



**Report of the OSCE Mission to the Republic of Croatia
on Croatia's progress in meeting
international commitments since May 1999**

-- 28 September 1999 --

Introduction

1. This is the fifth¹ of the Mission's Progress Reports, which are issued every four months. It is not the purpose of these reports to assess the 'current state of affairs' in the country. The purpose of these reports is to assess the progress the Government of the Republic of Croatia has made in fulfilling its international obligations and commitments during the reporting period.

2. As described in previous Progress Reports, Croatia is confronted with a complicated legacy of problems stemming from its socialist past, consequences of the conflict, and lack of trust between ethnic communities. These factors leave Croatia with a twin process of post-conflict normalisation and handling the transition to democracy. The international obligations and commitments undertaken by Croatia over the course of the past few years in order to move closer to Euro-Atlantic structures form the terms of reference for the exercise of the Mission's 'monitoring, advice and assistance' role in the country.

3. This reporting period was marked by Croatia's support for the preparations for the European Union's Stability Pact for Southeastern Europe. It also saw the conclusion of the NATO air campaign against the Federal Republic of Yugoslavia (FRY), during which Croatia showed a cooperative stance. Since the 18 May 1999 Progress Report, it should also be noted that the Lower House of Parliament was in recess from 30 June until 22 September 1999.

4. There has been piecemeal progress in some areas covered in the Mission's mandate, but in the most important areas no substantial progress has been made. The authorities continue to place obstacles in the way of even benign forms of international assistance. There seems to be no coherent plan for fulfilling long-standing commitments and obligations. The stance to resolve the problems in the country has been reactive rather than proactive.

5. Four areas have repeatedly been identified as priorities for the Government in seeking to overcome the remaining post-conflict problems in the country, including the return of refugees and displaced persons. These are 1) the repossession of property; 2) the clear and transparent implementation of the Amnesty Law, coupled with the correct and impartial pursuit of war crimes cases in domestic courts; 3) full co-operation with the International Criminal Tribunal for the Former Yugoslavia; and 4) the processing of applications for naturalisation and verification of citizenship. And, one and a half years after the formal post-conflict integration of Croatia, discriminatory laws introduced as temporary emergency measures during the conflict remain in force, perpetuating divisions within the society.

6. In this context, the security situation in most of the war-affected areas is reported to be satisfactory with a decreasing number of reported incidents. However, in some of these areas, in particular central and southern Croatia, an increase in the number of minor incidents with ethnic overtones reflects tension between ethnic communities. In the area around the town of Vukovar, there was a notable increase in the number of ethnically related incidents, which escalated when not addressed by the authorities, culminating in the killing of an ethnic Serb in the village of Berak in August 1999. As a result of these events, a large majority of Serb residents of the village have departed.

¹ The previous Progress Reports were issued on 20 May 1998, 8 September 1998, 26 January 1999 and 18 May 1999.

7. In view of the forthcoming parliamentary elections, the continued lack of progress in the areas of electoral and media reform has been of particular concern to the Mission during this reporting period. In 1996, the Government of Croatia committed itself to amend the electoral laws well before the next elections, in consultation with opposition parties. The Government also committed itself to comply with the recommendations made by international observers concerning the electoral process. Although Parliamentary elections are to take place no later than the end of January 2000, Parliament has not yet adopted amended legislation. However, at the time of writing, the Upper House of Parliament has adopted an Election Law proposed by the ruling party and the Lower House is currently debating that Law. By deferring the enactment of electoral legislation to this late stage of the process, the Government has left itself little time for the promulgation and implementation of the ancillary regulations and instructions necessary for the proper conduct of the elections. Furthermore, independent monitoring of Croatian television reveals a continuing pattern of unbalanced news and current affairs reporting in favour of the ruling party. An assessment of whether Croatia has met its international commitments with regard to reform of the electoral process will only be possible when the Electoral Law, related legislation, and implementing regulations are available for comprehensive review.

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Post conflict normalisation

I Return

8. **Introduction:** The Government of Croatia has obligated itself, through various international and domestic instruments, to facilitate the return of refugees and displaced persons to their homes in Croatia². During the period from May to September 1999, a number of initiatives taken by the Government have improved the framework and systems supporting the return process. However, systemic and institutional problems created by a lack of direction on the part of the central authorities in Zagreb leave many issues unresolved. An assessment of the complex return procedures leads to a conclusion that, in general, ethnic Serb refugees can return to Croatia but only exceptionally can repossess their property. Half of all repossession cases to date³ have taken place in the Danube Region where the Return Programme has been selectively implemented and where the majority of claimants for repossession are ethnic Croats returning from other parts of Croatia. These returnees have either been able to repossess their property through the court system or have ignored the established administrative and legal systems and have resorted to other methods. As an example, in Vukovar, 606 repossessions⁴, most of which were undertaken outside the parameters of the Return Programme, have been recorded out of a total of 1,286 reported requests for repossession. In the city of Knin (southern Croatia), on the other hand, with a reported 518 requests for repossession and no possibility for the mainly ethnic Serb owners to have their cases heard in court, nine owners⁵ have been able to repossess their properties to date. Overall, and for a variety of reasons including the NATO action in the Federal Republic of Yugoslavia (FRY), there are fewer organised returns to Croatia in this reporting period compared to the same period last year. Approximately 4,000 people have been cleared to return immediately, but remain in the FRY and Bosnia and Herzegovina (BiH).

9. **Re-registration Exercise for Serb Displaced Persons in the Danube Region:** In June and July 1999, the Government Office for Displaced Persons and Refugees (ODPR) regional offices in Eastern Slavonia conducted a re-registration exercise for Serb displaced persons in the Danube Region with the aim of verifying the number of displaced persons remaining there. The exercise was conducted in an objective and professional manner. However, displaced persons in some locations were unintentionally missed during the re-registration. Following discussions with ODPR, the Mission and the United Nations High Commissioner for Refugees (UNHCR) received assurances that all legitimate displaced persons were eligible to re-register at the ODPR regional offices. In some instances, ODPR re-visited locations in an attempt to identify additional persons. In light of the proposed changes to the Law on the Status of Expelled Persons and Refugees (see para 10), the Mission will continue to monitor the exercise in order to determine that all eligible citizens of Croatia are provided with equal status under the law.

10. **Discriminatory Laws Obstructing the Return Process:** Following a delay of approximately one year, the Government is taking steps to eliminate elements of discrimination in the three laws considered to most negatively affect the return process and the equality of certain persons before the law.

- Proposed amendments to the **Law on the Status of Expelled Persons and Refugees** are in adoption procedures in Parliament. These refer to the inclusion of 'returnees' and 'displaced persons' (ethnic Serbs in the Danube Region) as legally recognised categories in the Law, thus extending to them benefits and protection previously only accorded to persons categorised as 'expelled persons'

² (a) The General Framework Agreement for Peace (Dayton Agreement), December 1995; (b) The Erdut Agreement, November 1995; (c) The Operational Agreement on Return, April 1997; (d) Procedures for Return of Persons Who Have Left the Republic of Croatia, March 1998; (e) Programme for Return and Accommodation of Expelled Persons, Refugees and Displaced Persons (June 1998) and related instructions (August 1998 and February 1999); (f) Law on Reconstruction, March 1996; (g) The Continuing Programme for Reconstruction of the War Affected Areas of the Republic of Croatia, The Mandatory Instructions to the Continuing Programme for Reconstruction (December 1998, amended in August 1999) and the Operational Procedures to the Mandatory Instructions to the Continuing Programme for Reconstruction (August 1999); (h) Government of Croatia Non-Paper on the implementation of the Return Programme, October 1998.

³ Unless otherwise indicated, quoted figures cover the period from 26 June 1998 to date.

⁴ Representing 47 per cent of the total number of requests for repossession placed with the Housing Commission.

⁵ Representing 1.7 per cent of the total number of requests for repossession placed with the Housing Commission.

(usually of Croat ethnicity) and to ‘refugees’. However, the amendments to this Law fail to assure equal access to benefits existing in other laws, e.g. exemption from court fees. The Mission remains concerned over the 1999 Parliamentary Authentic Interpretation of Article 14 of this Law, which remains in force, given that it (i) violates the principles of independence and impartiality of the judiciary (legislative interference in the judiciary changes the outcome of pending proceedings), and (ii) allows for possible arbitrary deprivation of property.

