



Organization for Security and Co-operation in Europe

Mission to Croatia

Headquarters

STATUS REPORT No. 15 ON CROATIA'S PROGRESS IN MEETING INTERNATIONAL COMMITMENTS SINCE JULY 2004

21 November 2004

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EXECUTIVE SUMMARY

GENERAL BACKGROUND

Government of Croatia Maintains Commitment to Fulfilling its OSCE Mandate Obligations Related to Euro-Atlantic Integration

During the reporting period of July-November, the Government of Prime Minister Ivo Sanader of the Croatian Democratic Union (HDZ), which came into office in January 2004 and expressed a firm commitment to resolving OSCE mandate related issues in the larger context of Euro-Atlantic integration (NATO-EU), continued its efforts in meeting the objectives contained in the Mission's mandate.

The EU decision on 18 June to grant Croatia formal status of an EU candidate country, the adoption on 13 September of the *European Partnership with Croatia*, and the issuance by the European Commission of the *Pre-accession Strategy* on 6 October, are expected to further strengthen Croatia's determination to continue on this course.

The acceleration of the EU integration process and the consistent efforts by Prime Minister Sanader to bring the Croatian Democratic Union (HDZ) into the political mainstream, as well as HDZ's choice to seek Parliamentary support from representatives of the Serb minority, have given added attention to the Mission's mandate since the beginning of 2004.

However, it seems that over the summer recess there has been a dampening of popular and media enthusiasm regarding EU integration both in the media and in the public opinion. There are signs that the initial consensus for European integration is transforming into more measured support. The Government has announced its intention to launch a media campaign to better explain the benefits of joining the EU.

The Government nevertheless maintained its overall commitments and confirmed some of the positive signals given during the first half of the year. In particular, it has ensured that reconstruction assistance is widely available to Croatian Serb refugees and taken steps towards addressing the problem of occupied properties belonging to refugees. Important steps have also been taken toward a more effective inter-state cooperation on war crime issues, and targeted efforts have been undertaken to prepare the judiciary for the possible transfer of cases from the International Criminal Tribunal for the former Yugoslavia (ICTY).

Yet, it seems that the pace of reforms has somewhat slowed down in some areas, such as media reform, minority representation and electoral legislation. Regarding refugee return, there are still concerns about adequate solutions for the numerous Serb households (up to about 30,000) who lived in socially-owned flats before the 1991-1995 conflict. There is also a concern about ethnic bias in domestic war crime proceedings in lower courts.

In September and October, Members of Parliament from the Independent Democratic Serb Party (SDSS) expressed reservations about the implementation of the *Cooperation Agreement* signed with the Croatian Democratic Union (HDZ) in December 2003.

After SDSS leaders publicly criticized the Government's policy, mainly regarding refugee return and minority representation in the State administration, the judiciary and the police, Prime Minister Sanader held a series of meetings with representatives of the SDSS and Bosniak minority. Subsequently, both the Serb and Bosniak delegations stated their overall satisfaction with discussions and the Serb delegation expressed the view that the *Cooperation Agreement* was leading toward positive results.

The local political climate is becoming more favourable to refugee return but problems with ethnic incidents remain in some heavily war-affected areas. Property repossession has progressed well in some areas, but remains slow-moving in parts of Dalmatia and Southern Croatia. A persistently difficult economic situation also hinders reconciliation efforts. Civil society organisations are weak and under-financed. Minorities have gained a forum at the local level through the creation of Councils of National Minorities, but in many cases these remain weak.

The Government has been astute in handling challenges and crises of a symbolic and sensitive nature. Following a long series of incidents related to the erection of monuments honouring prominent *Ustasha* officials, which developed into a national debate, the Government took the decision in late August to remove two of these monuments and to prepare draft amendments to the Criminal Code aimed at banning the glorification and promotion of totalitarian regimes.

During the latest incident in Croatian-Slovenian relations which erupted on 22 September, at the closing of an election campaign in Slovenia, when 12 Slovene politicians were detained by Croatian border police for several hours after visiting a house along a disputed part of the border, Croatian authorities showed restraint and made constructive statements about the modalities of resolution of outstanding bilateral issues with Slovenia.

Regional Cooperation Developing

Initiatives regarding regional cooperation are intensifying, in particular after the Croatian Parliament ratified the *Agreement on Succession Issues* to the former Yugoslavia, which entered into force in June 2004. Following a meeting in Thessaloniki on 21 October with Serbian Prime Minister Vojislav Kostunica, Prime Minister Ivo Sanader visited Belgrade on 15 November. This visit was *the first official meeting of the Prime Ministers of the two countries ever*. A bilateral *Agreement on the Protection of Minorities* in both countries was signed on that occasion.

There has also been progress in other regional cooperation issues within the Mission's mandate. *Judicial cooperation on war crime trials* is gradually developing between Croatian and neighbouring authorities. In addition, the joint regional initiative proposed by the Principals of OSCE, European Commission (EC) and United Nations High Commissioner for Refugees

(UNHCR) in Croatia, Bosnia and Herzegovina, and Serbia and Montenegro, for the closure of the refugee file in a reasonable time-frame, was presented to the attention of the concerned governments.

DEVELOPMENTS ON MANDATE-RELATED ISSUES

Refugee Return

In November 2004, more than *200,000 Croatian Serbs* were still displaced in Serbia and Montenegro and Bosnia and Herzegovina. According to a report commissioned by the OSCE to a Zagreb based polling agency, *14 per cent* of the interviewed sample of Croatian Serb refugees abroad manifested a certain intention to return to Croatia in the coming years. The survey also showed that access to housing, economic incentives and employment opportunities could influence a larger number of refugees to return to Croatia.

The need to provide *housing* to the large category (up to 30,000 households) of refugees and internally displaced persons (IDPs) who formerly lived in socially owned flats with occupancy/tenancy rights (OTR) has still not been adequately addressed. In particular, the Government programmes designed to provide housing to former OTR holders who wish to return or are already in Croatia have yet to show visible results. The Government has reaffirmed its commitment to implementing them after a European Court of Human Rights (ECHR) judgement alleviated Government concerns that the State would have to compensate all former OTR holders.

A long-awaited information campaign to potential beneficiaries, implemented by the Government with the assistance of United Nations High Commissioner for Refugees (UNHCR) started only in October, less than 3 months before the expiration of the deadline for applications outside the Areas of Special State Concern. Funding for the housing care programme to former OTR holders in the 2004 budget remains unused.

Access to housing for former OTR holders would enable the return of the relatively skilled and educated urban population and would thus contribute to a more dynamic Serb community in Croatia.

Other refugee-related housing issues are being dealt with more forcefully. The *repossession of property* could be completed in 2005. There were approximately 19,000 occupied properties after the 1991-1995 conflict; as of 1 November 1,400 remain occupied. There are still obstacles that remain to be addressed: the looting of the properties upon departure of the temporary occupant; the extensive length of court procedures for eviction; the issue of counterclaims filed in courts by occupants pressing for 'compensation' from the owner for 'investments' made without his consent; as well as delays in the construction of alternative housing.

The progress on *reconstruction assistance* is satisfactory. In March, the Government reopened the possibility to apply for an additional six months, until the end of September 2004, allowing the submission of more than 14,500 new applications in addition to 2,200 unprocessed applications on file.

The Heads of the OSCE missions, European Commission (EC) delegations and UNHCR offices in Croatia, Bosnia and Herzegovina and Serbia-Montenegro have suggested that the three Governments agree on benchmarks for closing the refugee file by the end of 2006, with the facilitation of the three organisations.

Judiciary and the Administration of Justice

Judicial reform, a process that necessarily entails a long-term perspective, continues to focus on technical aspects. The *Constitutional Court* continues to play a significant role in the supervision of basic fair trial standards in the lower courts. As the end of 2004 approaches, the number of complaints against Croatia awaiting decision at the European Court of Human Rights has declined, largely as the result of numerous settlements and judgments related to one type of fair trial violation. A number of cases, however, remain to be decided in the coming months. Activities toward the development of a *free legal aid system* have begun in October 2004. The delay in appointing an *Ombudsman* has prevented further consideration of the recommendations for strengthening this institution and has curtailed its work.

Rights of National Minorities

Croatia's overall *minority rights regime* is framed within the Constitutional Law on the Rights of National Minorities (CLNM). The part of the law related to minority representation in elected bodies has largely been implemented. However, two years after the adoption of the Law, guarantees related to *minority representation* in the judiciary, police and State administration remain largely unimplemented. The Councils of National Minorities (CNMs), which function as advisory bodies to local authorities, have yet to become a significant voice for minority concerns.

War Crimes and Cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY)

Croatia has received positive assessments regarding *technical cooperation with the ICTY*, most lately when the ICTY President and the Chief Prosecutor reported on 29 June to the UN Security Council. Nevertheless, prosecution of high-ranking military officials for war crimes remains politically sensitive. During the autumn, the ICTY has again highlighted the case of ex-General Gotovina, who remains at large, and asked for intensified efforts by the Croatian authorities to secure his arrest and surrender to the Tribunal. Reports by the Tribunal President and the Chief Prosecutor to the UN Security Council on 23 November are expected to address this issue.

The Croatian Chief State Prosecutor completed in October a *review of pending domestic war crime proceedings*, resulting in the abandonment of a significant number of unsubstantiated charges against Serbs, thus leaving 1,900 substantiated cases. Nevertheless, arrests of Serb returnees and Serbs travelling in several other European countries continued on the basis of charges that were later dropped as unsubstantiated.

Efforts to improve the quality and fairness of *domestic war crime proceedings* remain largely targeted on ICTY transfer issues rather than viewing domestic war crimes adjudication in a comprehensive fashion. This could contribute to

the creation of a two-tier system of justice for war crimes. National origin of both victims and defendants continues to affect the adjudication of war crimes.

Police Reform

The Ministry of Interior has continued its efforts to reform the Police and is working with the Mission to elaborate a “*Road Map*” for the further development of a modern police service in line with European standards. The human resource management system needs to be revised to safeguard the police from possible political interference. *Community policing* remains one of the most advanced police reform initiatives, although the implementation has been subject to delays. *Corruption* is still an issue within the Croatian Police, but the Ministry of Interior is taking steps to address this problem.

