveys of all free-standing houses owned by the Government Agency for Transactions in Specified Real Estate (APN),<sup>7</sup> and state-owned apartments.<sup>8</sup> In November the Government discussed an action plan on property repossession and provision of alternative/temporary accommodation aiming at implementing the December 2002 deadline for repossession. The Mission continued to advise that only those individuals that qualify under Croatian social welfare standards should receive alternative accommodation and those who do not qualify should immediately relinquish their temporary housing to the rightful owners. This would speed up property repossession and reduce the number of houses the Government would be required to provide under its alternative housing programme.

**16. Occupancy/Tenancy Rights:** As noted in previous Progress Reports, the Government remains obligated to resolve the issues surrounding the loss of occupancy/tenancy rights to formerly socially owned apartments under the terms of discriminatory laws and practices introduced during the conflict.<sup>9</sup> The Mission continued during the reporting period to urge the Government to adopt a comprehensive legal regime for restitution (or adequate compensation *in lieu* of restitution) of these lost property rights affecting between 50,000 and 60,000 households. The resolution of this outstanding problem remains essential for accelerating the return process.

**17. Reconstruction:** After the Ministry of Public Works, Reconstruction and Construction decided in February 2001 to accept applications for reconstruction of houses destroyed by so-called "terrorist acts," County Offices for Reconstruction were advised in May to process applications on eligibility for reconstruction assistance on the basis of Article 1 of the June 2000 Amendments to the Law on Reconstruction, regardless of the cause of damage. Many County Offices contested the

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<sup>7</sup> Overall, 4,500 contracts on purchase of houses of predominantly Serb owners, out of these 2,500 contracts on lease of purchased houses (Source: ODP, 3 September 2001), mostly as alternative accommodation. The survey of state-owned apartments for planned use as alternative accommodation is being carried out irrespective of potential claims by former occupancy/tenancy rights holders.

<sup>8</sup> Additionally, the Council of Europe Development Bank granted a loan in September 2000 of 30 million Euro to Croatia for financing reconstruction and alternative accommodation for temporary users. To date only eight million Euro has been requested by the Government.

<sup>9</sup> In the Council of Europe Parliamentary Assembly Resolution 1223 (2000), "Honouring of Obligations and Commitments by Croatia," it was highly recommended that "the Government elaborates and/or Parliament should adopt as a priority matter... a thorough reform of the legislation governing property issues throughout the country (i.e. beyond the areas of special state concern), including the issue of occupancy/tenancy rights, in consultation with international experts."

Ministry's advice. The Mission is aware of numerous negative decisions issued by County Offices and at least one case confirmed by the Ministry despite the advisories described above. The Mission has been unable to determine whether applicants are being given favourable or unfavourable decisions owing to a lack of transparency in the system.

18. In August the Ministry announced an increase in funds available for reconstruction assistance between August 2001 and August 2002. This will include the reconstruction of over 4,000 heavily damaged housing units, a significant increase from year 2000. Additionally, the Government confirmed that all persons who had received a positive decision for reconstruction assistance by 1 May 2001 would be included in the reconstruction programme for 2002. As the majority of Serbs did not receive positive decisions by this deadline, they may only be included in reconstruction programmes after 2002.

19. Since early summer, Croatian Embassies and Consulates in Yugoslavia and Bosnia-Herzegovina have for the first time been accepting and forwarding reconstruction applications. In September the Government, in co-operation with UNHCR, initiated promotional activities in Yugoslavia and Bosnia-Herzegovina, disseminating information through the printed and electronic media. In a last effort to encourage Serb refugees to apply for reconstruction, the UNHCR, Government and Serb leaders in Croatia are currently undertaking a major publicity and contact campaign in Yugoslavia and Bosnia-Herzegovina.

20. The lack of clear guidance by the Ministry, administrative confusion, resistance by officials of County Offices in central and southern Croatia to carry out government instructions, the failure to publish those instructions and the delay in publicizing the process for applying for reconstruction assistance, particularly for houses destroyed by so-called "terrorist acts," raises questions as to whether Serb refugees were given a fair chance to apply. The Government is determined to hold to the deadline of 31 December 2001, while Serb leaders stated to the Mission that they will decide at the end of the information campaign described above whether Serbs were indeed given a fair chance, and whether or not to request an extension of the deadline.

21. **Joint Working Group on Legislation:** In response to a long-standing Mission recommendation, a Joint Working Group on Legislation was established in June, dealing with return-related legal issues. The Group consists of representatives of relevant Ministries and the international community. To date, the Government has failed to provide its input for a joint working agenda, despite the fact that five meetings have been held since its inception. Since the end of October Government and international experts of the Group have been discussing a draft for amendments to the 1996 Law on Areas of Special State Concern. The Mission will maintain close contact with the Government in order to ensure that this draft instils international legal standards regarding property repossession allocated under the Law on Temporary Take-Over and Administration of Specified Properties. The Mission supports the future work of the Group, and recognizes it as an appropriate vehicle to work towards establishing, *inter alia*, a comprehensive legal regime on property repossession.