- Amendments to the **Law on Reconstruction** are under preparation by the Ministry of Development, Immigration and Reconstruction. The proposals have not been made public or available to the Mission and thus comment cannot be made with regard to the extent to which the amendments will address the current bias in the reconstruction process. The current law differentiates between ethnic Croats and ethnic Serbs on the basis of the status provided to them in the Law on Expelled Persons and Refugees. In order to ensure the ongoing process of reconstruction, the Government issued instructions in August 1999 to the County Offices for Reconstruction and the ODPD regional offices on acceptance and processing of applications for reconstruction or provision of accommodation, according to the models outlined in the Continuing Programme for Reconstruction. The Government also provided information on reconstruction assistance to returnees in Croatia and refugees in countries of asylum with the assistance of international organisations. The Mission remains concerned that the one-month deadline for submission of applications stated in the August 1999 amendments to the Mandatory Instructions to the Reconstruction Programme is too short and continues to address the Ministry on this matter.
- The Mission has been informed in April and July 1999 that the **Law on Areas of Special State Concern** will be replaced. In view of the fact that a draft of the Law has not been made public or available, the Mission is unable to assess whether the proposed replacement Law will eliminate the discriminatory provisions of the Law on Areas of Special State Concern.

As noted in previous Progress Reports, other laws also require change.

11. Legal Status of the Return Programme: The Government has taken action to remove some of the problems with the legal status of the Return Programme. As a ‘Government Programme’, it has no real status or force of law other than through reference to it in the Law on Cessation of the Validity of the Law on Temporary Take-Over of Specified Property⁶. However, the Law on Temporary Take-Over of Specified Property was never applied in the Danube Region because it was not, at the time of implementation, under the sovereign authority of the Republic of Croatia. As a result, the Return Programme has been inconsistently implemented there. Returnees to the Region (usually ethnic Croats) have thus been able to access, free of charge, accelerated court procedures which have often resulted in court-ordered evictions of temporary occupants who are displaced persons (usually ethnic Serbs). The necessary safeguards for provision of alternative accommodation for the temporary occupant are not applied in such eviction cases. In response to this matter, the Supreme Court issued a memorandum to all County Courts in August 1999 informing them that the Return Programme procedures should be applied for all cases of property repossession, thus aiming to equalise the situation across the country. Given that this memorandum was issued recently, the Mission cannot currently determine whether it has had the intended effect. While such a move may be regarded as positive in the sense of equalising the legal regime, the Mission remains concerned that it effectively prevents all returning legal owners of property from accessing court procedures in case of failure by the Housing Commissions to oversee the repossession of property according to the Return Programme.

12. Legal Status of Decisions on Temporary Occupancy Issued by Former Authorities of the Self-Proclaimed Republika Srpska Krajina (RSK): Of further concern is the fact that the courts do not respect the legal status of decisions on temporary occupancy issued by former authorities of the self-proclaimed RSK. There is a growing trend for people holding such decisions (generally ethnic Serb displaced persons in the Danube Region – see Annex 1 for statistics) to be regarded as illegal occupants

⁶ The Government Office for Legislation provided an opinion that the reference to the Return Programme in the Law on Cessation of the Validity of the Law on Temporary Take-Over provided the Programme with the force of law. However, the opinion of the Office, acting as an executive rather than judicial body, is questionable given that it does not have the competence to determine what is or is not ‘the law’.

by the courts and thus be evicted without the provision of alternative accommodation. The Vukovar Municipal Court has informed the Mission that 451 claims for property restitution have been filed by owners (thus circumventing the provisions of the Return Programme, which state that alternative accommodation should be offered). The Mission has monitored 100 of these cases and notes that in no case was the RSK temporary occupancy permit recognised by the Court as valid. A similar situation has been noted in Beli Manastir (25 cases monitored) and Osijek (20 cases monitored). Such a situation contravenes the guiding principles of the Operational Agreement on Return⁷ which provides certain safeguards for the temporary occupant with regard to being permitted to remain in the temporarily occupied house until such time as a durable solution has been identified, and also ignores the provisions of the Return Programme.

13. Return Programme Implementation:

13.1 **Organised return movements**, facilitated by ODPR and UNHCR, have been operating on a regular basis. Statistics on organised return movements are provided in Annex 2. Verifiable statistics on spontaneous returns are not available. However, there are clear indications that the number of people returning spontaneously form the majority of the total number of people who have returned. This fact is noted by the Government, which reports a total of 101,000 individuals returned in all categories (displaced persons to and from the Danube Region, as well as refugees from countries of asylum) since the cessation of the conflict in 1995.

13.2 The Mission notes the full operation of the **Croatian Consulate in Banja Luka** since mid-July 1999, thus allowing increased numbers of refugees to access consular services and receive documentation which will facilitate their return to Croatia. Conversely, consular services at the Croatian Embassy in Belgrade have been curtailed by the return of consular premises to the FRY authorities following a request from them. The UNHCR reports large numbers of people attempting to access documentation and long queues at the Embassy.

13.3 The Mission remains concerned over the number of **persons who have applied to return to Croatia but who are unable or currently unwilling to exercise this unconditional right**. In some cases where houses are destroyed or occupied, or the person is a former occupancy-tenancy rights holder, the applicants are unable to provide a habitable return address. At present, some 4,800 persons fall into this category. Offers made by the Government of temporary, usually collective⁸, accommodation for the owner upon return have been accepted in only a very few cases, with the majority choosing to remain in the country of asylum. The Mission also notes delays in the decision-making process with regard to persons who are awaiting confirmation of citizenship from the Ministry of Interior. According to the UNHCR database as at 18 August 1999, over 1,000 persons had been awaiting clarification of their status by the Ministry of the Interior. More than 600 of these applicants have been waiting for such clarification for more than a year. The 'Procedures for Return of Persons Who Have Left the Republic of Croatia' (March 1998) allow for a maximum 90-day period for a decision to be made by Governmental authorities with regard to clarification of citizenship status.

13.4 While the general provision of **returnee status and benefits** is ongoing in a satisfactory manner, there are delays in the issuance of such status to persons who have returned to Croatia without the assistance of ODPR and UNHCR, that is spontaneously. The Return Programme states that all returnees should be accorded the same treatment regardless of their mode of return. In addition, in locations where citizenship registries were either destroyed during the period of conflict or are missing, returnees face problems in regularising their status and obtaining necessary citizenship documents. As far as the Mission is informed, such problems appear to relate only to persons of Serb ethnicity.

13.5 In summer 1999, the **former Ministry of Reconstruction and Development was reorganised**, as part of a wider restructuring of the executive, incorporating ODPR, and renamed the Ministry of Development, Immigration and Reconstruction (MDIR). ODPR was charged with co-ordinating the

⁷ 'Guiding principles', para 3; 'Homes damaged or destroyed by war', para 5; 'Homes which are being used temporarily', paras 4 and 5.

⁸ Collective accommodation refers to refugee camp accommodation standards.

implementation of the Return Programme. At the end of August 1999, the Head of ODPH was appointed President of the Government Commission on Return (the oversight body of the Return Programme). This reorganisation concentrates the administration of the structures dealing with refugees and displaced persons, the provision of reconstruction assistance and the repossession of property into one executive body, which aims to provide better guidance and co-ordination of return and repossession of property mechanisms across the country. Given its recent implementation, the Mission cannot currently assess whether there have been improvements on the ground. However, recognition by the central authorities that better co-ordination is required is seen as a positive development. In accordance with their monitoring functions, the Mission and UNHCR have provided the Government with Monthly Assessments of the implementation of the Return Programme (hereafter: Assessments) in June, July and August 1999, based on monitoring reports received from the field. These Assessments include examples of identified inconsistencies in implementation of the Programme at the local level.

13.6 According to the Assessments, the performance of the **Housing Commissions** remains uneven. This is due to a lack of resources, a lack of direction or support from the Government Commission on Return and/or a lack of will or ability due to the prevailing political, economic and social conditions in the municipality. The overarching issue is that a clear legal framework has not been developed for the functioning of the Housing Commissions, thus allowing differential performance without any form of sanction. In its Assessments, the Mission provided the Government with a number of detailed examples of both positive and negative work of the Housing Commissions. As an example, Housing Commissions appear reluctant to authorise owners to return to empty living units in houses with multiple apartments, in instances when another apartment in the same house has been allocated to a temporary occupant. In Knin, for instance, a more proactive engagement on this matter by the Housing Commission could considerably assist in the resolution of the many outstanding cases. Conversely, the Erdut Housing Commission has been persistent in attempting to ensure co-ordination with Housing Commissions in areas where temporary occupants currently accommodated in Erdut are seeking to repossess their property, including travelling long distances for meetings etc.