Electoral Reform

According to reports by the OSCE Office for Democratic Institutions and Human Rights (ODIHR), the overall conduct of elections in Croatia is satisfactory. However, ODIHR has made a series of recommendations for reform of Croatia’s electoral system. Many of these recommendations reappear in successive election observation reports and have yet to be implemented. The Government has *several draft laws* in development. The Mission convened a roundtable on electoral legislation reform in mid-November 2004 together with ODIHR and the Council of Europe.

Media Reform

The new Government initiated a reform of media legislation, but changes are still pending to the Law on Croatian Radio-Television and Law on Electronic Media. In particular, there remains a need to adopt provisions, in line with recommendations by the OSCE, the Council of Europe and the European Commission, to shield the respective *regulatory bodies* from the possibility of direct political interference.

The Government has not decriminalised *libel*, but amendments to the Criminal Code adopted in July allow for a more liberal libel regime. Croatian media still lack a *self-regulatory system* to effectively adjudicate complaints against the media.

Civil Society

Cooperation between NGOs and local authorities at the local level remains in most cases superficial and inadequately organised. However, encouraging and innovative developments have taken place in Zagreb and in Eastern Slavonia to foster public, private and non-Government sector cooperation.

The decision to impose *value-added tax (VAT)* on NGOs active in democracy and human rights remains an issue of concern. Moreover, there is a need for a *regulatory framework* to organise relations between public authorities and NGOs working for democratisation and minority rights.

PERSPECTIVES

Mission Adjusting to New Environment

In the context of increased responsiveness to Euro-Atlantic integration by the new Government, the OSCE Mission is being progressively appreciated by authorities as providing independent advice and being a *catalyst for change* on politically difficult issues.

Both the joint issuance of reports on war-crimes and the joint launch of the Public Awareness Campaign on refugee return demonstrate that the Government and the Mission have been able to establish *formal partnerships* on critical issues.

In the framework of envisaged modifications in the *Mission's field structure*, added attention will also be given to the implementation of relevant Government programmes at the local level. The OSCE field presence will continue to encourage and support local initiatives relevant to the fulfilment of the mandate.

More Active Political Life Ahead

The political life is entering a phase of renewed activity with the upcoming Presidential election (due early January 2005), and the local elections to be held in May 2005. This may deflect attention from some of the issues within the Mission's mandate.

Croatia's relations with its neighbours are expected to continue to improve not least because regional cooperation has also been identified as a remaining political condition by the European Union.

PROGRESS ON MANDATE-RELATED ISSUES

REFUGEE RETURN

Overview

Housing and economic factors are the most important obstacles to return. But administrative obstacles and some psychological barriers also remain, and slow down the return process.

As of 1 November 2004, approximately 114,000 Croatian Serbs are registered as having returned to and within Croatia (6,500 returned in 2004) while approximately 200,000 remain outside the country¹.

A recent field research report² commissioned by the Mission demonstrates that there remains a ***potential for return***. Around 14% of the interviewed sample of Croatian Serbs still being displaced abroad show an interest in returning to Croatia. The report, however, suggests that this potential may be higher if certain preconditions for return are realized, access to housing and economic opportunities being the most important ones. The report also suggests that a large number have integrated into their places of exile, primarily as a result of long periods of displacement and obstacles to return³.

The mentioned report demonstrates that a variety of ***obstacles to return*** continue to exist. These include psychological obstacles, such as fear of discrimination on the part of local authorities and the lack of transparency in the arrest of ethnic Serbs on suspicion of war crimes⁴. The Mission's observations validate these concerns. The security situation in return areas remains largely satisfactory, though some isolated ethnically-related incidents still take place⁵.

Significant progress has lately been made on reconstruction and repossession of private residential properties but in spite of this, not all those who want to return to Croatia have ***access to adequate housing***. There is still no significant progress as regards alternative housing for the numerous former tenants of socially owned apartments with occupancy/tenancy rights (OTR) who wish to return⁶ and have no access to affordable housing.

The ***legal regime on property repossession*** continues to favour the interests of temporary occupants over the rights of the owners, as was recognized in April 2004 by the EC's "Opinion on the application of Croatia for membership of the European Union"⁷. In addition, Serb returnees still face difficulties in applying for building materials to repair their looted houses, or in reconnecting electricity. Finally, there is still a need for a firm commitment to assisting owners in repossessing their occupied non-residential properties, e.g., business premises and agricultural land.

Some legal and administrative issues adversely affect the return process and the full respect for ***acquired rights***. Croatian Serbs still face difficulties in attaining state recognition of their working years during the period of the so-called "Republika Srpska Krajina" from January 1992 until August 1995, when Croatia regained that territory, as well as in the Danube Region of Eastern Slavonia before its peaceful reintegration to Croatia in January 1998. Although regional and local authorities in

war-affected areas have generally become more welcoming towards refugee return, Serb returnees who have not yet acquired Croatian citizenship still have difficulties in regularizing their status with the local police.

Access to Housing for Former Occupancy/Tenancy Rights (OTR) Holders

Former holders of occupancy / tenancy rights (OTR) remain the largest refugee category without a housing option if they want to return. Government housing programmes for this group are still largely unimplemented.

The need to provide **housing to former holders of occupancy/tenancy rights** (OTR; *stanarsko pravo*) remains an ultimate priority. These former residents of socially owned apartments are the largest remaining category of refugees and displaced persons without a housing option. Up to 30,000 refugee households are affected by war-time terminations of OTRs. Almost all terminations of OTR during and after the war affected Croatian Serbs⁸. Housing for former OTR holders would enable the urban refugee population to return, which would contribute to the reestablishment of a more vital and diverse Serb community in Croatia. Government programmes have been designed to benefit this category of refugees, but have not been implemented⁹.

A housing care programme for former residents of socially owned housing **outside the Areas of Special State Concern**, who want to return, was adopted by the Government of Croatia in June 2003 after the urging of OSCE, UNHCR and the European Commission¹⁰. The geographic area covered by this programme includes most of Croatia's urban centres. The programme is of key importance, because it would give a very large number of refugees access to housing, provided they want to return. There are 23,700 documented court cases during and immediately following the war where households outside the Areas of Special State Concern had their occupancy/tenancy rights terminated because of "unjustified absence" of more than 6 months. The decisions on termination were based on a legal provision that had thus far not been enforced.

In the areas of Special State Concern, the occupancy/tenancy rights were cancelled *ex lege* after those areas were brought under Croatian government control. The number of households affected by terminations in these areas could be up to 5,000. Potential beneficiaries from these areas have theoretically been able to apply for housing care since 2000, but in practice this programme has not been operational, since former occupancy/tenancy rights holders have been given low priority in relation to other housing care beneficiaries.

There are also **other potential beneficiaries** of the programmes, such as a special category of residents in the Danube region, where OTR as a legal instrument was not formally abolished¹¹. The Vukovar Municipal Court and the Constitutional Court¹² have awarded OTR holders the status of protected lessees, but this is disregarded in practice by the local authorities. Many of the potential beneficiaries in this region were not displaced during the war, but have later been displaced because of renovations, privatization of buildings, etc. Unlike the refugees, several households belonging to this category have already benefited from the programme. The beneficiaries of this category are not included in the estimated total number of beneficiaries above.

It has recently emerged that the **funding** originally foreseen for the housing care programme in the 2004 budget (23 million kuna for about 400 apartments) is no

longer available for the purpose. As of 1 November, the administration had not started the processing of the first 1,228 largely spontaneous applications.

The 2003 programme envisaged an *application deadline* of 31 December 2004. However, targeted information about the programme has only been disseminated to potential beneficiaries starting in October 2004, i.e., 15 months after the programme was formally adopted and less than three months before the application deadline. The tight deadline puts the efficacy of the information campaign for potential beneficiaries in doubt. This campaign was planned with the support of UNHCR under the assumption that the application period from the start of the campaign would be approximately one year and would be accompanied by information activities throughout.

The OSCE Mission and its international partners, including the EC and the UNHCR, have requested that the Government extend the application deadline at least until 30 September 2005 in order to give applicants adequate time to familiarize themselves with the programme and consider without pressure the decision whether to return to Croatia or stay at their present locations of displacement. However, the extension now appears to be in doubt.

The judgement by the European Court of Human Rights (ECHR) in *Blecic v. Croatia* on 29 July is the most significant recent development related to *the legality of OTR terminations*. The ECHR held that Croatia acted in compliance with the European Convention on Human Rights when it terminated the OTR of the plaintiff because she did not return within six months to her home during the period of active armed conflict¹³. The ECHR found that the plaintiff's OTR flat was her home and protected from impermissible interference, but also found that Croatia's permanent deprivation of her home was not disproportionate and lay within its margin of appreciation¹⁴.

The effects of the ECHR's judgment have yet to be observed in the hundreds of ongoing termination proceedings in Croatian courts¹⁵. The ECHR's judgment suggests that in cases similar to *Blecic*, terminations would be upheld as valid, whereas in cases with different facts and circumstances the termination might be invalidated¹⁶. The Court, in this case, did not have to consider the effects of OTR terminations for persons with refugee status or whether they were discriminatory with respect to ethnicity since the plaintiff did not have refugee status and did not invoke ethnicity motives in the submission to the Court.

The judgment in the *Blecic* case has alleviated Government concerns that it would have to financially compensate all former OTR holders who had their OTR terminated during or immediately after the war. This has enabled the Government to subsequently reaffirm its commitment in principle to ensuring, for humanitarian reasons, that all refugees who want to return have access to adequate housing.

Property Repossession Process

Speedier repossession of properties makes resolution of this problem likely to happen in 2005. There is still a need to take measures to prevent looting at handover of properties.

The *number of occupied residential properties* belonging to Croatian Serbs and allocated for temporary use, mostly to Bosnian Croats, under the 1995 Law on Temporary Take-over and Administration of Specified Property, reached

approximately 19,000 after the conflict. In January 2004, the number was 3,509 and on 1 July, 2,048. As of 1 November, 1,438 repossession cases still remain¹⁷. Their resolution is linked to the physical provision of alternative housing for the temporary occupants.

In the course of the first six months of the year, the Government reinforced the efforts to ensuring repossession of *illegally occupied residential properties*¹⁸ originally allocated under the 1995 Law. Since significant funding foreseen for alternative housing was used to solve around 500 cases of illegal occupancy, in some cases providing ineligible illegal occupants with housing, the pace of property repossession has somewhat slowed down since July¹⁹.