## **II. Amnesty, War Crimes Issues and Missing Persons**

22. **Implementation of the Law on Amnesty:** In early summer, the Government turned an important corner in the impartial handling of war crimes and amnesty cases. Under the direction of the new State Prosecutor, County Prosecutors were increasingly willing to review and modify inappropriate indictments for war crimes to criminal acts subject to amnesty. In September the outgoing Minister of Justice stated that 20,799 persons have been amnestied. He also informed the public that participation in the so-called "armed rebellion" was not a war crime in itself.

23. One remaining matter of concern involves a number of convicted Serbs whose cases were re-classified at the end of the armed conflict, or following the enactment of the 1996 Law on General Amnesty, from "armed rebellion" to war crimes or common crimes. As most of these persons were convicted in trials in a highly politicized atmosphere, a formal impartial review of these cases to determine the appropriateness of the sentences is called for. There are a residual number of on-

going trials, as well as appeals to recent convictions, where the new standards of review affecting the determination of amnesty *in lieu* of war crimes have not been applied. This discriminates against the defendants involved, and burdens the court with unnecessary court procedures. Finally, the Mission noted that persons previously convicted of “armed rebellion” and granted amnesty continue to possess criminal records in this regard. This is contrary to the meaning of amnesty and negatively affects the full exercise of their rights as Croatian citizens, including the right of employment in certain professions. The Mission regards procedures to clear criminal records in amnesty cases as a necessity.

**24. Domestic War Crimes Cases:** Despite protests from most war veterans’ associations and opposition parties, twenty arrests were undertaken in August and September during three separate operations against Croats suspected of war crimes against Serbs. Statements by the Prime Minister and the President followed the arrests, expressing the political will to investigate all alleged war crimes, including those previously ignored or condoned. Another positive trend in this reporting period were decisions by County Prosecutors and judges to reject war crimes and genocide charges against groups of Serbs due to the lack of any evidence of individual crimes. In July the State Prosecutor announced new, far-reaching policy initiatives, including the suspension of any future *in absentia* proceedings.<sup>10</sup> The Mission experienced a more open atmosphere of co-operation with the State Prosecutor and his Office. This contributed to the Mission’s better understanding of the State Prosecutor’s policies and led to a review and correction of legal irregularities which the Mission brought to the State Prosecutor’s attention.

25. Although less of a concern than during the previous reporting period, the circumstances of war crimes arrests and prosecutions in some areas of the Danube Region and central Croatia remain a concern. Cases of mistaken identity, lengthy pre-trial detention, inadequate review of war crimes and, in particular, group genocide charges were noted, as well as a lingering determination to prosecute despite an overriding lack of evidence. Furthermore, those significant inroads accomplished since July do not affect investigations and decisions arrived at previously.<sup>11</sup> The Mission thus welcomes the Government’s announcement to establish a new office for war crimes by the end of 2001. If allowed to ensure the professional and impartial overview of war crimes and amnesty-related cases, the office could become one corrective avenue upon which to de-politicize the war crimes issue.

**26. Co-operation with ICTY:** The Government continued to respect the protocol on co-operation with ICTY. In April and October the Government facilitated questioning by ICTY investigators of the Chief of Staff of the Croatian Armed Forces. ICTY investigators were also assisted during their April exhumations of Serbs buried in 1995 at the Knin cemetery in southern Croatia. These and other actions resulted in the ICTY Chief Prosecutor stating in June her satisfaction with Croatia’s level of co-operation. In July the Chief Prosecutor confirmed that indictments were delivered against one former and one active Croatian General. One General voluntarily surrendered to ICTY in August, while the failure to locate and arrest the second one remains a source of tension between Zagreb and The Hague Tribunal. A parliamentary vote of non-confidence was defeated following the ensuing political crisis within the governing coalition, confirming the Government’s policy to co-operate with ICTY. Protest rallies against co-operation with ICTY were relatively small, suggesting the Government’s policy towards ICTY is widely understood and respected by the public. The Government continued to object to those elements of the July indictments that include command responsibility of officers as well as those that claim that ethnic cleansing was one objective of Operations “Flash” and “Storm.”

**27. Missing Persons:** The Government Office for Missing and Detained Persons stepped up its activities and investigated suspected graves of Croats and Serbs with even-handedness and

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<sup>10</sup> Additional initiatives include instructions to local authorities not to initiate new criminal proceedings without prior consultation with the State Prosecutor, and to handle all cases with extreme professionalism and impartiality.