13.7 Processing of Applications for Repossession of Property⁹:

1. Registered applications for property repossession	6,907
2. Applications processed	2,526
3. Annulment of temporary occupancy decision with notice to quit once alternative accommodation has been identified	1,917
4. Certified offer of alternative accommodation provided to temporary occupant	146
5. Certified acceptance by temporary occupant of offered alternative accommodation	160
6. Temporary occupants remaining in property pending provision of alternative accommodation	1,800
7. Properties certified as returned to the owner	1,423

The figures provided above have been received from the Government, which has stated that they are incomplete. However, these figures show that much work remains to be done in the processing of applications and the identification of alternative accommodation. Up to two-thirds of applications remain unprocessed. Of those which have been processed, very few persons have been offered alternative accommodation. 1,800 persons remain in property pending provision of alternative accommodation and a total of just over 1,400 properties have been returned to their owners.

A more detailed analysis of the available figures (not shown here) reveals that the repossession of property in the Danube Region, where the Return Programme has not been uniformly implemented (see para 11), is more successful than through Housing Commissions which operate in the rest of the country. In none of the Vukovar Housing Commission's 606 'solved' cases (see para 8) was alternative accommodation requested from the Government Commission. In most cases, the procedures for repossession through the Return Programme were not used. Instead, cases were 'self-solved' indicating an agreement between the owner and the temporary occupant by which the occupant vacated the property. (Reports received by the Mission indicate that in some cases temporary occupants were pressured to leave the properties). In such cases, the Housing Commission records

⁹ Source: Office for Displaced Persons and Refugees – "Housing Commissions – The Latest Report" – 2 September 1999.

repossession of property in which neither it nor the Return Programme played a role. Conversely, in the rest of the country, where the Return Programme has generally been consistently applied, only approximately 750 houses out of a total of more than 4,000 requested have been returned to their owners.

While the establishment of co-ordination mechanisms for the work of the Housing Commissions and the issuance of a Supreme Court memorandum aiming to ensure uniform implementation of the Return Programme are noted, the Mission maintains its concern over the lack of right of access to the courts for owners seeking to repossess their property, in cases of non-performance by Housing Commissions. Many applicants have been waiting to return to their homes for more than a year, and in some cases for more than two years. Of additional concern is the matter of occupancy-tenancy rights. Lack of progress in this area is an additional factor deterring the return of persons who formerly were in possession of such rights (see also para 36).

13.8 No improvement has been noted with regard to the respect for **deadlines for confirmations on the status of property**, as evidenced by the 4,381 cases remaining unprocessed despite the obligation of the Housing Commission to respond to the applicant within five days of receipt of the request. Under the Return Programme, Housing Commissions are obligated to annul the right of the temporary occupant to occupy within seven days after confirming the ownership of the claimant, and to refer requests for alternative accommodation to the Government Commission within five days of informing the temporary occupant of the annulment of the temporary occupation order. The absence of any deadline for physical repossession of property, combined with the lack of legal remedy in cases where the Housing Commissions fail to act (see above), remains a serious obstacle to the repossession of property under the Return Programme.

13.9 The lack of provision of **alternative accommodation** for temporary occupants is the main impediment to the process of repossession of property. Some bias has been noted in what constitutes 'acceptable alternative accommodation'. In the Danube Region, in instances when the Return Programme is applied, temporary occupants are often offered collective centre accommodation by ODPR, not state owned houses or flats as required by Paragraph 9 of the Procedures for Return of the Return Programme. When they fail to accept such accommodation, they are subject to a court-ordered eviction, requested by the Housing Commission, for failing to accept a form of alternative accommodation which is not in accordance with the stipulations of the above-mentioned Paragraph 9. Conversely, temporary occupants in other parts of the country have refused offers of a state-owned house or flat but have not been subject to a Housing Commission requested court-ordered eviction. Further, the Government has, in a number of cases, not taken action to ensure that temporary occupants whose houses have been reconstructed vacate houses they are temporarily occupying. The Mission notes that the Government Commission does not appear to have addressed potential sources of alternative accommodation, other than via the Government Agency for Transactions in Specified Real Estate (APN).

13.10 In accordance with its Statute, **APN** receives requests for assistance in provision of accommodation from a variety of governmental sources and for a number of different reasons. The agency does not appear to have prioritised the provision of alternative accommodation in facilitating return, as envisaged in the Return Programme, although ongoing discussions between the Mission and the Agency have assisted in clarification of the operation of the Agency. According to the Return Programme, the Government Commission on Return receives applications for the provision of alternative accommodation from the Housing Commissions, which it then refers to ODPR and APN for resolution. Discussions with APN reveal that this system has been superseded by the establishment of direct communication between the Housing Commissions and the APN. Lack of a clear instruction on this change in procedure has led to some confusion on the part of local Housing Commissions, not all of whom are clear that the responsibility for initiating alternative accommodation requests to APN now rests with them. The Mission also notes that APN has purchased a significant number of damaged houses for potential use as alternative accommodation. However, no system has been established to provide state funds for the repair of these houses, thus rendering them currently unusable.

13.11 The Mission remains concerned that the Government Commission has not issued clear guidelines for Housing Commissions on what constitutes **illegal (including multiple) occupancy**. In the absence of a definition and related instructions to the Housing Commissions, illegal occupancy cases are not uniformly addressed across the country. Some Housing Commissions have worked on cases while others claim that such action does not fall within their responsibility. In many cases, deadlines to refer such cases to court are not met.

14. The situation of **ethnic Croat refugees and settlers from BiH and FRY** is of increasing concern. Temporary, but often long-term occupation of Serb-owned houses by this group is a major obstacle to the normalisation process, both for them and for those who wish to repossess their property. At the local level, there appears to be a reluctance to identify solutions for even the easiest cases, thus increasing frustration and insecurity. Concurrently, the Government has not articulated a clear policy on the way in which it will resolve the many problems faced by those who wish to return to BiH or remain in Croatia.

II Trust Establishment, Amnesty and the International Criminal Tribunal for the Former Yugoslavia (ICTY)

15. **Programme on the Establishment of Trust:** The Mission has reported repeatedly on the non-functioning of the Government's Programme on the Establishment of Trust¹⁰. Trust Establishment Committees, overseen by a National Committee, have never worked as expected or envisioned. The lack of activity is evident at the local level, where such efforts are most needed. Trust Establishment Committees have been established in most areas of the Danube Region, but they convene rarely if at all. In southern Croatia, few Trust Establishment Committees have been established. The National Committee on Establishment of Trust intervenes only on an *ad hoc* basis, almost exclusively in the Danube Region, as was the case in late May 1999 following the upsurge in ethnically related incidents in the village of Berak near Vukovar. The efforts of the National Committee on Establishment of Trust continue to be ineffectual in calming inter-ethnic tensions. Apart from responding to events after they occur, responsible authorities have not undertaken necessary preventive action within the scope of the Trust Establishment Programme. Following the killing of an ethnic Serb from the village of Berak on 9 August 1999, the public reaction from local and national officials was belated and, given the severity of the incident, mild (see paras 19, 20 and 24). In the present situation, the Mission can only conclude that the political will to fulfil the goals of the Trust Establishment Programme is still lacking at all levels of authority.

16. **National War Crimes Prosecutions:** Ambiguities and uncertainties continue to surround the application of the 1996 Law on General Amnesty, and thus the nature of present and future war crimes indictments. While the Mission believes that impartial war crimes prosecution is a core component of successful trust establishment, recent court decisions on war crimes cases against ethnic Serbs call into question the precise nature of what it means to have participated in an "armed insurrection." In addition, it is apparent from the Sodolovci¹¹ and Horvat¹² verdicts that the courts base individual criminal responsibility for war crimes on the grounds that the defendants, being members of Serb territorial defence units, are by that fact alone participants in a criminal enterprise. This basis of criminal responsibility for war crimes is potentially applicable to tens of thousands of male Serbs who served in such a capacity during the conflict, and therefore creates a significant sense of insecurity and apprehension in the Serb community. The Mission is aware that the Sodolovci case has been appealed to

¹⁰ Programme of the Government of Croatia on the Establishment of Trust, Accelerated Return and Normalisation of Living Conditions in the War-Affected Areas of the Republic of Croatia, dated 2 October 1997. Through the Programme, the Government committed itself to pursue the establishment of trust between all citizens, the creation of a climate of tolerance and security, and the creation of conditions for the normalisation of life in the war-affected regions.