The Mission's spot checks indicate that *physical repossession of property* takes place in only around half of monitored cases. This is because many property repossession cases are not being resolved through the actual hand-over of the properties to the owners, but are being resolved when the State purchases the occupied house, mainly as alternative housing for the occupant. According to the Government, this pertains to approximately 25 percent of the 2,071 cases resolved since January 2004. Alternatively contractual agreements have been reached between the occupants and the owners (such as lease contracts)²⁰.

In accordance with the July 2002 Amendments to the LASSC, owners of properties not returned to them by the mandatory deadlines (1 November 2002 / 1 January 2003) had to be granted State *compensation for the continued use* of these residential properties. As of 1 November only 1,480 out of more than 3,500 potential beneficiaries had received such compensation payments (7 kunas, i.e. € 0, 93 per square metre *living space*)²¹.

The Mission continues to observe that up to half of the physically repossessed properties are in an *uninhabitable condition*, because they have not been maintained while under State administration and/or because they have been devastated or looted by the occupants prior to the handover, often without being properly recorded by the competent authorities. Owners of looted, devastated and otherwise uninhabitable properties are entitled to State *housing care* in the form of repair assistance according to the LASSC as amended in July 2002. This assistance has, however, been made available only for a very limited number of potential beneficiaries²². This prolongs the displacement in many cases²³.

In many cases, local courts continue to order owners to *compensate temporary users*, including illegal occupants, for "investments" in property that the users claim to have made while occupying the then State administered property without the consent of the owner²⁴. However, the Constitutional Court upheld in September the validity of local court decisions ordering the eviction of temporary users despite pending claims for investments against the owner²⁵.

The 31 December political deadline on property repossession is approaching but *delays in court proceedings* initiated for repossession of private property continue as a rule. Further delays occur in the execution of court verdicts requiring physical return of the property to the owner. In mid-November, the ECHR issued a decision accepting a friendly settlement in *Kostic v. Croatia*, in which it ordered the Government to pay 11,000 euros to the applicant who contended that a three-year delay in the execution of a final court verdict violated the right to property.

Therefore, the *resolution of the more than 1,400 outstanding property repossession cases* will not be achieved by the end of the year but rather in the course of 2005. The Mission will continue to promote the closing of legal gaps aiming at improving the property repossession regime in line with the Croatian Constitution and European standards.

Reconstruction of Destroyed Residential Properties

Reconstruction assistance is well under way after the application procedure was reopened in 2004. Most reconstruction beneficiaries are now Croatian Serbs.

Croatian Serbs represent the majority of *beneficiaries of Government reconstruction programmes* since the end of 2002²⁶. While the programme 2003/04 benefited 8,000 households, the one for 2004/05 foresees reconstruction assistance for 10,800. More than 14,500 applications for state-provided reconstruction were filed since the Government extended the deadline in March until 30 September 2004, pursuant to the Cooperation Agreement signed between the Government and the representatives of the Serb Independent Democratic Party (SDSS). These potential beneficiaries either missed the previous deadline at the end of 2001, or did not consider this option at the time because of a less favourable return climate. The total number of pending applications has therefore increased from 2,200 to more than 16,700. It appears likely that State reconstruction assistance would need to continue in 2006 as well.

The competent county offices of the State administration have significantly accelerated the *processing of reconstruction applications* in the course of 2004, following the *Cooperation Agreement between HDZ and SDSS*. In parallel, the Ministry has invested considerable efforts to contact applicants still displaced abroad urging them to complete their applications with missing documentation. However, first instance negative decisions on eligibility for assistance issued by county offices have increased significantly in 2004. According to the Ministry, the rejections mostly relate to applications from Croats dated from 1996 to 1998 and not processed so far. As a result, the number of pending appeals against first instance decisions has risen to almost 10,000. One reason for the increased rate of rejection seems to reside in the hastiness often shown by State administration offices which, in line with the *Cooperation Agreement*, were ordered to complete processing of reconstruction applications by 30 April (later extended to 30 September).

The 2003 Law on Terrorist Acts provides that property owners who originally sought *compensation for damages resulting from terrorist acts* through civil lawsuits initiated in the early to mid-1990s should seek an alternative remedy under the Law on Reconstruction. However, since the Law's adoption in July 2003, few if any property owners have been granted reconstruction assistance by the Ministry. Although court claims have been pending for years, there is no continuity between the two procedures and property owners must submit a new claim to the Ministry. Because some pending property claims involve property that is ineligible under the Law on Reconstruction, it is foreseeable that the Ministry will deny these claims, with the result that the property owners have no right to compensation either from the courts or the Ministry.

Unconditional Return and Regulation of Status upon Return

The 2003 Law on Foreigners offers a possibility for *re-establishment of the status of permanently residing foreigner* for individuals, mostly Croatian Serbs, who lost this status after leaving the country during the armed conflict and who had not yet acquired Croatian citizenship. OSCE field monitoring has revealed a lack of uniform approach by the police administrations in processing the applications as well as relatively widespread lack of respect for the letter and spirit of the Law. In addition, only a limited number of potential beneficiaries applied, in part because of a lack of public information on this issue. Therefore, the Heads of the OSCE Mission, the EC Delegation and UNHCR in Croatia have addressed a joint letter to the Minister of the Interior on 4 November requesting the extension of the legal deadline.

Reintegration and Access to Utilities and Infrastructure

The Government announced in September to the Mission and its International Community partners a plan to sign an agreement with the State electricity company (HEP) to carry out an *electrification programme for minority villages* or villages having return potential. The lack of access to utilities and infrastructure in minority return areas is one of the most powerful obstacles to sustainable return. The project relies on funds provided by the European Investment Bank (EIB) for regional development and is earmarked in the 2004 Croatian State Budget. The Government's initiative followed the Mission's report, *Lack of Electricity Supply in Minority Returnee Villages*, shared with the relevant Croatian authorities and the State electricity company (HEP) in early August²⁷.

Regional Return-Related Activities

In identical letters addressed on 5 October to the Governments of Croatia, Bosnia and Herzegovina, and Serbia and Montenegro, the Heads of the OSCE missions, EC delegations and UNHCR offices in those three countries have proposed that the *three Governments agree on benchmarks for closing the refugee file as a political issue* in the region. The purposes are to encourage an agreement between the three governments on the remaining refugee issues and cooperation in resolving them; to add impetus to the removal of obstacles, not least in Croatia, by identifying remaining issues and stating that the refugee file will be closed if issues will have been addressed; and to facilitate a solution enabling refugees to make a free choice whether to return or to remain in the country of refuge. The Government has indicated it will accept the substance contained in the initiative, including the holding of a regional ministerial conference in early 2005.

To facilitate the resolution of the remaining return issues, the Mission co-launched with the Government of Croatia, the European Commission and UNHCR a *Public Awareness Campaign* (PAC) on Reconciliation and Sustainable Return on 15 September. The Campaign has been supported by several embassies. It will be conducted both among refugees in the neighbouring countries and in receiving communities in Croatia. Serb minority representatives have declared support for the campaign while emphasizing their expectation that it should facilitate the resolution of practical issues and inform on procedures in support of return. The Mission has opened a tender to select a public relations firm to design the campaign. The campaign will be implemented in the course of 2005 after consultation with major stakeholders.

JUSTICE AND THE RULE OF LAW

General Judicial Reform

The Ministry of Justice presented in October 2004 an update of the technical measures needed to further implement the judicial reform. Delays in the issuance of judicial decisions as well as the execution of verdicts are widespread.

The Minister of Justice outlined in late October further **measures to promote judicial reform**. They aim at decreasing the case backlog²⁸, expediting court procedures, enhancing performance of judges through financial incentives and professional education²⁹, increasing access to the judiciary³⁰, implementing infrastructure projects and land registry reform. In support of these reforms, the Minister announced that the budget of the Ministry of Justice would be increased by 10 per cent in 2005. A draft curriculum for the Judicial Training Academy developed by a CARDS-funded foreign expert was presented in the autumn of 2004. It is anticipated that voluntary training pursuant to the curriculum will begin in 2005.

In order to address the large **case backlog**, the President of the Supreme Court, recently called for more radical reforms by all those responsible for the current problems in the judiciary. He called upon the Government to provide sufficient funding, noting that the State as a litigant was responsible for a significant part of the backlog. He also called on Parliament to improve the clarity of the laws so as to ease their implementation, and urged the use of alternative forms of dispute resolution by out-of-court settlements. The Parliament repealed in mid-October several measures sponsored by the former Government intended to speed execution of final court decisions³¹.

The Government's judicial reform plans do not relieve judges of non-judicial duties such as conducting elections (See Electoral Reform).

No reform measures have yet been undertaken for the **Administrative Court** to address deficiencies that prevent it from providing certain fair trial guarantees. The number and type of complaints against Administrative Court decisions that the Constitutional Court must address indicates the need for reform³².

Croatia has **no system for free legal aid** in civil cases other than that provided pursuant to the *pro bono* obligation of members of the Croatian Bar Association (HOK)³³. Establishment of a free legal aid scheme is included in planned reforms of the judiciary, and the Ministry of Justice has established a working group to draft a law which began its work in October 2004³⁴. However, in response to opposition to the significant increase in attorney's fees by the HOK in June, the Minister of Justice announced that attorney's fees would likely be regulated through amendments to the Law on Attorneys, intended to be proposed by year's end.

Constitutional Court

The Constitutional Court has steadily increased its role as an effective domestic remedy for human rights violations. Nevertheless the slow consolidation of reform means that the Constitutional Court and the European Court of Human Rights still enforce basic human rights standards in the lower courts.

The Constitutional Court (CC) has increased its role as an effective *domestic remedy for human rights violations*, but remains constrained both by its statute and decision-making practice from filling that role for all human rights violations. The Mission continues to facilitate a project funded by the Government of Norway, intended to strengthen public access to and awareness of the Constitutional Court.