<sup>11</sup> In Sisak-Moslavina County, for example, 119 arrest warrants affecting 373 persons remain active, while trials affecting 214 persons continue in Osijek-Baranja County, including 194 *in absentia*.

transparency, including invitations to the Mission to observe exhumations. The overall search for 1,423<sup>12</sup> missing persons remained hindered due to a lingering apprehension in the war-affected areas to provide accurate information on suspected graves. On 15 October the Office opened its new administration in Vukovar, in order to obtain better information on 779 persons still missing in the Danube Region and to facilitate common ground between relevant Croat and Serb associations. One setback has been the work of the Working Group for Missing and Detained Persons in the Area of Osijek-Baranja and Vukovar-Sirmium Counties.<sup>13</sup> It has only met once as a complete body since its first meeting in March 2001. The Head of the Office informed the Mission in November that he is concerned about the level and nature of co-operation with his counterparts in Bosnia-Herzegovina and Yugoslavia. He noted problems with regard to the reciprocal process of exchanging information and handing-over remains.

### **III. Policing and Security**

**28. Co-operation:** During the reporting period the level of co-operation and collaboration between the police and the Mission grew. In August the Director-General of Police gave unambiguous guidance to all Heads of Police Administrations on the co-operation expected towards the Mission. This was in keeping with the policy of transparency and partnership between the Mission and the Ministry of the Interior and led to an increased level and range of contact. The relationship has allowed the Mission to provide advice and work with the Ministry and Police Administrations on even the most sensitive of issues.

**29. Police Management:** The most significant development in police management was the agreement of the Ministry of the Interior in October to form a long-term working group, in partnership with the Mission, to consider further reforms. While no limits have been placed on the range of options that may be considered, the group will first examine management reorganization and the separation of police operations from direct political influence. This initiative is still at a very early stage, but it is a most encouraging sign.

**30. Police Performance:** Police demonstrated an ability to respond quickly to incidents of civil disorder and major crime that posed a potential threat to community security, reassuring the public that they can act fairly and enforce the rule of law. Disciplinary proceedings were instituted against some officers whose performance in this respect was lacking, and previously silent victims of ethnically motivated crime began to seek police assistance. This is a promising indicator of the new respect and trust which police are beginning to earn. One area of concern where no progress was recorded in this reporting period relates to complaints by returnees regarding citizenship applications and other forms of documentation issued by the Ministry of the Interior, to which there exists persistent administrative obstructionism at all levels. Senior police management failed to recognize this issue or appreciate its direct influence on the sustainability of return.

**31. Restructuring:** Police as a whole experienced a predictable lowering of morale when redundancies were first addressed in June. The Ministry managed redeployment of officers in all areas; some officers were allocated other duties or were transferred to other employers. The Government and the Ministry gave a commitment to honour Croatia's obligations under the Erdut Agreement and maintain the proportion of Serb police officers in the Danube Region as part of its overall restructuring. Data on the numbers of Serb police officers in the Region was only supplied to the Mission in late October but based on what has been received it appears that the Ministry has not yet fulfilled its commitment to maintain proportional representation. Further details have been requested which will require analysis. Restructuring of police training is behind schedule, although mechanisms for change, such as direct contacts between the Police Academy and international partners, progress steadily.

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<sup>12</sup> The official government figure of 1,423 does not include as many as 1,000 Croatian Serbs still reported missing as a result of Operations "Flash" and "Storm."

<sup>13</sup> Formerly the Danube Region Sub-Commission on Missing and Detained Persons, to which the Mission maintains its observer status.

**32. Security:** Tensions increased in several multi-ethnic areas, resulting in violence, threats and public demonstrations. Such incidents were often sparked by housing disputes, reductions in veterans' benefits, unemployment, war crimes investigations and the election of Serbs to local government (see para 49). Extreme incidents, such as deliberate planting of explosive devices in central Croatia and Eastern Slavonia, had a serious detrimental effect on the perception of public safety and security. Abandoned stores of ordnance that the Ministry of the Interior and de-mining companies failed to secure and illegally held explosives exacerbate the danger. Clear differences in community reactions to security were apparent. War crimes investigations and arrests of Serbs passed without incident, while those of Croats prompted demonstrations and sensational media coverage. Police have even been assaulted in such actions and Mission Staff, often accused of bias, have received abuse, threats and attempts at intimidation.