¹¹ On 27 May 1999, the County Court in Osijek reaffirmed the *in absentia* convictions of five defendants from the Sodolovci municipality for war crimes against the civilian population. The defendants were included in the list of twenty-five war crimes suspects.

¹² Milos Horvat was extradited from Germany in May 1997 at the request of the Croatian Government having been convicted *in absentia* of genocide. The Supreme Court upheld the conviction and five-year sentence for genocide by the County Court in Osijek (25 June 1997) in a decision, dated 16 December 1998, but not delivered until June 1999.

the Supreme Court, and looks forward to a speedy decision. Furthermore, the Government needs to adhere to its commitment to notify ICTY in a timely manner of new war crimes prosecutions¹³.

17. Amnesty Law: There is still a lack of information on those persons who have been amnestied. In addition, there continues to be a lack of transparency as to which criminal acts are covered by the Amnesty Law. For example, a group indictment for war crimes against Goran Pasic and three co-defendants has been re-issued from evidence that had earlier been used to successfully grant amnesty¹⁴. On 29 July 1999, an ethnic Serb policeman in Ilok was arrested on an indictment that was issued in 1994, although he was not on the official list of 25 war crime suspects¹⁵. In addition, he had undergone background checks and received assurance from the Ministry of Interior in 1997 that there were no charges or indictments pending. The Mission notes that, according to a written response from the Minister of Interior, the accused was detained on the basis of both the old 1994 indictment and new evidence. On the same 1994 indictment, Mirko Tomasevic, an ethnic Serb returnee, was arrested on 2 August 1999, although he had received proper clearance to return in 1998, including confirmation that there were no charges outstanding against him. Tomasevic also was not included in the official list of 25 persons. The Mission is concerned about the use of the 1994 indictment and the failure to re-issue a new indictment based upon new evidence. Moreover, both individuals received official clearances from the competent ministries. This casts doubt over the quality of the clearance procedure and, ultimately, the effects that such deficiencies will have on return and reintegration.

18. Co-operation with the International Criminal Tribunal for the Former Yugoslavia (ICTY): In a letter dated 25 August 1999, the ICTY president reported Croatia's non-cooperation to the UN Security Council. In addition, the ICTY president stated that the jurisdiction of the Tribunal to investigate war crimes was indisputable. However, the Government continues to dispute the jurisdiction of the Hague Tribunal over operations "Flash" and "Storm", police and military campaigns undertaken in May and August 1995 to retake then Serb-controlled territory in central and southern Croatia. The Government has yet to respond to 13 requests for information relating to those operations, while satisfying 106 unrelated requests. In particular, one of these unrelated requests was the long-standing international desire for ICTY to be notified on an indictment against 23 persons from the village of Dalj in the Danube Region, while another was for ten persons in the so-called Pakracka poljana case. An ICTY Trial Chamber proceeding on the issue of jurisdiction over these operations may take place as a result of the Prosecutor's request for a binding order for documents relating to these operations. The Government has also failed to co-operate with ICTY over the extradition of specific individuals to the Tribunal. While Vinko Martinovic (Stela), accused by ICTY of alleged war crimes in central BiH, has been extradited to The Hague, Mladen Naletilic (Tuta) has yet to be extradited although he has also been charged under the same indictment. On 16 September 1999, the Government presented a "White Book" on co-operation with ICTY, supporting its well-known claim of good co-operation with chronological and statistical information.

III Integration of the Danube Region

19. Introduction: The Government of Croatia has, during the reporting period, undertaken some efforts to improve the general situation (infrastructure and communal services) for all of its citizens in the Danube Region. The poor economic situation continues to impact the entire Danube Region and to negatively affect the return of ethnic Croats. This factor combined with issues such as convalidation (see para 34), trust establishment (see para 15), and security (see para 20) has led to a perception among Serbs, particularly in and around Vukovar, that their general situation has worsened since the last Progress Report. Events such as the demonstrations in the village of Berak in May, directed by Croat

¹³ Programme of the Government of Croatia on the Establishment of Trust ..., dated 2 October 1997.

¹⁴ Supreme Court verdict, dated 1 April 1999. The Supreme Court maintains that while "it is indisputable that the defendants objectively performed a criminal act of armed rebellion by all its essential characteristics (which came under the General Amnesty Law), when it was simultaneously determined that this other side to which the defendants belonged did not abide by the laws and customs of war, then there is no doubt that the defendants also committed a criminal act of war against [the] civilian population."

¹⁵ After 1996, the Government issued a list of 811 war crime suspects. This number was subsequently reduced to 150. Ultimately, the Government informed UNTAES of a final list of twenty-five persons. This was reaffirmed by the Article 11 Commission in February 1999.

returnees against local Serb inhabitants, continue and have spread to nearby villages. Tensions peaked with the murder of a local Serb in Berak on 9 August 1999. In order to preserve integration achievements, a renewed attempt by the Government to address the problems and concerns of its citizens in a realistic and vigorous way is needed.

20. Security Situation: The security situation is reported to be satisfactory by nine of the ten police stations monitored by the Mission's Police Monitoring Group in the Danube Region. However, in the tenth, Vukovar, particularly in the villages of Berak, Marinci and Sotin, there has been a noticeable increase in the number of ethnic intimidations. Almost half of all incidents monitored in the Danube Region have occurred in these villages. Two ethnically related homicides¹⁶, as well as assaults and arsons, have been perpetrated against the minority Serb community. The unresolved issue of those Croats that went missing from the period of armed conflict (see para 24) has led to prayer vigils and demonstrations in these villages. The combination of these events has led to fear in the Serb community, resulting in a number of families leaving these villages. While this reporting period has seen an overall reduction in the number of reported incidents, the Mission remains concerned by the fact that many of the reported incidents continue to be of an ethnic character. The Mission acknowledges the role of the Ministry of Interior in maintaining security by deploying a high number of police officers in the Danube Region. The Mission has, however, at times expressed concerns about the adequate use of available police manpower for preventive policing. In this regard, local police have been willing to accept advice from the Mission's police monitors when deficiencies were brought to their attention.

21. Performance of the Local Police Force: The overall performance of the local police force remains unchanged, and most ordinary cases are handled in a reasonably professional manner. The Police Monitoring Group reports progress in the abilities of the local police force to handle housing disputes and house searches. However, local police in the Vukovar area experience specific problems arising in ethnically mixed communities. Senior officers command the organisation in a professional manner, whereas difficulties with delegation of responsibility and deficiencies in middle management have been identified. Furthermore, there continue to be areas of inadequacy¹⁷, which must be addressed by the Police Administration. The number of non-compliance reports¹⁸ has almost doubled when compared with the last reporting period. In some cases, the Police Monitoring Group is dissatisfied with the manner of resolution of these complaints. A review of disciplinary procedures indicates that corrective action is taken in a fair and equitable manner, broadly in line with the ethnic composition of the force.

22. Police Authorities, Co-operation and Structure: Co-operation between the Police Monitoring Group and the local police force at local and county level is good. The Memorandum of Understanding of 1997 on the restructuring of the transitional police force established the ethnic composition of the local police. Structure and composition of the local police remain unchanged since the May 1999 Progress Report. There are currently 1,350 officers, 52 per cent of whom are Croat, 43 per cent Serb, and 5 per cent other ethnic groups. Progress has been noted in the appointments of three Serbs as station commanders in Borovo, Erdut and Tenja, thereby bringing the Government into compliance with the Memorandum. The Mission notes the commitment on the part of the Ministry of Interior to maintain an ethnically diverse police in the Danube Region. The Ministry has completed training for 180 ethnic Serb police officers who previously did not have proper academic qualifications to serve as Croatian police officers.