The bulk of the *decisions by the European Court of Human Rights* (ECHR) against Croatia in the second half of 2004 followed the earlier trend and involved violations of the *right to fair trial*, in particular denial of the right of access to court due to suspended court proceedings. As of late October, the ECHR had issued a total of 37 decisions, both judgments and settlements, on the lack of access to court, for which Croatia was ordered to pay approximately 250,000 euros in damages and costs³⁵. This issue also accounts for the bulk of the cases currently awaiting decision by the ECHR. In November, the ECHR ruled in *Kvartuc v. Croatia* that the non-enforcement of a final court order violated the right to fair trial, the third such judgment in 2004. In the coming months, the ECHR will decide whether the Constitutional Court adequately fulfils the right to an effective domestic remedy for individuals challenging lack of access to court³⁶ and prison conditions³⁷. The ECHR will also decide whether the Constitutional Court's recusal rules provide sufficient guarantees of an impartial tribunal³⁸.

The ECHR has not reviewed the *Parliament's retroactive change of legal standards* applied in certain ongoing lawsuits because it found in September that the particular "right" at issue was not within its jurisdiction³⁹. However, Parliament's retroactive elimination of some pending lawsuits seeking compensation for damages resulting from terrorist acts, will likely result in ECHR review of this legislative practice⁴⁰.

The Constitutional Court continues to serve as a primary "*supervisor*" of *delayed judicial proceedings* determining the extent to which these are sufficiently severe to constitute fair trial violations. Between January and October 2004, the CC issued 165 judgments finding unreasonable delays in the local courts and the Supreme Court, and ordered the State to pay more than 202,000 euros in damages. This constituted nearly four times the number of such judgments issued by the CC in 2003. In contrast, the CC in the same time-frame issued 33 decisions finding violations of other constitutional guarantees. The delays in such cases ranged from a minimum of 2 years in cases for expedited procedure to a maximum of 27 years, with an average of 10 years. The municipal court in Zagreb alone accounts for more than 40 per cent of the CC's judgments in 2004, while the municipal courts in Split and Zadar are among the other courts most frequently sanctioned. Such cases constitute an increasing percentage of the CC's docket: nearly 18 per cent of all complaints received and 13 per cent of the decisions issued so far in 2004⁴¹.

There continued to be several other *ambiguities in the jurisdiction and practice of the Constitutional Court*. The Constitutional Court continued its pattern of non-review of challenges to the constitutionality of laws on the grounds that the challenge was not subject to review as a result of Parliament's adoption of new legislation⁴². The Court also decided against reviewing the constitutionality of Parliament's self-delegated authority to issue "authentic interpretations" of legislation⁴³. On the other hand, the CC continued to issue repeat decisions due to the failure of State bodies to adhere to its prior decisions⁴⁴. In one case, the Administrative Court explicitly stated that it would decide the issue "independently from the legal opinion of the Constitutional Court"⁴⁵.

Ombudsman

The delay in the appointment of the Ombudsman and large budget cuts cast doubt on the commitment to strengthening this institution. The field visits of the Ombudsman in 2004 have resulted in increased visibility of its work and facilitated better cooperation with local authorities.

Although the Ombudsman is one of the most important human rights institutions in Croatia, several recent developments have ***weakened the Ombudsman institution***. The Parliament has left the post of Ombudsman vacant since June this year⁴⁶. The mandates of all three Deputy Ombudsmen who are in turn proposed by the Ombudsman for appointment by Parliament expire on 30 November. However, the Parliament was taking steps, by mid-November, to appoint a new Ombudsman. Also, amendments to the State budget adopted by the Parliament in July reduced the 2004 budget of the Ombudsman by 11 per cent. The European Commission has called on the Government to improve cooperation with the Ombudsman as a short-term priority⁴⁷.

The Mission anticipates working together with the new Ombudsman to implement the recommendations in an ***expert report on strengthening the institution***, which was commissioned by the Mission and ODIHR in 2003. During 2004, the Ombudsman conducted five ***field visits*** funded by the Government of Norway through a Mission project. As a result of these field visits, the Ombudsman received an increased number of complaints from residents of Croatia's rural areas. Significant and positive coverage of these visits in the local media resulted in increased visibility of the work of the institution and facilitated better cooperation with local authorities.

Rights of National Minorities

Implementation of the Constitutional Law on the Rights of National Minorities⁴⁸ (CLNM) has to date primarily involved minority representation at all levels of elected government. No significant steps have yet been taken toward implementation of the CLNM's guarantee related to minority representation in the judiciary, State administration, and regional and local self-government administration⁴⁹.

The Government in late October appointed the remaining five members to the ***national-level Council of National Minorities*** (CNM), completing the Council's membership after it was formed in March 2003 following the adoption of the CLNM. These members were nominated by the local and regional CNMs and primarily represent minority communities not previously among the CNM's membership.

The ***Councils of National Minorities*** (CNMs), elected for each minority at the local and regional levels, have yet to emerge as a significant voice for minority concerns⁵⁰. The work of local CNMs has so far focused on the formal issues of establishment and funding. Given their advisory status, the effectiveness of CNMs significantly depends upon the cooperation of local authorities, both in terms of funding and adoption of legislation. Many self-governments units remain unaware of what their role should be vis-à-vis CNMs, while others, for example in Osijek, Croatia's fourth largest city, as well as in Osijek-Baranja and Vukovar-Srijem counties, have taken steps to regulate their relations with CNMs.

Some CNM representatives remain unaware of their intended role as advocates for minority concerns. To tackle this problem, the Government Office for National Minorities, in co-operation with the national-level CNM, has provided 20 ***training***

seminars for CNMs and representatives of national minorities in the second half of 2004. The seminars, co-funded by the Mission, are intended to provide a better understanding of the practical application of minority rights and use of the media, and promote co-operation and dialogue with local authorities.

Despite the CLNM guarantees, significant *under-representation of minorities in the judiciary and State administration* continues. Government information as of October 2003 indicates that 95 per cent of all judicial personnel are Croats, while 2.5 per cent are Serbs (compared with 4.5 per cent of the total population) and 2.6 per cent are from other national minorities⁵¹ (compared to 2.9 per cent of the total population). National minorities are also under-represented in the police, with all minorities combined comprising approximately four per cent of police officers. Serbs comprise 2.6 per cent of police officers (most are posted in the Danube region) and they constitute 1.4 per cent of those in managerial positions. However, in the most recently completed basic training course at the police academy in July 2004, all minorities combined constituted 8.3 per cent.

To address this under-representation, the Mission and representatives of the OSCE High Commissioner on National Minorities (HCNM) began discussions in October together with the Government and minority representatives regarding the development of prospective plans for *recruitment and hiring of qualified minorities* in the judiciary and State administration. The Ministry of Justice has convened a working group composed of Government officials and NGO representatives to propose measures for combating all forms of discrimination, including against national minorities. The Government has announced that a National Plan for Combating All Forms of Discrimination should be approved by the end of 2004. The HCNM will continue these discussions during a visit expected in January 2005.

Access to the legal profession continued to be blocked to some Serbs, not only those who served as functionaries in the “occupying authorities”. In July, the Constitutional Court invalidated for the second time a decision by the Bar Association denying membership to a Serb attorney who went to Hungary for more than six months in 1991-1992⁵². The Bar Association had based its denial on the lack of “dignity to practice law” and concluded that leaving the country during the conflict created a permanent bar to practicing law. The Constitutional Court reprimanded the Bar Association and ordered it to reconsider its negative decision. On the same grounds, the Bar Association also continued to deny membership to a Serb attorney who served in the judiciary as well as a private company during the so-called “Republika Srpska Krajina.”

The case of approximately 3,000 former predominantly *Serb employees of the Borovo Company in Vukovar, who seek compensation for the termination of employment* in 1991, remains unresolved. The company terminated the employment of these employees - who remained in Vukovar during the conflict - due to their failure to register with the company in Zagreb in 1991⁵³. In October 2004, an association of these former employees resumed negotiations with the Government, seeking a settlement similar to that reached by the Government in December 2003 with a group of more than 1,700 Croat employees who fled Vukovar in 1991. The Government contends that the Serb and Croat employees are not similarly situated as the Croat employees remained employed until 31 March 2003, while the employment of Serbs who remained in Vukovar was terminated in 1991. The Government contends that the issue will be properly resolved through court proceedings.

In October, the Mission and representatives of the HCNM began discussions with the Government and minority representatives regarding possible cooperative endeavours to *enhance minority education rights* and *avoid segregation in education*. New history textbooks covering the period from Homeland War until present are not yet available despite the expiration of a moratorium on history teaching in Serb language classes in Eastern Slavonia. Besides, a constitutional complaint seeking review of allegations of segregation of Roma students in the Medimurje schools remains undecided after nearly two years. Renewed complaints related to the segregation of Roma pupils were submitted to the Minister of Education in late October by the Croatian Helsinki Committee and the European Roma Rights Centre.

Croatia and Serbia and Montenegro concluded on 15 November a *bilateral Agreement on the Protection of Minorities* (Croats in Serbia and Montenegro, and Serbs and Montenegrins in Croatia). The Agreement was signed by the Ministers of Justice during the Croatian Prime Minister's first visit to Belgrade the same day. The agreement emphasizes that minority rights contribute not only to the political and social stability of each country, but also to the return of refugees and their integration into each society. The agreement largely recapitulates guarantees provided by the CLNM as well as other minority protection laws. It does, however, also introduce several new guarantees, including a Mixed Commission on minority rights. Croatia has previously signed such agreements with Italy and Hungary.

The Prime Minister has promised the Bosniak MP to resolve the long-standing *citizenship problems of members of the Bosniak minority* who were pre-war residents of Croatia, but became foreigners according to the provisions of Croatia's citizenship law. It is unclear how a resolution of this problem, which affects Serbs and Roma as well as Bosniaks, will be accomplished in practice. There has also been discussion of including Bosniaks in the list of national minorities specified in the Constitution, from which Bosniaks and Slovenes were deleted when the Constitution was amended in 1997.

The Mission co-sponsored with the Government Office for National Minorities a day-long roundtable in September between minority and government officials discussing the Government's second Report on the *Implementation of the Framework Convention for the Protection of National Minorities* and an NGO shadow report.

For minority election issues, see section on Electoral Reform.

Cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY) and the ICTY Completion Strategy

The Government has repeated its assurances of continued and full cooperation with the ICTY. The ICTY, while stressing the need to locate and surrender fugitive Ante Gotovina, has acknowledged the quality of technical cooperation, most recently by the Chief Prosecutor and the President of the Tribunal in late June at the UN Security Council.