## Human Rights and Democratization

### IV. Legislative Reform

**33. Legal Reform:** The Government continued to amend certain laws to bring them into compliance with international and European standards. Out of the 27 laws and two implementing regulations identified by the Government as requiring amendment, eight were completely revised and nine were partly changed or are in the process of amendments. In March 2001 Parliament adopted several amendments to the Constitution that extended the protection of human rights, such as the right to public assembly, public protest and association for all individuals, rather than only to citizens.<sup>14</sup> Following a Constitutional Court decision in February 2000 revoking a number of provisions of the Law on Associations, a new Law on Associations was adopted in September which addressed most of those concerns first expressed by the Council of Europe in 1997. The remaining ten laws and two implementing instructions in need of reform are still outstanding.

**34. Discriminatory Legislation:** Discriminatory provisions in laws and residual discriminatory effects of conflict-related legislation still needs to be eliminated. Since the last Progress Report, no progress has taken place to remedy the effects of previously abolished discriminatory legislation affecting property rights.<sup>15</sup> Similarly, additional amendments have not been introduced to eliminate provisions of the Law on the Status of Expelled Persons and Refugees that continue to have residual discriminatory effects.<sup>16</sup> While those laws adopted during or shortly after the conflict have been partly abolished, a new law was adopted in March 1999 which contains the same discriminatory provisions and is still in force.<sup>17</sup> Furthermore, even though the Law on Reconstruction was amended in June 2000 to eliminate its discriminatory provisions, the authorities continued to interpret it in a discriminatory manner. Additional laws containing discriminatory provisions were also not remedied.<sup>18</sup>

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<sup>14</sup> One provision, Article 32, allowing restrictions to be imposed on the right of Croatian citizens to enter Croatia, which contradicts the European Convention on Human Rights, was however not revoked.

<sup>15</sup> During and after the armed conflict, a number of laws were passed which discriminated against those individuals, mostly Serbs, who left the country or were living in formerly Serb controlled territories. Two of these laws, Law on Temporary Take-Over and Administration of Specified Property and Law on the Lease of Apartments in Liberated Areas, were abolished in 1998. However, individuals who accrued rights under them retained these rights and those who were dispossessed of their properties are still unable to repossess them or obtain compensation for their continued loss.

<sup>16</sup> In 1998, this Law was identified as discriminatory, in that it guaranteed special privileges to particular groups of individuals (i.e. those fleeing from Croatian territories not under Government control, largely Croats, or from other countries affected by the conflict, again often Croats) and not to others (those fleeing areas under Government control, largely Serbs).

<sup>17</sup> The Law on Islands provides for abandoned property and state-owned apartments to be allocated to displaced individuals initially for use, consequently allowing these individuals to get a title for the property by operation of law after ten years of residence.

<sup>18</sup> The Law on Privatization and the Law on Transformation of Socially Owned Property limit the right of employees and former employees to receive and purchase shares in companies under privatization procedure only to individuals



**35. Legislative Framework Governing Rights of Minorities:** The Government has still not presented a proposal to Parliament on the amendments to the Constitutional Law on National Minorities, which would include the latest July recommendations of the Council of Europe's Venice Commission. Croatia committed itself in 1996 upon entry into the Council of Europe to promptly revise the Law in consultation with the Venice Commission.<sup>19</sup> Amendments to the Law were adopted in May 2000, but substantive recommendations of the Venice Commission were never taken into consideration.

**36.** The legal framework governing minority rights includes two other laws related to linguistic rights of minorities passed by Parliament in May 2000.<sup>20</sup> Although the implementation of these laws has been more even-handed, some problems arose in the areas of minority return. The Mission is also concerned about questionable practices in northern Croatia where separate classes of an allegedly lower quality than the national educational programme were established for Roma pupils.

## **V. Administration of Justice**

**37. Administration of Justice:** Only very limited progress has been made since the last Progress Report to remedy shortcomings in the administration of justice. The courts remain burdened by continuous operational problems, such as the high number of judicial vacancies, especially in courts in the war-affected areas and larger cities.<sup>21</sup> As a result, a huge backlog of pending cases still exists, officially announced in October at the level of 1,340,000.<sup>22</sup> This figure represents an increase of approximately twenty per cent compared to the most recent years. Although the recent reform of the Law on Courts enabled the President of the Supreme Court to intervene with administrative measures in order to diminish the heavy backlog of cases, no visible reduction of pending cases occurred. To deal with this problem courts have abandoned established regulations governing case prioritization and have resorted to a more or less random selection process without transparency and irrespective of regulations.

**38. Independence and Impartiality of the Judiciary:** At a judicial conference held in October, many judges stressed that the current Government has on most occasions respected the independence and impartiality of the judiciary. Conference participants themselves stressed that the effects of political influence exercised by the previous Government remain in force. In addition, some recent measures introduced through the amendments to the Constitution in March 2001, resulting in the termination of the mandates of the President of the Supreme Court and the members of the State Judicial Council, raised concerns. Since the termination of these mandates occurred prior to the expiration of their constitutionally regulated terms of office, this measure bypassed existing constitutional procedures ensuring the independence and impartiality of the judiciary.