23. Police Response to Ethnically Related Incidents: Although the initial police response to ethnically related incidents is generally satisfactory, there is evidence to suggest that inadequacies sometimes occur.

¹⁶ On 16 May 1999, a male Serb was shot and fatally wounded in Marinci. A Croat was charged and is presently on bail awaiting trial. On 9 August 1999, a Serb male was beaten to death in the village of Berak, and a Croat suspect remains in custody while the investigation is continuing.

¹⁷ For example, evidence from an assault investigation turned over to the local police was not recorded and is now missing. In addition, police monitors were excluded from interviews regarding the investigation.

¹⁸ Twenty-three non-compliance reports were prepared during this reporting period, the majority for failure to notify police monitors of incidents. Others were prepared against local police officers for failure to record criminal events properly or for leaving important information out of an official police report. In addition, there were five cases of non-compliance to international standards.

However, under-performance cannot be tied to officers of a particular ethnicity¹⁹. The Police Monitoring Group has expressed dissatisfaction with the manner in which 8 per cent of all cases of ethnically related incidents were investigated, although senior officers sometimes intervene to set a positive example. In relation to the investigation of serious crimes, immediate follow-up action is often slow and inflexible. In part, this may be a result of the fact that police officers are unwilling to take decisive steps during the pre-investigation stage without prior notification to investigative judges.

24. UNTAES Agreements:

- **Joint Council of Municipalities (JCM):** The Government has essentially complied with its obligation to allow for the existence of the JCM and to provide co-financing²⁰. However, due to repeated late transfers of the Government subventions, the Council has not been able to consolidate its financial base. At the Ministerial level, the Government has shown renewed interest in consultations with the Council on legal issues, whereas county authorities still seem to lack guidance from the central Government in pursuing sustained dialogue. This has prevented progress in realising the Council's right, as confirmed in the Government's Letter of Intent, to propose Serb candidates for Assistant Minister and other senior Government positions. Uneven JCM performance in exercising its right to identify candidates is another factor in delayed nominations. After nine months, the Serb Assistant Minister of Interior was approved by the President on 22 September 1999, following consultations with the JCM. In Osijek-Baranja County, the Serb Deputy Prefect, supported by the County Prefect, was elected by the County Assembly on 21 April 1999 without prior consultation with JCM. This issue remains unresolved.
- **Danube Region Sub-Commission for Missing Persons:** As reported in the May 1999 Progress Report, the Danube Region Sub-Commission for Missing Persons still has not been established as required by the relevant UNTAES Agreement²¹. The Agreement calls for the formation of a single sub-commission to include up to three members of the former Joint Commission. Although the JCM was invited to propose the candidates, it has found it difficult to identify candidates acceptable to the Government. The Mission notes the JCM's two recent proposals and awaits a response from the Government. If accepted, the Government has promised a speedy confirmation of the candidates. The Croatian authorities have, on numerous occasions, acknowledged the need to comply with their commitments without results. The commitment also includes non-biased search criteria. In 1999, there has been no evidence of any attempt by the Croatian authorities to locate missing persons of Serb ethnicity in the Region. In light of recent events in Berak and surrounding villages, Serb inclusion on the Sub-Commission would formalise mechanisms to encourage Serb co-operation in the search for missing persons.
- **Integration of Employees in the Public Sector:** The Ministry of Health continues to go beyond formal obligations and is making efforts to re-employ ethnic Serbs who were on temporary contracts in their pre-war places of employment. This approach is commendable and should serve as a positive example. Serb teachers with permanent contracts have been integrated on equal terms with other Serb employees in public institutions, as foreseen in the Affidavit on the integration of public sector employees²². At the beginning of academic year 1999-2000, the Government is in compliance with its commitment to provide equitable and fair distribution of principal positions in the Region based on the evolving demographics, as mandated by the relevant UNTAES Agreement²³.
- **Educational Rights of Minorities:** The 1996 Government Declaration on Educational Rights of Minorities states that minorities have the right to education in the language and script pertaining to each minority. Government compliance is still inadequate in the provision of Serb-language textbooks,

¹⁹ The Police Monitoring Group carried out a survey of five cases, which occurred in the Vukovar area of operation during this reporting period.

²⁰ Erdut Agreement, para 12; "Letter of Intent" para 4; document on "Joint Council of Municipalities Organization, Status, Composition, Competence and Financing", dated 23 May 1997.

²¹ "Agreement concluded between the Government of the Republic of Croatia and UNTAES concerning the functioning of the Sub-Commission for Detained and Missing Persons for the Croatian Danubian Region", dated 12 January 1998.

²² Affidavit (concerning rights of employees of public enterprises and public institutions), dated 16 December 1996.

²³ Agreement on Distribution of Principal Positions for Schools in the UNTAES Administered Region, dated 4 August 1997.

especially for secondary schools. There is still insufficient communication between the Ministry of Education and minority representatives on these issues.

- **Deferment of Military Service:** The Government continued to comply with the Letter of Intent to guarantee the deferment of military service to Serbs from the Danube Region until 15 January 2000. The Mission is aware of isolated cases where the issuance of personal documents was made conditional on draft registration, which is not explicitly covered by the Letter. The commitment includes consideration of individual deferment requests after the 15 January deadline. Serb leaders in the Region have publicly voiced concerns that more Serbs will leave in the absence of an additional deferment regime. The Mission has facilitated dialogue between the Ministry of Defence and Serb representatives on that matter.

Human rights and democratisation

IV. Human Rights, Rights of Minorities and the Rule of Law

25. Introduction: Croatia's progress towards fulfilling its obligations to guarantee respect for human rights, the rights of minorities and the rule of law continues to be unsatisfactory. The Government has failed in particular to comply with many of the formal obligations it undertook in 1996, on entry into the Council of Europe, to resolve serious human rights problems on the ground and to promulgate new legislation in important areas. The law and practice that should enable individuals to protect their rights remain both complex and opaque.

26. International Instruments: Since May 1999, Croatia has ratified the European Convention on Mutual Assistance in Criminal Matters and its Additional Protocol. It has also signed a number of international instruments²⁴.

27. Adherence to the 1951 Convention Relating to the Status of Refugees: The Government reacted in an adequate manner to the critical refugee situation in the region in recent months, complying with its international obligations under the 1951 Convention Relating to the Status of Refugees and supporting its share of the burden of refugees from Kosovo. According to UNHCR, there has been one instance in which a Kosovar Albanian refugee was *refouled* to FRY, where he was ill-treated by the authorities. The enactment of a law formalising the domestic implementation of Croatia's obligations under the 1951 Geneva Convention, the drafting of which is being supported by UNHCR, is anticipated by the end of the year.

28. Amendments to the Constitution: Previous Progress Reports have noted that the Government should make certain amendments to the Constitution to bring its provisions into conformity with applicable international standards, particularly those that currently limit the enjoyment of certain rights to citizens rather than to individuals²⁵. No progress has been made in this area.

29. Conformity of Croatian Legislation with International Standards: The process of democratisation and the promotion of the rule of law in Croatia require an intensive transformation of its legislation. Croatia has made progress in the ratification of international conventions and is in the process of drafting or amending important laws to bring them into conformity with the applicable international

²⁴ The European Outline Convention on Transfrontier Co-operation Between Territorial Communities or Authorities, the European Convention on Transfrontier Television, the Convention on the Recognition of Qualifications Concerning Higher Education in the European Region, the Criminal Law Convention on Corruption, and the Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine: Convention on Human Rights in Biomedicine, including its Protocol on the Prohibition of Cloning Human Beings.

²⁵ In 1997 and 1998, experts of the Council of Europe recommended a number of amendments to the Croatian Constitution to bring it into conformity with the European Convention on Human Rights. As noted in previous Progress Reports, Constitutional Articles 27 (legal aid), 42 (peaceful assembly and public protest) and 46 (right of petition) should be amended to clarify that their protection extends to all individuals within Croatia and not just to all citizens of the country. Article 43 should be amended to clarify that the right to non-political association should also be guaranteed to all individuals and not only citizens. Article 32(3) should be amended to guarantee the unlimited right of all citizens to enter the country. Article 39 should be amended to modify the language stating that "any form of intolerance shall be prohibited and punishable" to reflect the international standards on freedom of thought and belief and freedom of expression.

standards. In some instances, the Government has consulted with experts of the Council of Europe for their recommendations, in accordance with obligations undertaken on entry into the Council of Europe. However, in several instances the recommendations have been ignored or legislation pushed through prior to receiving the recommendations (see para 40). Further, Croatia has not yet abolished discriminatory legislation adopted in relation to the conflict (see e.g. para 10), and needs to remain vigilant in changing laws and regulations to bring them into compliance with international principles and standards. The Government itself has recognised that a number of laws still required amendment in order to bring them into conformity with the European Convention on Human Rights (ECHR)²⁶. The Government has still not revised the 1991 Constitutional Law on Human Rights and Freedoms and on Rights of Ethnic and National Communities or Minorities²⁷ and the Law on Local Government and Self-Government²⁸.