During 2004 Croatia has increased its *level of interaction with the ICTY*. Increasing concerns in relation to Croatia's cooperation with the Tribunal were voiced by the

Chief Prosecutor when she appeared before the EU Council of Ministers in October and the North Atlantic Council in November, given that Ante Gotovina remains at large. She indicated that by the time of her report to the Security Council on 23 November she expected Croatia to arrest Gotovina as well as another ICTY indictee, Miroslav Bralo, whom she stated had been in Croatia earlier in the year⁵⁴. Bralo surrendered to the Stabilisation Force in Bosnia-Herzegovina on 10 November and was transferred to The Hague two days later. In advance of his upcoming annual presentation to the UN Security Council on 23 November, the ICTY President visited Croatia for the first time in early November. In his presentation to the UN General Assembly on 15 November, the Tribunal President indicated that he had been impressed by the “growing professionalism of the County Court in Zagreb and of the Supreme Court of Croatia.”

The Tribunal’s “*Completion Strategy*” and the prospect of referral of ICTY cases to Croatia have further enhanced dialogue and co-operation with the ICTY. In September the ICTY Chief Prosecutor requested to refer the indictment against retired Croatian Army Generals Mirko Norac and Rahim Ademi to Croatia for purposes of conducting the trial in the Zagreb County Court⁵⁵. Norac and Ademi stand indicted for planning, ordering and executing crimes against Serb civilians in September 1993 during the Croatian military operation in the Medak pocket. In her motion, the Prosecutor relied on the Mission’s reports on domestic war crime proceedings, citing the Mission’s statement that there was no indication that a limited number of cases could not be handled appropriately despite concerns about the capacity and impartiality of the judiciary in general⁵⁶.

As part of the EU’s overall efforts to support the implementation of the mandate of the ICTY, the Council of the European Union issued a Common Position on 27 September and a Council Regulation on 5 October intended to *freeze the financial assets of several ICTY fugitives*, including Gotovina. While acknowledging that current Croatian legislation would not permit compliance with the Council’s Common Position, the Ministry of Justice indicated that the Government would propose new legislation in expedited procedure to implement the Common Position by 23 November.

Croatia provided *guarantees regarding eight ICTY indictees* who voluntarily surrendered to the Tribunal for purposes of ensuring appearance for trial if provisionally released⁵⁷. In September the ICTY granted provisional release to six of the indictees whereas it denied requests for provisional release submitted by former Croatian Army Generals Ivan Cermac and Mladen Markac⁵⁸. High-ranking Government officials have in recent months showed support for Croatians convicted and indicted by the ICTY⁵⁹ by making visits to and appearing together with such individuals.

The Government has created two *amici curiae groups*. On 30 June, it announced the establishment of an *amicus curiae* group intended to protect the interests of Croatia and to oppose “politically unacceptable allegations” in the indictment in the proceeding against Cermac and Markac. In October it also appointed two law professors to serve as *amicus curiae* to provide information to the ICTY in relation to the competence of the Croatian judiciary to take over cases from the Tribunal.

War Crime Trials in Domestic Courts

Statistical data and substantive review of war crime procedures suggest that national origin of defendants and victims continued to have an impact on the adjudication of domestic war crimes proceedings in lower courts throughout 2004. The Supreme Court continues to have a key supervisory role and functions as a significant corrective.

Although the **number of individuals facing war crime prosecution** compared to 2002 and 2003 has decreased, Serbs continue to represent the overwhelming majority of individuals alleged to have committed war crimes in the 1991-1995 conflict⁶⁰. In contrast to past years, significant numbers of charges against Serbs have been abandoned and more Serbs on trial have been acquitted.

The Chief State Prosecutor in October completed a **review of pending war crime proceedings**, resulting in the dismissal or re-qualification of charges against approximately 1,900 persons, predominantly Serbs, for which there was insufficient evidence⁶¹. After this review, the Prosecutor has “substantiated” cases against approximately another 1,900 persons, including cases at all stages of proceedings from investigation to final verdict. In mid-November, during the visit of the Prime Minister to Belgrade, the Minister of Justice provided a list of these cases to her counterpart in Serbia and Montenegro. Given the recognition that a significant number of cases were based on inadequate evidence, a logical next step would be the review of *in absentia* convictions, of which there are approximately 500. The Chief State Prosecutor has expressed willingness to do so upon the request of persons affected, for possible initiation of new proceedings.

The review mechanism has not, however, prevented some **unsubstantiated charges** from being processed by the courts, often resulting in unnecessary detention. Improved coordination between the prosecution, the police, and the judiciary is required to avoid unnecessary arrests of individuals whose cases have been resolved through the review. Of the 23 Serbs arrested during the first 10 months of 2004, 21 were subsequently released, most of whom had their charges dropped or were amnestied⁶². Nearly 80 per cent (18 of 23) of those arrested so far in 2004 were Serb returnees, with some arrested at international border crossings. Six individuals were arrested for war crimes in third countries on the basis of international arrest warrants. In recent months, two requests for extradition have been refused at the first instance level by third countries, in at least one case on the grounds of fair trial concerns⁶³.

The **Supreme Court** continued to play a key role in **supervising shortcomings in war crime trials**. In the first 10 months of 2004, the Supreme Court reversed 65 per cent (15 of 23) of trial court verdicts, including the acquittals in the “Lora” case, previously tried before the Split County Court⁶⁴. As in previous years the main reason for reversal was the trial court’s failure to establish the facts sufficiently and correctly. The Supreme Court has also invalidated procedural decisions of the trial courts, mainly related to detention of war crime suspects, most notably in the “Lora” case⁶⁵. In August, the Supreme Court quashed a decision of the Vukovar County Court to conduct a war crime trial *in absentia*, finding that the court had not taken sufficient efforts to locate the defendant. Consistent with his instructions from 2002 to avoid *in absentia* proceedings, the Chief State Prosecutor has advised all local prosecutors of this decision and has instructed them to file similar appeals in any cases in which the trial courts seek to proceed *in absentia*. Compared to previous years, relatively few war crime trials were conducted *in absentia* during 2004⁶⁶.

The high reversal rate is an indication that additional measures are required to *prepare all parts of the Croatian judiciary to adjudicate war crimes* in a professional manner. Preliminary training efforts have been undertaken by the Ministry of Justice together with ICTY in the context of potential transfer of cases from the Tribunal to Croatian authorities. Judges and prosecutors mainly from Zagreb, Osijek, Rijeka and Split where *special war crime chambers* have been created, have participated in training sessions from May onwards⁶⁷. However, in 2004, more than 80 per cent of all defendants facing war crime allegations in Croatia were tried by courts other than the four courts with special war-crime chambers. This underlines the need to expand the training to avoid the emergence of a two-tier system of justice for war crime adjudication. The United States also intends to intensify its capacity building activities in light of the ICTY Completion Strategy. At the current time, there appear to be no plans for further training under the programme run by the Ministry of Justice and ICTY.

Security of witnesses and court personnel warrant additional measures, particularly in cases against former members of the Croatian armed forces. In its decision reversing the acquittal of four Croats by the Bjelovar County Court, the Supreme Court made an explicit finding that it appeared that two witnesses gave testimony favourable to the defendants because they had been threatened. Judges, prosecutors, and witnesses have also been subject to both subtle and overt pressures from supporters of the defendant in the third trial of Mihajlo Hrastov, an active duty police officer, accused in the Karlovac County Court of the killing of 13 Serb prisoners-of-war in 1991.

Delays occurred in war crime cases at all stages of the procedure throughout 2004. Several trial courts have failed to issue the written verdict in a timely manner, including courts with special war crime chambers⁶⁸. Some trial courts also failed to promptly re-commence proceedings after a Supreme Court ruling for re-trial⁶⁹. The Supreme Court decisions also exceeded the legal time period (3 months) in appeal proceedings where defendants remained in detention⁷⁰.

The possibility of ICTY transfer has also highlighted the importance of *inter-state judicial cooperation*. The Chief State Prosecutor has intensified contacts with his counterparts in neighbouring countries to discuss the feasibility of concluding agreements that specify a mechanism for speedier and direct inter-state co-operation between prosecutors in the pre-investigation stage. Inter-state judicial cooperation has worked smoothly in some cases, but not in others⁷¹.

Several provisions intended to *harmonize the Criminal Code with the Statute of the International Criminal Court* came into force on 1 October. The amendments introduce the criminal offences of *Crimes against Humanity and Subsequent Assistance to a Perpetrator of a Criminal Act against Values Protected under International Law*. The amendments also specify three forms of *Command Responsibility* as a basis for individual criminal liability in war crimes prosecutions subject to varying penalties. In this context, there is an ongoing discussion whether commanders can be held criminally liable for their failure to prevent or punish war crimes by their subordinates through retroactive application of this law. Finally the amendments introduce a new offence of *Revealing the Identity of a Protected Witness*, which has relevance for war crimes procedures as well as other types of criminal prosecution.

POLICE REFORM

The Ministry of Interior is working with the Mission on the development of a “Road Map” for the further development of a modern police service in line with European standards. The security situation is generally good although there are sporadic reports of ethnically related incidents.

Police Reform and General Management

The *number of police officers per capita* in Croatia is significantly higher than in most Western European countries, for example almost twice that of the United Kingdom and Germany⁷². National minorities and women are clearly under-represented within the Croatian Police, comprising approximately 4 and 8 percent, respectively. In particular, Serbs represent 2.61 percent of the police, whereas their share of the population is 4.5 percent. The Ministry of Interior has taken some initiatives to improve the situation but has still not been able to present a clear strategy to adequately address this issue.

Replacement of senior police officials within the General Police Directorate (which is the central police authority for Croatia), and the regional Police Administrations has reached some 70 percent since the change of government in December 2003. This should be seen against the perspective of the previous government, which during its first months in power replaced some 95 percent of the top positions within a police service that was at the time generally seen to be heavily politicized. The Mission continues to emphasize the importance of isolating the Police from any possible political influence by ensuring full transparency and civilian control.

The former Government’s *Police reform programme*, ‘Action Strategy – Community Policing’, was adopted in 2002 and revised in 2004 by the current Government. It addresses six areas: Reform of the Operational and Preventive Work of Uniformed Police; Advancement and Development of Crime Prevention; Organization of Communal Prevention; Reform of Public Relations; Reform of Police Education; and Internal Democratization of the Police. The “Reform of the Operational and Preventive Work of Uniformed Police” programme remains one of the most advanced police reform measure.