**39. Court Procedures:** The Mission remains concerned with the behaviour of several courts that still refer to the legally dubious memorandum sent by the former President of the Supreme Court to deny owners of their ability to repossess their property through courts.<sup>23</sup> Other courts continue to

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who hold citizenship. The Law on Citizenship and the Instructions for the Issuance of Work Permits provide for an unjustified difference in treatment of individuals on the basis of their ethnicity.

<sup>19</sup> The passage of the 1991 Constitutional Law on Human Rights and Freedoms and on Rights of Ethnic and National Communities or Minorities was a precondition for Croatia's international recognition as an independent state. However, shortly after Croatia regained control of most of the formerly Serb-controlled territories, Parliament suspended about 40 provisions of this Law in late September 1995. The suspended provisions provided in particular for political participation and autonomy provisions, applying above all to the Serb minority.

<sup>20</sup> Law on the Use of Languages and Script of National Minorities and the Law on Education of the Languages and Script of Minorities adopted by the Parliament in May 2000.

<sup>21</sup> For instance, in Korenica in central Croatia, a "visiting judge" has been working one or two days per week for more than five years despite the fact that this court would require four to five permanent judges. Other courts in central Croatia, such as in Dvor and Hrvatska Kostajnica, are considerably understaffed.

<sup>22</sup> As an example, the Zadar Municipal Court has a total of 28,451 pending cases, out of which some 18,000 await execution.

<sup>23</sup> In August 1999, the former president of the Supreme Court issued a memorandum to all County Courts informing them that the Return Programme procedures should be applied for all cases of property repossession.

refer to the discriminatory “Authentic Interpretation of Article 14(2)” of the Law on Status of Expelled Persons and Refugees, although Article 14(2) of this Law has already been abolished.<sup>24</sup> The Mission is also concerned with the recent failure of some courts in central and southern Croatia to provide adequate security and anonymity to witnesses involved in sensitive war crimes criminal proceedings. With regard to witnesses in proceedings against Croats suspected of war crimes against Serbs (see para 24), open attempts at intimidation, assault and threats of violence against witnesses inside and outside court facilities were reported at a significant level for the first time in this reporting period.

**40. Constitutional Court:** The Government again failed to take any action to implement Constitutional Court decisions or to respect the deadlines for replacing legislation set by this Court.<sup>25</sup> Although the Constitutional Court is seen as a corrective mechanism with regard to human rights protection, the European Court of Human Rights held in July 2001 that the Constitutional Court is not an “effective domestic remedy” in cases of length of proceedings. This decision, as well as the November 2000 amendments to the Constitution, will necessitate several changes to the Constitutional Law on the Constitutional Court.

**41. Administrative Court:** Serious problems remain with the status and procedures of the Administrative Court, which ensures the judicial review of administrative decisions. The Mission is particularly concerned with the lack of governmental action to comply with the November 2000 decision of the Constitutional Court, which confirmed that the Administrative Court does not meet the criteria of a “court of full jurisdiction” as established by the European Convention on Human Rights. This decision is of utmost importance for the legal protection of property rights or other civil rights in cases where only administrative procedures are available for individuals under Croatian law.

**42. Rule of Law:** Widespread deficiencies in the implementation of the principle of the rule of law remain. The Government did not take any action to remedy the legal uncertainty created by the previous Parliament that enacted and amended laws in order to suspend or reverse the outcomes of pending judicial proceedings.<sup>26</sup> In addition, the executive authorities charged with the implementation of a number of laws have acted outside of their authority by introducing terms and conditions not provided for in the law itself, such as deadlines, residency or citizenship requirements.<sup>27</sup> The Mission also noted continued biased enforcement of court decisions, particularly with regard to property repossession and occupancy rights. Finally, although a new provision was introduced in the November 2000 amendments to the Constitution requiring the

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<sup>24</sup> The “Authentic Interpretation of Article 14,” adopted in 1999, violated the principles of independence and impartiality of the judiciary by dictating in advance the outcome of cases pending before the courts regarding the payment of compensation by temporary occupants to property owners. It also allowed for the possible arbitrary deprivation of property by permitting temporary occupants to become owners after ten years of residence in the property of others.

<sup>25</sup> On 3 May 2000, the Constitutional Court issued a decision confirming the principle that an individual dispossessed of property should be entitled to compensation determined on the basis of the market value of the property. On 9 April 1999 the Court declared as unconstitutional a provision in a property law that limited the right to compensation for expropriated property to citizens. It gave Parliament one year to amend the relevant law and this deadline was further extended until 15 July 2001. Nothing has yet been done.