30. Separation of Powers: The Government of Croatia has not responded to concerns the Mission expressed in its May 1999 Progress Report about developments that could undermine the principle of the separation of powers, particularly the independence of the judiciary from executive and legislative authority. The Government continues to fail to address issues relating to respect for the rule of law and the administration of justice (see also paras 31-33). In some instances, the Mission notes that the Government has shown a lack of understanding of the principles involved, in particular the separation of powers as reflected in Governmental representations that shortcomings in the judicial system could be effectively remedied through the strengthening of the executive branch of the Government²⁹. Executive authorities charged with the implementation of a law often introduce terms and conditions not provided for in the law itself, for example imposing deadlines, residency or citizenship requirements, thus acting outside their authority to nullify or dilute the effects of the law (e.g. convalidation decrees).

31. Independence and Impartiality of the Judiciary: Two bodies share primary responsibility for the operation and oversight of the judiciary, the Ministry of Justice and the High Judicial Council. The former exercises control over the budget and administrations of the courts and shares control over the appointment of judges with the High Judicial Council. The High Judicial Council is also the chief disciplinary body for presidents of courts, judges and state prosecutors. In 1996 and later, the Government of Croatia committed itself to amending the Law on the High Judicial Council taking into account the recommendations of Council of Europe experts. These recommendations, which pointed to the negative effects of the existing Law on the independence and impartiality of the judiciary³⁰, were primarily targeted at reducing political influence over appointments to, disciplinary action against and dismissals from the judiciary and state prosecutorial service as a whole. They also focused on the potential problems related to the control of the Ministry of Justice over the finances of the High Judicial Council. Although the Parliament did amend this Law in May 1999, many of the expert recommendations

²⁶ See the Government's 'Second Report by the Working Group for the Review of the Compatibility of Croatian Legislation with the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols', December 1998, (hereafter Compatibility Report). In that report, the Government's own experts gave a list of laws that required amendment and recommended that the Government establish a schedule for the revision process (from three months to one year for the entire process). To the best of the Mission's knowledge, no such schedule has been established and many of the laws remain unamended.

²⁷ As noted in the January Progress Report, the passage of such a law was a precondition for Croatia's international recognition as an independent state in January 1992. In late September 1995, shortly after the Government reasserted its authority over most of the formerly Serb-controlled territories, Parliament suspended many provisions of this law. The suspended provisions provided in particular for the protection of political representation and social and cultural rights of minorities, and applied above all to the ethnic Serb minority. On entry into the Council of Europe in 1996, the Government agreed promptly to revise this law.

²⁸ In April 1999, the Council of Europe Parliamentary Assembly called on the Croatian authorities to revise both these laws "by the end of October 1999 at the latest".

²⁹ In December 1998, the Parliament adopted "binding conclusions" stating that "the Government is to prepare a well-elaborated system of measures aimed at limiting the courts' authority" in part with the "aim to diminish the scope of the legal mechanism". A similar approach was taken in a Governmental paper from February 1999 which stated that "the Government is to strengthen the control function of the Ministry of Justice with regard to the administration of justice bodies". In its Compatibility Report, the Government recognised that certain laws should be amended to ensure full judicial review of matters that are currently handled through the more limited administrative system.

³⁰ The issue of political influence over the appointment of judges is of particular concern in light of the forthcoming elections. The Constitutional Court is responsible for the review of issues arising in the conduct of elections, including the functioning of the political parties, and the activities of the State Election Commission. However, the appointments of the majority of judges on the Constitutional Court expire in early December, immediately prior to the elections.

were not in fact taken into account³¹. On the practical level, the executive authorities continue not to enforce judicial decisions, particularly in regard to evictions.

32. The Constitutional Law on the Constitutional Court: A parliamentary working group has been established for drafting amendments to the Constitutional Law on the Constitutional Court. This is a positive development. Croatian experts have criticised the existing law, adopted in 1991, for containing vague norms and gaps, which have hampered the functioning of the Constitutional Court. Issues of concern include the implementation or application of Constitutional Court decisions³², the relationship between the Supreme Court and the Constitutional Court³³, and the effectiveness of the Constitutional Court as a remedy for human rights violations³⁴.

33. Functioning of the Judicial System: As previously reported, the Croatian judicial system is burdened by an extremely heavy backlog of cases, officially announced at the level of one million for the past several years. Not only has there been no progress in reducing this backlog, but the Government's own statistics reveal that it is getting worse, at least in some courts³⁵. Furthermore, the Mission notes that the high number of judicial vacancies has exacerbated this difficult situation. Since the May 1999 Progress Report, efforts have been made to remedy this situation through the advertisement of more than 60 vacancies in the Croatian Official Gazette. In this context, the specific vacancies mentioned in the May 1999 report have been addressed albeit insufficiently. The County Court in Gospić appointed two judges on an interim basis to handle cases in Donji Lapac and Korenica. However, to date the judge appointed to Donji Lapac has not yet appeared and the circuit judge appointed to Korenica works only with 'urgent' cases, a category that remains undefined. When achieved, the normal staffing of courts is expected to have a positive impact in problematic areas such as access to courts, effective rights to appeal and the obtaining of court decisions within a reasonable time.

34. The Law on Convalidation: The Law on Convalidation and three subsequent Decrees³⁶ relate to the validation of judicial decisions and administrative documents issued during the conflict in then Serb-controlled areas. The Law aims, *inter alia*, to ensure continuous protection and enjoyment of accrued rights, such as pensions and child benefit, through the Croatian legal and administrative systems by certifying the validity of such decisions and documents. In general, no problems appear to have arisen with regard to the convalidation of documents defining civil status (e.g. birth, marriage, death) or of judicial decisions, as governed by two of the Decrees. However, several problems arise with regard to convalidation addressed under the third Decree governing 'Labour, Employment, Pension and Disability Insurance, Children's Allowances, Social Welfare and the Protection of Military and Civilian Invalids of War'. The underlying focus of this Decree is the convalidation of years of employment, or 'working years', to which no deadline applies. However, rights that stem from the recognition of working years are subject to deadlines not included in the law itself³⁷. No one inside or outside the country at the conclusion of the twelve months is able to request convalidation of any of these protected rights. Even those who filed applications prior to the deadlines face continued delays and other practical problems, for example the necessity for regional pension decisions to be confirmed by the central Pension Fund. However, some

³¹ On the other hand, the amended Law should facilitate the filling of judicial vacancies, although the Mission has not yet been able to confirm this development (see also para 33).

³² For example, executive authorities have ignored Constitutional Court judgements holding that administrative bodies must give reasons for the decisions they take, interpreting certain provisions from the Law on Citizenship, and so forth.

³³ For example, the Supreme Court has refused to recognise the superiority of the Constitutional Court in the structure of the judiciary and has consequently refused to apply Constitutional Court decisions in the courts under Supreme Court jurisdiction.

³⁴ The Constitutional Court has itself declared that it cannot review the effects on Constitutional rights of the failure of administrative or executive authorities to act (e.g. in cases contesting the silence of the administration or in cases where the authorities do not enforce eviction orders).

³⁵ An October 1998 report of the Ministry of Justice on 'The Situation in the Judiciary of the Republic of Croatia: Analysis and Proposed Measures', notes that from 1994 to 1997 the number of cases introduced at the Supreme Court decreased by 63.1 per cent, while the number of cases unresolved by that Court increased by 62.3 per cent.

³⁶ The Decrees of April 1998 are as follows: (i) the Implementation of the Law on Validation in Subjects of a Judicial Nature; (ii) the Implementation of the Law on Validation of Acts Issued in Subjects of an Administrative Nature; and (iii) the Implementation of the Law on Validation for the Administrative Fields of Labour, Employment, Pension and Disability Insurance, Children's Allowances, Social Welfare and the Protection of Military and Civilian Invalids of War.