To date, 279 *community policing* Contact Officers have been deployed throughout the country out of a planned total of some 700. The programme of Contact Officer training for 2004/2005 has been delayed. The Mission has assisted with the Contact Officer programme by providing expert training and advice to the Croatian authorities. A pilot project of Preventive Councils, supported by both Germany and the Mission, is expected to be established in 12 cities and towns by the end of 2004. The councils, comprising representatives from local communities, will formulate community-based crime-prevention initiatives.

The elaboration of a “*Road Map*” to further develop a modern police service was agreed between the Mission and the Ministry of Interior early in 2004. It is intended to complement the Ministry of Interior’s current police reform measures and allow these to be placed within a broader inter-agency context. For that purpose, the Mission organized a five day workshop in May including representatives of the relevant ministries, prosecutors, judiciary and civil society. A comprehensive report from the

workshop, including a thorough problem analysis relating to the Croatian Police, was transmitted to the Ministry of Interior in July.

It is envisaged that a follow up presentation will take place between the Mission, the EC Delegation and the Minister of Interior. The Mission has suggested that a Coordination Group, chaired by the Ministry of Interior with the participation of the OSCE Mission and possibly the Delegation of the European Commission, should be established to finalize the Road Map and support its further implementation.

The *human resource management* system within the Ministry of Interior was subject to a joint six-month assessment by the Mission and the Ministry which concluded that there was a lack of personnel development tools and no existing strategy to develop such a system. The human resource management in the Ministry of Interior still needs to be revised to produce a clear and transparent promotion system and to safeguard the police from political interference. Subsequently in October, the Mission organized a follow-up workshop in Croatia and a study visit to the Interior Ministry of the German Federal State of Saxony-Anhalt. It is expected that this will lead to structural and organizational changes within the Ministry, in line with European standards for human resource management systems.

Police Operational Issues

Corruption was identified as a continuing problem by the Croatian experts during the above mentioned “Police Road Map” workshop. There is a need to strengthen the administrative and operational capacity of the Office for Suppression of Corruption and Organized Crime (USKOK). These issues will be targeted by an envisaged EC funded Twinning project with Spain.

The Law on *Witness Protection* was adopted in 2003, after which the Mission provided advice and assistance to the Ministry of Interior on the establishment of a Witness Protection Unit. The Unit is still not fully operational due to resource constraints and insufficient training of Unit personnel. However, a relevant training course was conducted in October and it is anticipated that such training will continue in the future. Adequate security for witnesses of major crime cases remains an issue, and tensions still exist in some places as a result of ongoing war-crime arrests and prosecutions.

International Police Cooperation

Joint regional *training of border police* in the countries of South-eastern Europe was called for in the conclusions of the Regional Conference on Border Security and Management that took place in Ohrid in May 2003. Croatia has committed itself to supporting these conclusions and has hosted a subsequent workshop in April 2004 on cross-border co-operation in the region.

The final report on the first phase of the EC funded “Twinning Project *Integrated Border Management* – Border Police” was accepted by the Interior Minister’s Collegium in March 2004. The project objective is to achieve an efficient system of state border supervision in line with EU standards and the Schengen legal system. The implementation of the project is proceeding according to plan and is scheduled to be concluded by August 2005. The Mission will continue to advise the Croatian Border Police in the separation of the Border Police from the general police.

The Ministry of Interior is establishing a *Department for European Integration Affairs and Peacekeeping Missions*, which will also be responsible for maintaining contacts with international organizations.

Security Situation

Security has generally remained good. *Ethnically related incidents* occur sporadically, but appear to be the exception.

ELECTORAL REFORM

The Government is planning to propose the introduction of a Permanent State Election Commission in line with ODIHR recommendations. There remains a need for increased transparency in campaign financing and promotion of out-of-country voting for Croatian Serb refugees.

Electoral Legislation

According to a series of recommendations by the OSCE Office for Democratic Institutions and Human Rights (ODIHR)⁷³ and domestic actors such as GONG - Croatia's lead election support NGO - the *main areas requiring reform of electoral legislation* are the lack of a permanent State Election Commission (SEC); insufficient regulation of campaign financing; and lack of a clear framework for out-of-country voting. Although the Government is preparing draft laws on a number of issues, it is not clear when they will be presented⁷⁴. Together with OSCE/ODIHR and the Venice Commission (Council of Europe), the Mission held a roundtable on electoral legislation reform on 18-19 November 2004 to facilitate dialogue between Government, Parliamentary representatives, civil society, and academic experts.

Croatia still lacks a *permanent election administration body*, although the President of the Supreme Court (who also serves as the President of the State Election Commission) has advocated the creation of such a body. While the *ad hoc* arrangements currently in place continue, there is no dedicated body to strengthen the electoral framework. The Government has produced a draft law to establish a permanent State Election Commission, but it is not clear whether or when the Government intends to table the draft. However, it has been suggested that the law will be in place before local elections in May 2005.

In addition, *campaign financing* remains inadequately regulated. The relevant provisions for the local, presidential and parliamentary elections do not ensure full transparency. On 16 July, Parliament adopted a Government-proposed law on campaign financing for the Presidential elections through an expedited procedure which precluded significant public discussion. The Law does not incorporate ODIHR's recommendations or existing norms as outlined by the Venice Commission's Code of Good Practice in Electoral Matters⁷⁵.

In the forthcoming Presidential and local elections, voters and political parties will have no legal recourse to lodge *complaints regarding irregularities in the candidacy process*, unless new provisions are adopted. Provisions in the laws allowing for political parties and voters to lodge complaints were annulled by the Constitutional Court in March and May of this year⁷⁶. Thus far they have not been replaced.

Minority Elections Issues

The local elections in May 2005 will be the first to fully and simultaneously incorporate *minority representatives*. Minority representation is guaranteed on the basis of the percentage proportion of a given minority population in the local or regional self-government unit. According to the Constitutional Law on the Rights of National Minorities (CLNM), this information is taken from official census results, which should be harmonised with the last confirmed voters' lists of any given unit prior to each election. If these results are not updated in time for the 2005 local elections, minority representation will be directly affected.

The Mission and the Delegation of the European Commission have recommended that additional polling stations be opened outside the diplomatic and consular representations to enable *Croatian citizens in Serbia-Montenegro* – most of them Croatian Serb refugees – to vote in the upcoming elections.

In anticipation of nation-wide local elections in Spring 2005, which will include the first complete election round for minority representatives in local and regional self-government bodies provided for in the CLNM, the Mission will undertake efforts together with civil society and minority organizations to enhance *minority voter education and registration*. The Mission, in co-operation with Croatia's lead election-support NGO, *GONG*, is planning a nationwide campaign to encourage extensive registration of their minority status on the voters' lists.

FREEDOM OF THE MEDIA

The Government continues to align Croatian media legislation with recommendations from the OSCE, the Council of Europe (CoE) and the European Commission (EC). Changes are still pending to the Law on Croatian Radio-Television and the Law on Electronic Media, in particular as regards the need to shield oversight bodies from political interference. Amendments to the Criminal Code adopted in July allow for a more liberal regime, but without fully decriminalizing libel.

Media Legislation

The current *Law on Croatian Radio-Television* (HRT), which was adopted in February 2003, does not fully take into account OSCE/CoE/EC recommendations to enhance the role of the HRT Programme Council, the supervisory body of the public service broadcaster⁷⁷. The Government continues to prepare a new draft which will be reviewed by media experts commissioned by the OSCE/CoE/EC. The Mission has received assurances that this new draft will include provisions whereby the oversight body would involve a stronger role for civil society. Experts also recommended refining the nomination procedure to avoid that it is unnecessarily politicized or protracted. The draft Law is expected to enter into parliamentary procedure next year.

Recent criticism by the Parliament Speaker of HRT coverage of Parliamentary activities resulted in a heated public debate, with media professionals stating that such criticism represented unacceptable *political interference* in the editorial policy of HRT. Media professionals reported that, in a meeting in Parliament, HRT senior management was threatened with the abolition of subscription fees, a major financing source.

Although the international experts recommended that the *Law on Electronic Media* be given the highest priority when reforming media legislation, the Government has

not yet submitted a new draft for expert review. The main issue of concern in the current Law remains the independence and appointment of the regulatory body, the Council for Electronic Media. In addition, the Council is not granted enough power to perform its tasks, particularly regarding the monitoring of broadcasters. Although the international experts recommended speedy legislative action in order to allow a new Council to function effectively, the Government appointed a new Council for Electronic Media on the basis of the current Law earlier this year.

Amendments to the Criminal Code, which were adopted by Parliament on 16 July, and became effective on 1 October, do not remove *libel provisions* from the Criminal Code, although they allow for a more liberal libel regime. While libel has not been decriminalized, Croatian experts on media law nevertheless believe that these are the most favourable libel laws Croatia has seen. Prior to these new libel amendments, which shift the burden of proof from the defendant to the plaintiff, the Mission noted that a Croatian television reporter was sentenced in July a two-month suspended prison term in a Split Municipal Court decision. More recently, in mid-November, a *Feral Tribune* weekly journalist was sentenced by the same court to a suspended three-month sentence for libel against a businessman.

The *Law on Access to Information*, adopted in October 2003 at the urging of a coalition of Croatian NGOs, and with the support of the CoE and the OSCE, does not seem to have led to a significant improvement of the public's access to information from public authorities. A group of nineteen prominent NGOs called "The Public has the Right to Know" has drafted new amendments to the Law and launched a public awareness campaign. On 15 October, the Government decided that special officials should be appointed in public administrations to deal with the public's requests, and be tasked with the preparation of a systematic overview of information in their possession.

Media Ownership and Pluralism

The State owns two major *newspapers which it has pledged to privatize* – Slobodna Dalmacija and Vjesnik. The privatization of the first one, Slobodna Dalmacija, the country's third-largest daily, is under consideration. The future of the other State-owned and heavily subsidized daily, *Vjesnik*, is still uncertain.

Many *local authorities continue to co-own local electronic and print media*. This constitutes a potential threat to editorial independence and often results in political pressure on local media. Media professionals also recently raised concerns regarding the Fund for the Promotion of Pluralism and Diversity of Electronic Media⁷⁸. According to the current Law on HRT⁷⁹, 3 percent of the HRT subscription fee is paid to this Fund, which is then re-allocated to electronic media at local and regional levels to promote pluralism. Media professionals fear that this Fund could be used to support politically-friendly local media. Investigative journalism is rare and often discouraged at the local level.