<sup>26</sup> In 1996, amendments to the Law on Obligatory Relations suspended pending judicial proceedings in cases when individuals sought compensation for damages caused by terrorist activities. In 1999, two articles were introduced to the Law on Obligatory Relations, which suspended pending cases for compensation of damages caused by the Croatian Army and police forces. Although Parliament obligated the Government to propose new legislation by May 2000, it has not yet done so. These changes to the laws effectively stripped courts of the power to resolve cases pending under relevant provisions.

<sup>27</sup> For example, in February 2001 the Government published a Decree on the Conditions and Criteria for Accommodation in the Areas of Special State Concern, which expanded its applicability beyond the scope of the overarching law.

Government to publicize its sub-legal regulations, no instructions were published to the best knowledge of the Mission.<sup>28</sup>

**43. Law on Convalidation:**<sup>29</sup> The Mission is still concerned about the content and the implementation of one of the three governmental decrees<sup>30</sup> and the instructions issued by the previous government which are still in force. Although according to the principle of the separation of powers a governmental decree cannot act to change the law, the 1998 Decree on Convalidation of Working Years and Pensions introduced additional eligibility requirements and deadlines which are not found in the 1997 Law on Convalidation<sup>31</sup>. The convalidation process has been further hindered with the issuance of non-published instructions by the Central Pension Fund under the previous administration, which also introduced new eligibility criteria that are not mentioned in the Law. This led to the non-uniform application of the Law, resulting in a backlog of cases estimated to be more than 13,000. The Constitutional Court is currently reviewing the legality of the Law on Convalidation and the subsequent Decrees, and has charged the Ministry of Labour and Social Welfare to provide responses to issues contained in a claim before the Court.

## **VI. Freedom of the Media**

**44. Overview:** The media in general operated during the eight month reporting period in an open and pluralistic atmosphere. Although political interference in their work has continued,<sup>32</sup> Croatia's media have acted more than ever before as a public watchdog on Government activities, which is one hallmark of democratic societies. Both electronic and printed media have begun to tackle sensitive issues such as alleged war crimes committed by Croatian armed forces and the conditions faced by returning refugees.<sup>33</sup> Print media also demonstrated an increased maturity in exposing hate speech and criticizing those who make use of it.<sup>34</sup> At the same time, media reform during the reporting period has all but stalled.

**45. Reform of Media Legislation:** A detailed analysis of the new Law on Croatian Radio and Television (HRT) and the amended Law on Telecommunications, prepared by the OSCE Representative on Freedom of the Media, concluded that the two laws taken together allow state bodies to maintain direct control over broadcasting. In particular, the Government and Parliament retain control over HRT through their direct role in the appointment of the main HRT bodies and in the oversight of its activities.<sup>35</sup> In order to establish an independent broadcasting regulatory body,

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<sup>28</sup> The instructions issued by the Ministry of Reconstruction on the Law on Reconstruction in March 2001, aiming at eliminating possibilities for discriminatory interpretation of the Law, are still not published.

<sup>29</sup> The 1997 Law on Convalidation established the procedure for the validation of documents issued in the areas controlled by the so-called "Republika Srpska Krajina" authorities or UNTAES, with the aim of facilitating re-integration throughout Croatia.

<sup>30</sup> 1998 Decree Governing Labour, Employment, Pensions and Disability Insurance, Children Allowances, Social Welfare and Protection of Military and Civilian Invalids of War.

<sup>31</sup> As a result, not all individuals who applied after the 9 April 1999 deadline have been able to convalidate the documents needed to obtain pensions or social benefits connected to employment.

<sup>32</sup> In particular, field reports indicate that political pressure on the media has remained at the local level, regardless of the party in power. Such pressure takes various forms, from direct verbal threats to editors and reporters, to obstacles in the privatization process as well as attempts to financially compromise the existence of a certain newspaper or radio station because of their critical reporting.

<sup>33</sup> For example, Croatian Television (HTV), aired on 1 October, amid great controversy, the war crimes documentary "*Storm Over Krajina*" focusing on alleged crimes committed by Croatian armed forces during and after Operation "Storm." HTV also produced a balanced documentary about the day-to-day work of the Mission and mandate-related issues such as return and media.

<sup>34</sup> A notable example is the reaction of several dailies and weeklies to an inflammatory speech delivered by the Deputy Mayor of Petrinja in central Croatia, who addressed Serbs in a local radio station as "neither humans nor animals." Following the Minister of Public Works, Reconstruction and Construction's refusal to work with this official, several dailies criticized the language, stimulating a debate on the significance of prosecuting hate speech and bringing up several cases of hate speech in Croatia over the last ten years that went unpunished.