³⁷ With regard to these rights, the Decree sets two deadlines that together establish a final deadline that precludes all future applications for convalidation, whatever the circumstances. One deadline is established for individuals returning to the country; a second deadline is established that no convalidation request will be considered on the expiry of twelve months after the publication of the Decree.

individuals have obtained the children's allowance since May. Whereas problems exist in the area of convalidation of agricultural pensions, the relatively recent introduction of agricultural pensions (1980), coupled with the fifteen-year vesting period, compounds the difficulties attached to convalidation.

35. The 1991 Law on Citizenship: This law continues to be inequitably applied. Although the Law requires only five years of continuous residence at any time prior to application for citizenship, the Government has rejected a number of applications for citizenship from long-term residents on the grounds that the applicants were unable to prove they had been resident for the immediately preceding five years. This practice does not meet applicable international standards³⁸. Nor is it consistent with decisions of the Constitutional Court on this issue³⁹. In 1993, the Constitutional Court held that Government authorities and judicial bodies must provide reasons for rejecting applications for citizenship. This decision has not always been respected. Finally, individuals unable to verify their citizenship or to claim their entitlement to citizenship on *force majeure* grounds have not been provided with an adequate opportunity to do so. Some applications for citizenship have been rejected on the grounds that criminal charges might be lodged or were pending against the individual concerned. This practice contravenes the right to be presumed innocent⁴⁰. Difficulties in verifying citizenship arising from the disappearance or destruction of citizenship registers in war-affected areas have not been adequately addressed, although instructions issued in mid-1998 in connection with the return process were intended to provide alternative means of proof of citizenship.

36. Occupancy-Tenancy Rights: As noted in previous Progress Reports, the Government is under an obligation to resolve issues surrounding the loss of occupancy rights. During the conflict, Croatia introduced discriminatory laws and practices that served to deprive people of these rights (the main type of real property right in urban areas of the former Yugoslavia). There has been no progress in addressing this issue.

V Freedom of the Media

37. Introduction: The Mission's previous Progress Reports have pointed to the Government's failure to fulfil the obligation undertaken to uphold democratic standards as regards freedom of the media. Performance in this area remains well short of Government commitments.

38. State Broadcaster: As noted in previous Progress Reports, the legislative framework for the state broadcaster, Croatian Radio-Television (HRT), provided by the HRT Law, fails to achieve the Government's stated objective of transforming HRT into a public service broadcaster. According to the agreement in principle reached between the ruling party and parties of the opposition on 25 May 1999 concerning the Election Law, the HRT Law should be further amended in order to transform HRT into a public service broadcaster. However, agreement on a revised law has not been reached to date.

39. Monitoring of Croatian Television (HTV): International monitoring of news and current affairs coverage on HTV reveals a continuing pattern of biased and distorted programming⁴¹. The monitoring

³⁸ Article 32 of the Convention Relating to the Status of Stateless Persons states: "The Contracting States shall as far as possible facilitate the assimilation and naturalisation of stateless persons. They shall in particular make every effort to expedite naturalisation proceedings..."

³⁹ For example, in decision No. U-III-1275/1997 of 25 November 1998 (unpublished as of 28 September 1999) the Constitutional Court of Croatia ruled that if an individual has accumulated five years of uninterrupted residence in Croatia, 'the presence of the individual in the Republic of Croatia is not any more a condition for acquisition of Croatian citizenship through naturalisation'. Further, in the decision the Constitutional Court stated that the five-year residency requirement prior to application 'cannot be interpreted in a way that the individual has to be factually living in the Republic of Croatia at the time his application is decided upon', and held that the five-year residency requirement for naturalisation could be comprised of several separate periods of time and did not necessarily have to transpire during the five years immediately prior to the application for naturalisation. However, the executive authorities continue to issue decisions declaring that the five-year requirement must be immediately prior to the application for naturalisation.

⁴⁰ Article 29 of the Constitution and Article 6 (2) of ECHR and possibly Article 7 ECHR (depending on the timing of the citizenship application).

⁴¹ Sources: Monitoring by the European Institute for the Media (EIM) and the United States Embassy in Croatia. The Mission, together with the OSCE's Office for Democratic Institutions and Human Rights (ODIHR), commissioned the EIM to carry out a media monitoring project during the period until the forthcoming parliamentary election. The project started on 17 July 1999, initially focusing on a selection of news and current affairs programmes on HTV. The US Embassy has monitored the main evening news programmes, Dnevnik and Motriska, since May 1999. Both projects provide weekly analyses of the results of their monitoring.

results reveal that figures of the ruling party, especially when appearing in their capacity as government or state officials as opposed to their party capacity, receive an overwhelmingly disproportionate amount of coverage. Although presenters of news and current affairs programmes most often present the news in a balanced way, without introducing their own positive or negative assessments, ruling party officials are much more frequently shown in a positive news context (achievements of the Government, openings of new constructions etc.), while opposition figures more often appear in a negative context (political disunity etc.). There are also cases of presenters being openly partial in favour of the ruling party or the State President. In addition, figures from the ruling party receive far more opportunities to present their case directly to viewers through sound bites than do other parties. Press conferences by opposition parties are more often left out of the main evening news show, *Dnevnik*, and broadcast only in news programmes with a lower audience rating.

40. Private Broadcasting: In the May 1999 Progress Report, the Mission pointed to concerns over the licensing procedure for private broadcasters. On 9-10 June 1999, a Council of Europe experts' mission visited Croatia for discussions on a new draft of the relevant law, the Law on Telecommunications. The Council of Europe experts made recommendations which, if implemented, would have assisted in ensuring the independence of the regulatory authorities for the broadcasting sector. Despite assurances that sufficient time would be allowed for the Council of Europe experts' recommendations to be considered before the final law was passed, the Law was adopted on 30 June 1999, before their written recommendations had been received⁴². A number of the Council of Europe experts' detailed recommendations, made orally during their visit, were incorporated in the Law. However, the Mission, in consultation with the Council of Europe, assesses that certain recommendations of major importance have not been incorporated. In particular, the law does not provide for a strong broadcasting regulator, separate from the telecommunications regulator, with responsibility for issuing licenses and monitoring compliance with regulations. In addition, the final law does not incorporate recommendations of the Council of Europe experts that would have assisted in ensuring the independence of the regulatory authorities from political influence.

41. Privatisation of the Third Channel of HRT: The Mission notes that a concession has been granted for a private, fourth national television channel. The Mission has urged the Government to fulfil its obligation to promote the private broadcasting sector, and, in view of doubts as to the viability of a fourth channel given the size of the Croatian market, recommends the privatisation of the third channel of HRT under fair and transparent conditions⁴³.

42. Pressures on Print Media: As noted in previous Progress Reports, the unresolved financial difficulties of the Tisak distribution company mean that independent media remain vulnerable, and the development of free market conditions for print media remains hindered. As regards another problem area identified in previous Progress Reports, namely the pressure through legal actions against independent print media, the situation remains unchanged.

VI. Elections

43. Reform of Electoral Legislation: Upon accession to the Council of Europe in 1996, the Government committed itself to amend the electoral law "well before the next elections" following consultations between the ruling and the opposition parties and in compliance with recommendations made by international organisations⁴⁴. In this context, international concerns over the electoral process in Croatia were forwarded to the Government on 14 August 1998 in a non-paper developed by the Mission in co-operation with OSCE/ODIHR and the Council of Europe [see September 1998 Progress Report]. In order to reiterate international concerns, as well as to focus the attention of the Government on practical aspects

⁴² Upon Croatia's accession to the Council of Europe in 1996, the Government committed itself to implement the recommendations of Council of Europe experts on the Law on Telecommunications, as stated in Opinion no. 195 (1996) of the Parliamentary Assembly of the Council of Europe.

⁴³ Council of Europe Parliamentary Assembly Resolution No. 1185, dated 29 April 1999, called on the Croatian authorities "...to reconsider the decision not to privatise the third channel of the HRT".