Other Media Issues

Croatia still lacks a *self-regulatory system to effectively adjudicate complaints against the media*. The Mission is supporting efforts by the Croatian Helsinki Committee to develop a self-regulatory oversight body according to German and Scandinavian models.

CIVIL SOCIETY

There is still little understanding among citizens and many Government bodies of the role and importance of NGOs, particularly outside the largest urban centres. Some initiatives are underway at the national level to promote a more solid legal underpinning for civil society, but these efforts have been undercut by increased tax burdens for some NGOs. The Mission is supporting several civil society capacity-building activities at the national and regional levels.

National – Level Civil Society Policies

The National Foundation for Civil Society Development has finalised a *strategy to support the development of a sustainable domestic civil society structure*, and provide technical assistance, training and funding to NGOs. The National Foundation also launched the project ‘Social Service Delivery by the Non-Profit Sector’, which invites NGOs to apply for technical training and then to submit projects under a call for proposals under the EC CARDS 2002 programme. The Mission offered its field support to further promote and reach out local NGOs to participate in the ‘Social Service Delivery’. Last, the Foundation organised two conferences (at national and international level) to promote voluntarism with partial support by the Mission.

New legal standards ensuring equal access to Government funding for the civil society sector, through the Code of Positive Practices, Standards, and Criteria for the Realization of Financial Support to NGO Programmes and Projects, and the Voluntarism Law, are expected to be adopted by the end of 2004.

At the same time, the Government decision last spring to impose *value added tax on NGOs dealing with human rights, democratisation and minority rights*, remains an unresolved issue of concern. Other NGOs, for example those engaged in sport and culture, are still exempt from VAT.

To promote public outreach of official information, the Government has launched in November a *web portal* containing information about approximately 60 projects and incentives managed by eight Ministries. The portal is meant to address families, entrepreneurs, farmers, and veterans etc, who can ask questions and receive a monthly newsletter after registration.

Initiatives to Improve Cooperation between NGOs and Local Authorities

The superficial or sporadic *cooperation of local authorities with NGOs* has been a disappointing feature so far, particularly outside larger urban centres. Nevertheless, there are encouraging signals in some parts of the country.

In Zagreb, innovative initiatives were launched, involving important domestic institutions dealing with civil society, such as the National Foundation for Civil Society Development and the Central State Administrative Office for Public Administration, and supported by high level authorities, such as the Deputy Prime Minister and various Ministers, to promote better mutual cooperation between institutions and NGOs.

In the second half of the year, some local initiatives aimed at regulating the relationship between the local governments and NGOs and providing a specific framework for joint projects, motivated by possible future EU funds, were launched, particularly in Eastern Slavonia.

In the Danube region, the Mission has supported several initiatives to enhance cooperation between NGOs and local authorities. It facilitated the establishment of a working group in Osijek to draft a Charter on Cooperation between the county and city authorities and NGOs to be signed in December; which is followed up by the development of joint projects. The Mission has also supported a similar body, initiated by the Vukovar-Sirmium County Council for European Integration, in the drafting of a Charter for Cooperation and financial support to local NGOs.

Good Governance Initiatives

The Central State Administrative Office for Public Administration, together with the Croatian Union of the Association of Cities and the Association of Municipalities of Croatia, launched a *Best Practice project* to be implemented throughout 2005 with the support of the Council of Europe and the Mission. The project will foster positive competition among municipalities that wish to *share best practices in democratic governance with other municipalities*. The Mission's involvement focuses on the war-affected areas of the country.

With the purpose of supporting good governance, the Mission is finalising a round of *training sessions for elected officials* in the Sisak area on communication and negotiation skills. It has also raised funds to support projects in five counties to promote civic and political participation, and stimulate economic activity.

ENDNOTES

¹ Approx. 185,000 in Serbia Montenegro and 19,000 in Bosnia Herzegovina respectively, according to UNHCR data.

² *Motivational and Emotional Factors for the Return of Refugees to their Homes and the Acceptance of their Return by the Local Population, Zagreb September 2004*. The US Agency for International Development (USAID) funded it. The report includes the findings of a survey conducted by the PULS Agency on the attitudes towards return amongst Croatian Serb refugees residing in Serbia and Montenegro and Bosnia and Herzegovina, Croat refugees from Bosnia and Herzegovina residing in Croatia, and the Croatian population in the areas of Serb minority return.

³ Ibid. Around 77% of respondents from the sample of Croatian Serb refugees abroad declared to some extent a stronger affiliation to their country of refuge.

⁴ Ibid. The PULS survey shows that Croatian Serb refugees still abroad rank the remaining psychological obstacles to return in the following decreasing importance: lack of employment opportunities; shift of ethnical balance in return areas; fear of being discriminated by local authorities; fear of possible revenge by the local population; fear of arbitrary arrest.

⁵ During the reporting period, the Mission had knowledge of ethnically related incidents against minority returnees which took place with a particular frequency in the Knin area, and also in the Zadar hinterland. For example, on 26 June 2004 three later identified perpetrators approached and insulted on ethnical basis a Croatian Serb returnee and his family in the Obrovac Municipality. Similarly on 1 August four men of Croatian ethnicity from Golubic, holding wooden lathes, stopped two people of Serb ethnicity, insulted them and hit one of them. In another incident, football fans from Dubrovnik, while driving through Knin, stopped next to a car with SiM plates, and hit the car, spitting and insulting the driver. The Mission updates a list of recorded ethnically-related incidents in return areas.

⁶ In addition to those displaced abroad, potential beneficiaries for the programs are also former OTR holders who were internally displaced or have already returned but have no access to housing.

⁷ Page 28, Commission of the European Communities. Communication for the Commission, '*Opinion on Croatia's Application for Membership of the European Union*', Brussels, 20 April 2004, COM(2004)

⁸ According to UNHCR data, 33,000 of the Croatian Serb refugees in Serbia and Montenegro are former OTR holders what make them the largest remaining refugee category lacking access to housing.

⁹ The EC's Opinion on Croatia's application for EU membership and the European Partnership with Croatia both highlight the resolution of the housing problems for former OTR holders as a priority for action by the Government. EC's Opinion, page 29, cited, see endnote 7.

Council Decision on the principles, priorities and conditions contained in the European Partnership with Croatia, Brussels, 2.9.2004. 9374/04. COWEB 102, Page 3

¹⁰ The regime for provision of housing to former OTR holders *outside* the ASSC is quite less favorable than the one for OTR holders *inside* the ASSC. While the provision of housing to former OTR holders *inside* the ASSC is regulated by the LASSC, the programme for former OTR holders from areas *outside* the ASSC does not have the force of law. The LASSC neither limits the period for applications nor the number of applications per former household of OTR holders from *inside* the ASSC, whereas the deadline for beneficiaries from *outside* the ASSC is 31 December 2004. In addition, former OTR holders from *inside* the ASSC can only submit one application per former household.

¹¹ In the Danube region OTR were not terminated either *ex lege* or through individual court proceedings. The concept of OTR was abolished in 1996 by the Law on the Lease of Apartments. OTR holders that did not purchase their apartments became protected lessees. However, at that time the Danube Region was not under the control of the Government, given the fact that the peaceful reintegration of the Region was realized only in January 1998 following the end of the mandate of the UN Transitional Administration in Eastern Slavonia (UNTAES). Subsequently some of former OTR holders in Baranja could sign contracts on protected lease with local authorities while those in Vukovar were left in a legal vacuum.

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

¹³ The ECHR made undisputed findings of fact that an armed conflict existed in Zadar at the time of Blečić's absence that was used as the basis for termination of her OTR. "[B]y the end of August 1991, the armed conflict escalated in Dalmatia, resulting in severe travel difficulties in that area including the town of Zadar. ... From 15 September 1991, the town of Zadar was exposed to constant shelling and the supply of electricity and water was disrupted for over one hundred days." The ECHR noted that at this time Blečić was in a place of safety outside the conflict zone and indicative of a lack of law and order in Zadar, third persons had broken into her flat. The ECHR also noted negative actions taken affecting Blečić's ability to sustain herself, finding that in October 1991, the Croatian authorities

terminated Blečić's pension and as a result she lost her right to medical insurance. Zadar initiated a lawsuit to terminate her OTR in February 1992. The ECHR relied on the determination of the Croatian Supreme Court that Blečić's failure to return to Zadar during the conflict was unjustified.

¹⁴ The ECHR did not decide whether an OTR flat constituted property for purposes of the Convention, but for purposes of its analysis assumed as such, concluding that the state's elimination of this assumed property interest did not violate the Convention.

¹⁵ In late October, Blečić submitted a request for review of the July judgment by an ECHR Grand Chamber.

¹⁶ Such examples might include terminations for participation in enemy activity in the absence of a criminal conviction contrary to the Constitutional Court's interpretation of the law, or terminations where occupants were forcibly evicted and unsuccessfully sought repossession through civil remedies. Similarly, those cases in which the former OTR holders are still living in the flats and would face first-time eviction and displacement as a result of contemporaneous judicial termination might also result in a different balancing of interests.

¹⁷ Out of which 1,033 refer to pending property claims.

¹⁸ The number of such occupied properties thus decreased from approximately 523 on 1 January to approximately 55 on 30 June and 67 on 1 November. Illegal occupants are either a) occupants whose private houses have meanwhile been reconstructed by the State and who should therefore leave the property b) occupants whose decision on temporary use has been cancelled and who did not leave the property, despite being ordered to do so by the Ministry c) occupants who received alternative housing from the Ministry but still refuse to vacate the property. Finally there is a category of illegal occupants who never had a valid administrative decision to occupy temporarily such property.

¹⁹ The pace decreased to an average of 152 repossessed properties per month (July - October) compared with an average of 243 repossessions per month up to June.

²⁰ Field reports indicate that in Municipalities like Benkovac and Knin several owners and occupants have concluded lease agreements in regard to the occupied houses and the Croatian Caritas informally provides the occupant for the rent payment.

²¹ According to the competent ministry, a total of 2,014 owners have been sent settlement-contracts (*nagodba*) for their signature as a precondition for such compensation payments and an additional 600 will receive them soon.