<sup>35</sup> By contrast, the HRT Council, whose ostensible role is to oversee the work of HRT on behalf of the public, has in fact no real powers. Instead, the Parliament-appointed Board of Management has assumed greater competencies over the Council's functions with the danger that it has the power to impose on the broadcaster the political views of a

the report's overall recommendation is that a separate broadcasting law should be adopted to cover both public and private broadcasting.

**46. Reform of State Broadcaster:** Delays in the implementation of the new Law on Croatian Radio and Television continued following its adoption on 8 February 2001. Although the Law set out a number of fixed deadlines for reform, only a new HRT Council and a new Board of Management were realized. Appointments of a new HRT Director and Editors-in-Chief continued to be postponed. In protest, the Chairman of the HRT Council resigned on 16 October and, along with Forum 21, the Croatian Journalist Association body advocating reform of the electronic media, urged the international community to continue to demand the transformation of HRT into a genuine public broadcaster. The Mission urges the relevant State and HRT bodies to honour their commitments on public service broadcasting and facilitate implementation of the Law. In order to remove all possibilities for state bodies to interfere directly into HRT operations, the Mission continues to recommend that the Law be amended in accordance with relevant OSCE and Council of Europe documents.<sup>36</sup>

**47. Private Broadcasting:** The Government appears to have abandoned plans to pass a new Law on Telecommunications. Although never adopted, a draft Law on Telecommunications was presented to the Mission in September 2000 and analyzed by the Council of Europe in October 2000. Instead of acting on this draft, Parliament adopted on 16 July 2001 a limited range of amendments to the 1999 Law on Telecommunications, which did not substantially change the Law. The existing Law on Telecommunications does not ensure the independence of responsible authorities to issue licences and/or frequencies to private broadcasters and to monitor compliance with broadcasting regulations. To ensure such independence, the OSCE and the Council of Europe continue to recommend the creation of a strong independent broadcasting regulator separate from the telecommunications regulator.

## **VII. Local Elections, Local Self-Government and Cross-Border Co-operation**

**48. Local Elections:** Nation-wide local elections were held on 20 May in accordance with OSCE and Council of Europe standards. The local elections constitute one more positive example of a maturing and persistent democratization process in Croatia. Although the April 2001 Law on Local Elections guarantees proportional minority representation in principle, final confirmation of minority representation hinges on the official publication of the results of the 2001 census, expected in the first half of 2002. If minorities are not represented in local government in proportion to local populations, the Law requires so-called "additional elections" to ensure such minority representation. No legal provision for these elections has been developed and the criteria under which they should be organized are not defined in the Law.

49. A principal result of the elections was the increase in multi-party representation in local and regional administrations. Increased Serb representation in local councils, formation of joint Serb-Croat administrations and election of Serb mayors occurred in different parts of central and southern Croatia. Ethnic relations improved in some areas as a result of the elections, notably in Gvozd, Vojnic and Udbina in central and southern Croatia, while they worsened in others, so that no overall pattern of change in this regard can be attributed to the election results.

**50. Local Self-Government:** A new Law on Local and Regional Self-Government was adopted in April 2001. The Law is generally in compliance with relevant Council of Europe standards. Among other positive changes, the Government nominated in September new Heads of Administrative

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current parliamentary majority and Government. The Board of Management appoints and recalls, *inter alia*, the HRT Director and can block the appointments of HRT Editors-in-Chief.

<sup>36</sup> Reference is made to the concluding document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (June 1990), where participating states reaffirmed that "everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas *without interference by public authority* and regardless of frontiers" (emphasis added). The law also contradicts the letter and spirit of Recommendation No. R (96) 10 of the Committee of Ministers of the Council of Europe on the guarantee of *the independence of public service broadcasting* (emphasis added).

Offices at the county-level, therein removing any state administrative responsibility and potential conflicts-of-interest from County Prefects. In June the Government launched a process of decentralization by amending an additional package of laws granting local self-government units greater competencies in education, health and welfare. Despite the complementary transfer of fiscal competencies through amendments to the Law on Financing of Local Administration and Self-Government, local authorities still cannot realize their full independence in these areas due to scarce financial resources. They remain dependent on financial support from central authorities, which established a special equalization fund to assist in financing.

**51. Cross-Border Co-operation:** In April, local self-government units, through the new Law on Local and Regional Self-Government, were vested with additional competencies with respect to the establishment and maintenance of international relations. During the reporting period many local self-government units undertook efforts to establish cross-border contacts and co-operative agreements with partners in Bosnia-Herzegovina and Yugoslavia. Environmental protection, agriculture, industry, culture as well as infra-structure including the opening of new border crossings constituted emerging areas of co-operation.<sup>37</sup> The Mission welcomes increased cross-border co-operation and the Government's support in this area, with a view to consolidating political and economic stability in the region and promoting refugee return.