⁴⁴ Council of Europe Parliamentary Assembly Resolution No. 1185, dated 29 April 1999.

of the electoral process, representatives of the United States, European Union and OSCE delivered a demarche to the Minister of Foreign Affairs on 12 July 1999. It underlined that, in order to achieve a democratic electoral process, the Government is obliged to ensure enfranchisement of all Croatian citizens by securing their access to necessary documents, to provide for an accurate and updated voter registry as well as to respect international law and practise by restricting voting outside the country to established embassies and consulates.

44. Citizenship and the Franchise: The Government is obliged to ensure that persons with a claim to Croatian citizenship, whether abroad or in Croatia, have an equal opportunity to obtain documents proving their citizenship. In view of difficulties with processing citizenship claims, reports from FRY and BiH show that the issuing of these documents have significantly slowed down over the last months (see para 13.3). All citizens have the right to participate in elections, with no dependence on other procedures related to other interests. The Government's failure to meet its obligation and to show the necessary flexibility in applying the 1991 Citizenship Law and to process citizenship verification applications expeditiously is hampering the democratic process and denying basic political rights (see para 35).

45. Political Process Concerning the Reform of Electoral Legislation: Since the last Progress Report, there have been some positive developments concerning the Government's obligation to adopt amended electoral legislation after consultations between the ruling and opposition parties. On 25 May 1999, the parliamentary clubs of seven political parties in Parliament, the governing party and six mainstream opposition parties agreed on a document setting forth the principles for a new Electoral Law. Negotiations to reach a consensus on the new Electoral Law resumed on the basis of that document. Despite intense discussions, the parties have not been able to agree on how these principles should be transformed into the long awaited legislation. Therefore, the governing party forwarded its own draft Election Law into parliamentary procedure on 2 September 1999, in order to present it in the House of Representatives, the Lower House of the Croatian State Parliament, on the opening of its autumn session on 22 September 1999. With the current composition of the Croatian State Parliament, the ruling party is in a position to adopt the Law without the consent of any of the opposition parties. The Upper House of Parliament, the House of Counties, adopted this HDZ proposed Election Law on 16 September 1999 at its first autumn session.

Looking Ahead

46. On 22 September 1999, the Government of Croatia presented the Mission with a 'White Book' setting forth its own views about progress in meeting international commitments since May. Although this document was submitted late in the process, a preliminary review reveals a number of good intentions to take certain actions in the future. Ministries responsible for drafting legislation that the Government has committed itself to introduce have stated that several key laws will be introduced into parliamentary procedure or be promulgated by the end of the year. Given the fact that Parliament will dissolve 60 days prior to the election (i.e. no later than 27 November 1999), the Mission has some doubts that this extensive legislative agenda can be fulfilled.

47. Further improvement in the return and reconciliation process requires increased Governmental efforts to establish trust between ethnic communities, to better ensure a sense of security amongst ethnic minorities and to improve implementation of the Amnesty Law and more transparent pursuit of war crimes cases. In addition, amendments to the three discriminatory laws which the Government committed itself to introduce fifteen months ago remain outstanding.

48. In order for the Government of Croatia to consolidate achievements it has made in the development of democratic institutions and to expedite the bringing of those institutions into line with those of other European countries, it needs to take several major actions. The Government should pursue comprehensive reform to abolish laws, decrees and other legal instruments introduced on a temporary or emergency basis during the conflict and to eliminate the negative effects of that legal regime. Furthermore, improvements still need to be made to several election-related laws, in particular those

concerning the media, regarding which recommendations from international experts were not fully taken into account.

49. The elections to the Lower House of Parliament will provide an opportunity for the Government to demonstrate its commitment to the development of democratic institutions. Revision of electoral legislation and securing an unbiased role for state-owned media are the two keys to create fully democratic conditions for these elections. It may prove difficult for the Government to present the public with a Voters Register and to provide potential voters the opportunity to rectify inaccuracies in the Register no later than two months before the election, as required by the international community in order to assess the elections as 'free and fair'.

Population Statistics Danube Region

	1991 Census	UN Survey October 1996	UN Survey July 1997	ODPR registration	ODPR Validation March 1998	Present
Croats	86,700	8,800	9,200	N/A	N/A	47,200
Serbs	73,200	73,000	72,800	N/A	N/A	50,000
Hungarians	13,000	6,700	7,100	N/A	N/A	7,000
Others	28,500	8,500	6,000	N/A	N/A	5,600
Ethnic Serb DPs	0	47,600	37,500	31,600	11,200	5,000
Total	201,400	144,600	132,600	31,600	11,200	114,800

Annex 2:

**TABLE 1 - RETURN OF REFUGEES TO CROATIA FROM COUNTRIES OF ASYLUM
ORGANISED RETURNS UNDER THE RETURN PROGRAMME
(FIGURES PROVIDED BY UNHCR AND ODPR AS AT 01 SEPTEMBER 1999)**

STATUS	JULY – AUGUST 1998	SEPT – DEC. 1998	JAN 1999 – APR. 1999	MAY 1999 – AUGUST 1999	AS AT 01 SEPTEMBER 1999
(1)	(2)	(3)	(4)	(5)	(6)
1. Clearances Received from ODPR	6,100	6,200	4,600	1000	18500
<i>(a) Actual returns</i>	<i>2,700</i>	<i>4,700</i>	<i>4,100</i>	<i>1,600</i>	<i>13,100</i>
Returned Assisted	2,000	1,200	200	800	4,200
Returned Unassisted	700	450	1,800	400	3,350
Returned with Putni List ⁴⁵	N/A	3,100	2,200	300	5,600
<i>(b) Accepted – Can Return Immediately</i>					4,000
2. Applications Pending ODPR Clearance					3,800
3. Deferred Cases					6,400
Total Applications Submitted to ODPR					22,300

**TABLE 2 – RETURN TO AND FROM AND DEPARTURES FROM THE DANUBE REGION
(FIGURES PROVIDED BY ODPR, EXCEPT WHERE NOTED)**

STATUS	AS AT 31 AUGUST 1998	AS AT 31 DEC. 1998	AS AT 30 APR. 1999	AS AT 31 AUGUST 1999
(1)	(2)	(3)	(4)	
Persons Returned to the Danube Region from the Rest of Croatia	17,000	26,100	35,300	40,500
Persons Returned from the Danube Region to the Rest of Croatia	21,100	27,000	27,000	27,600
Displaced Persons from the Danube Region to FRY ⁴⁶				c.a. 29,000
Resident Ethnic Serbs from the Danube Region leaving for FRY ⁴⁷				c.a. 18,000

- (a) Government statistics note that, as at 01 September 1999, approximately 101,000 persons had been recorded as returned to their place of origin by the Office for Displaced Persons and Refugees (ODPR) since 1995. These figures are supported by the UNHCR.
- (b) ODPR statistics (not included in the table above) show that a total of approximately 33,300 ethnic Serbs have returned to Croatia from FRY and BiH since 1995. The Return Programme accounts for some 12,000 of these returns. Numbers registered as returning between May and August 1999 are lower than during the same period last year
- (c) Despite difficult economic conditions in the Danube Region the Government has made significant steps in the return of ethnic Croats to the Croatian Danube Region with a further 5,000 people recorded as having returned during the summer of 1999. Conversely the return of ethnic Serbs from the region to the rest of Croatia has stopped, despite the presence of 4,700 ethnic Serb displaced persons in the region. This may be attributable to the failure of the Operational Agreement on Return to provide durable solutions for these persons. Statements made by the Government in September 1999 indicate that the resolution of these cases is now a priority.
- (d) The Mission has been unable to obtain accurate figures for departures from the Croatian Danube Region to FRY.
- (e) Not noted in this table but of importance is the lack of progress for the 13,000 ethnic Croats from Bosnia who have submitted applications for return to their homes. Obstruction in BiH, and in particular Republika Srpska, combined with limited engagement by the Croatian Government on this matter prevents the return of these people.

⁴⁵ Note that persons returning with Putni List (a travel document issued by Croatian Diplomatic Missions to persons who meet the criteria established under the Procedures for Return of Persons who Left the Republic of Croatia (March 1998) documents do not have their applications through ODPR but can, if they approach the Office upon return, be registered as returnees.

⁴⁶ UNHCR has estimated that some 29,000 ethnic Serbs displaced from the rest of Croatia to the Danube Region have subsequently moved to FRY.

⁴⁷ UNHCR has estimated that some 18,000 domicile ethnic Serbs from the Danube Region have moved to FRY since the end of the conflict in 1995.