### **VIII. Democratization**

52. With few exceptions, the general attitude of local authorities towards non-governmental organizations (NGOs) did not significantly change since local elections in May. Most of the new authorities, regardless of their political affiliation, still failed to appreciate the importance of NGOs, not only in the overall protection of human rights, but also in the development of civil society in general. This applied to even the most proven and well-developed NGOs from urban areas. In the less developed war-affected areas, local officials lack the basic appreciation of how to begin to foster civil society and the process of democratization. This is in contrast to the support and recognition given to more traditional humanitarian NGOs such as Caritas and the Red Cross or to the Homeland War veterans' associations that have a strong post-conflict history in Croatia.

53. One of the few positive examples was the impact of "Citizens Organized to Monitor Elections" (GONG), a nation-wide NGO known for its successful election monitoring. GONG provided excellent monitoring of the nation-wide local elections in May and was an effective and generally welcomed partner to governmental authorities in conducting the successful elections. The significant efforts of NGOs to advocate impartial war crimes investigations and prosecutions were also noted in this reporting period. Co-operation with the Governmental Office for Associations has improved, and most NGOs and other associations assess its work positively. Yet, the impact of the Local Community Boards, as defined in the April 2001 Law on Local and Regional Self-Government, was minimal. The Mission is aware of only a few concrete examples, mostly in rural, war-affected areas, where the Boards launched civil society initiatives.

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<sup>37</sup> With support from OSCE Field Offices in Croatia and Bosnia-Herzegovina, the municipalities of Vojnic and Cetingrad in Croatia and Velika Kladusa in Bosnia-Herzegovina signed a mutual partnership agreement in August. The agreement foresees the re-opening of border crossings as well as promoting co-operation in the fields of sport, culture and economy. In turn, the first conference of the Mayors from neighbouring cross-border Sava municipalities, also facilitated by OSCE Field Offices, was held on 17 October in Bosanska Gradiska. A conference on cross-border co-operation in central Croatia to encourage investment in the Sava river valley was also successfully conducted under the auspices of the OSCE Co-ordination Centre Sisak. In southern Croatia and in the Danube Region local authorities have been hesitant to initiate cross-border co-operation. One exception has been the City of Osijek, which undertook cross-border activities within the Danube-Drava-Sava Project, as well as Osijek-Baranja civic and business representatives who initiated cross-border contacts in their respective areas. At the regional level, representatives of the Istrian County and the province of Vojvodina in Yugoslavia met in September to discuss economic, cultural and political co-operation as they concern human and minority rights.

## Looking Ahead

**54. Policing and Security:** The Mission looks forward to working with the Ministry of the Interior on a wide range of programmes, including the development of an accountable police service free from direct political operational control and the resolution of the proportionality question of Serb officers in the Danube Region.

**55. Return:** The Joint Working Group on Legislation should intensify its work to create a comprehensive legal and administrative regime on property repossession. This will facilitate the implementation of those return-related programmes that the Government launched during the reporting period. The Government must also find a comprehensive solution for lost occupancy/tenancy rights of formerly socially owned apartments.

**56. Legislative Reform:** The Government should articulate its support for reform of legislation in accordance with international human rights standards, while working to eliminate discriminatory provisions in laws and the residual discriminatory effects of conflict-related legislation. The finalization of the legislative framework governing the rights of persons belonging to minorities must be tackled further.

**57. Administration of Justice:** Judicial institutions have to be supported in the development of their capacity to administer and execute existing laws. Interference into the independence and impartiality of the judiciary must be addressed further. Improved efficiency of the judiciary and the reduction of the number of pending cases are required, as are efforts designed to upgrade the professional quality of judicial officials. The Mission looks forward to working with the Ministry of Justice and the courts on these issues.

**58. Freedom of the Media:** The Government should engage itself further to ensure the transformation of the state-administered broadcaster into a public service broadcaster, while considering remedies to deficiencies noted in the existing Law on Telecommunications. This is necessary to institutionalize and uphold democratic standards regarding the freedom of media, information and expression.

**59. Post-Conflict Normalization:** The Government should continue to build on the recently established level of impartiality and professionalism with regard to on-going war crimes arrests and investigations of Croats and Serbs. Implementation of amnesty must be regarded as a pillar of post-conflict normalization. The Mission welcomes the Government's announcement to establish a new office for war crimes by the end of 2001.

**60. Regional Co-operation:** Especially in light of the signing of the SAA, the Mission encourages the Government to continue its constructive policy of engagement with all neighbouring countries, particularly in the framework of the Stability Pact for South Eastern Europe, paying special attention to improving mechanisms for cross-border return in the region.