²² The Rulebook on the priority list for the allocation of housing in accordance with Art. 9 par. 3 of the LASSC provides that occupants of private claimed and unclaimed property constitute the highest prioritized beneficiaries of housing care. Provision of *housing care* to owners of looted properties falls under *others* with the lowest priority assigned to them.

²³ In October, the Ministry has encouraged the Mission to refer cases in which owners were unable to file requests for assistance or had failed to do so. In November, the Mission and its international partners have urged the Minister to take action aiming at speeding up the provision of repair assistance.

²⁴ The Mission has so far received no answer to the letter addressed to the Ministry of Justice on 18 May proposing draft amendments to the Code on Civil Procedure aimed at forbidding the possibility for temporary occupants to file counterclaims for investments made without the consent of the owners in the occupied properties.

²⁵ U-III/1936/2001, dated 29 September 2001. The Constitutional Court upheld the decision of the Gospić County Court ordering the eviction of a temporary user who has been using the property allocated by the Government as a for-profit business, namely a café, in Korenica. The Court found that such use was contrary to Article 10 of the 1998 Return Program that only contemplated use of allocated property for residential purposes.

²⁶ According to data provided by the Ministry of Maritime Affairs, Tourism, Transport and Development, about 70 per cent of the approx. 19,000 beneficiaries of State reconstruction assistance since 2003 are Croatian Serbs.

²⁷ The report indicates that 189 villages and hamlets with an overall population of over 5,000 people in most cases in minority villages still have to be reconnected to the electrical grid nine years after the end of the armed conflict.

²⁸ Measures include hiring additional court advisors, transferring cases from more burdened to less burdened courts, temporarily transferring judges between courts, and paying judges to work overtime.

²⁹ Measures to include amendments to the Law on State Judicial Council related to judicial disciplinary procedures.

³⁰ Measures include appointment of court spokespersons.

³¹ Amendments to the Law on Execution adopted in 2003 assigned public notaries a role in the execution of final court decisions.

³² For example, the CC issued a judgment finding a constitutional violation based on the Administrative Court's improper dismissal of an appeal as untimely which had in fact been filed within the legal time limit. U-III/4117/2003, dated 17 July 2004. In yet another case, the CC found a violation of the right

to appeal where the Administrative Court found that a vehicle owner was not permitted to appeal from the customs service confiscation of his vehicle. U-III-1018/1999, dated 26 March 2004.

³³ The EC's *Avis* on Croatia's EU membership application noted the absence of a free legal aid system. Page 21-22 (Cited see Endnote 7).

³⁴ The Ministry is currently preparing documents necessary for launching a tender for development of a legal aid program by year's end pursuant to a 2004 EC CARDS project.

³⁵ As of mid-November, the ECHR has issued a total of 27 judgments, finding violations in 25 cases and adopted 34 friendly settlements, awarding damages and costs of approximately 365,000 euros.

³⁶ *Plavsic v. Croatia*. The ECHR in late October accepted settlements between the Government and the applicants in two similar cases, *Bubus v. Croatia*, and *Grubasic v. Croatia*, alleging lack of an effective domestic remedy to challenge lack of access to court.

³⁷ *Cenbauer v. Croatia*.

³⁸ *Meznaric v. Croatia*.

³⁹ *Banekovic v. Croatia*. The ECHR rejected as inadmissible a challenge lodged by a police officer to the retroactive application of a stricter legal standard adopted in 2000 for civil servants working in the Areas of Special State Concern to qualify for higher salaries.

⁴⁰ The *Law on Responsibility for Damage Caused by Terrorist Acts and Public Demonstrations* eliminates without any remedy compensation claims for damage resulting from terrorist acts for types of property that are not eligible under the *Law on Reconstruction*.

⁴¹ Since March 2002 when the Constitutional Court's statute was amended to explicitly grant jurisdiction over length-of-proceedings complaints, the Court has received an increasing number of such complaints. In 2002, the Court received 453 such complaints, decided 144, and issued 6 judgments finding unconstitutional delays. In 2003, the Court received 566 such complaints, decided 287, and found violations in 42 cases. In the first 10 months of 2004, the Court received 693, decided 360, and found violations in 165. In less than three years, the Court has thus received 1,712 length of proceedings complaints, decided 791, found violations in 213, and awarded damages exceeding 244,000 euros.

⁴² U-I-851/2001, dated 13 October 2004 (NN 147/04). In October, the CC dismissed a request to review the constitutionality of provisions of the *Law on Health Protection* submitted in 2001 on the grounds that the issue was moot as Parliament adopted a new *Law on Health Protection* in July 2003.

⁴³ U-II-1265/2000, dated 28 September 2004. The Constitutional Court found that Parliament's constitutionally granted power to adopt legislation encompassed its self-delegated power to adopt authentic interpretations of legislation.

⁴⁴ In 1997, the Constitutional Court determined in an abstract review that certain provisions of the Law on Selling Apartments on Which an Occupancy Right Exists were unconstitutional. U-I/697/1995 (Official Gazette 11/97). Since that time, the CC has issued at least 9 decisions finding the same violation.

⁴⁵ U-III/3418/2003 and U-III/3510/2003, dated 22 January 2004 [dissolution of Osijek-baranja county assembly found to violate right to equality and right to local and regional self-government].

⁴⁶ The application process for filling the position had been completed in early June prior to the expiration of the mandate of the outgoing Ombudsman.

⁴⁷ Page 7. Cited see Endnote 9.

⁴⁸ Croatia's minority rights framework includes the CLNM as well as two laws that regulate minority language use and education in national minority languages.

⁴⁹ The *European Partnership with Croatia* cited (endnote 9) improved respect for minority rights, including ensuring proportional representation in state administration and judicial bodies as a short-term priority. Page 6.

⁵⁰ The Law (CLNM) envisages councils at state, regional and local levels as a means through which minorities can participate more fully in "the public life and management of local affairs...in order to improve, preserve and protect the position of national minorities in society."

⁵¹ Statistics for 2004 have been requested from the Ministry of Justice, but as of the date of this report have not been provided as in 2002 and 2003.

⁵² The Bar Association found that the lawyer should be denied membership because of his departure from Osijek in 1991 for Hungary, which made him inaccessible to the Croatian authorities. The Bar stated that the attorney thus "avoided the possibility of defending his country in the war which was imposed on it."

⁵³ Upon re-integration of Vukovar into the Croatian legal system, many of these former employees filed lawsuits challenging the termination of their employment. In April 2004, the Supreme Court invalidated a lower court decision upholding the termination. It determined that the lower court's explanation that "it was the plaintiff's own fault" that her employment was terminated because she failed to contact the company in Zagreb did not sufficiently consider that her residence was in the occupied area. The Supreme Court instructed the lower court to examine the facts in the light the

applicable regulation adopted in 1991 which stipulates that, *inter alia*, “the employment of a refugee employee, or an employee who cannot come to work due to the terrorist activities or serious threats, cannot be terminated as long as the above-mentioned reasons exist”. No. Revr 360/03-2, dated 21 April 2004.

⁵⁴ Bralo was indicted by the ICTY in 1995 for crimes allegedly committed in Bosnia and Herzegovina, by the Croatian Defense Council. The indictment was only made public in October 2004.

⁵⁵ The Prosecutor’s request to the ICTY Trial Chamber for referral was submitted under Rule 11 *bis* ICTY *Rules of Procedure and Evidence* that contemplates the transfer of an ICTY case to any domestic jurisdiction that guarantees a fair trial and where either the crime was committed, the accused was arrested, or to any other jurisdiction willing and prepared to accept the case. Such transfers to domestic jurisdictions will constitute a key component of the ICTY “Completion Strategy.”

⁵⁶ See the Mission’s Background Report on “Domestic War Crime Trials 2003” and the Mission’s Supplementary Report “War Crime Proceedings in Croatia and Findings from Trial Monitoring.”

⁵⁷ In April, six former Croatian Army and Bosnian Croat officials were indicted for their participation in a “joint criminal enterprise” together with the former President of Croatia, Dr. Franjo Tudjman for war crimes committed in Bosnia and Herzegovina. In February, former Croatian Army Generals Ivan Cermak and Mladen Markac were indicted for war crimes in Croatia.

⁵⁸ The defendants surrendered voluntarily to the ICTY in March 2004. The Trial Chamber rejected release citing uncertainty as to whether the defendants would appear for trial, pose a danger or threat to the victims and witnesses as well as the gravity of the alleged offences.

⁵⁹ The Minister of Justice has repeatedly met in the detention centre at ICTY with ICTY indictees former Generals Cermak and Markac, who are indicted, together with fugitive General Ante Gotovina, for their alleged ordering, planning and executing of crimes against Serb civilians during the Croatian military operation “Storm” in 1995. The Government also provides special support for the indictees’ families. The Prime Minister and Deputy Prime Minister met with former General Bosnian Croat Tihomir Blaskic upon his release from prison following the ICTY Appeals Chamber decision in July reducing his sentence for war crimes committed in central Bosnia and Herzegovina from 45 to 9 years. Cooperation also tends to be politicized as indicated by the presence of the Ministry of Foreign Affairs at virtually all meetings between the Chief State Prosecutor and the Minister of Justice with the ICTY on cooperation issues.

⁶⁰ In the first 10 months of 2004, Serbs represented 23 of 27 arrested, 3 of 3 indicted, 85 of 105 on trial, 9 of 12 acquitted, and 18 of 20 convicted. Of the 18 Serbs convicted, 5 were convicted *in absentia*. Excluding cases where charges were dropped, the conviction rate of Serbs in 2004 was 67 per cent (18 of 27) while the conviction rate of Croats was 25 per cent based on a very small number of cases (one of four).

⁶¹ The Chief State Prosecutor mandated in July 2002 that local prosecutors review old cases stating: ... *[i]t is a fact that at the time of the Homeland War and also afterwards, county state prosecutors’ offices were submitting investigation requests indiscriminately in a number of cases, and based on insufficiently verified criminal charges, they were issuing dubious indictments for war crimes against a significant number of people on the basis of investigations conducted in an inferior manner, while those indictments did not concretize the illegal activity on the part of the particular defendants containing elements of war crimes.*” 11 July 2002 Instructions from the Chief State Prosecutor to all County State Prosecutors.

⁶² Among Serbs who had charges dropped were individuals subsequently released due to mistaken identity or who had been amnestied several months previously, but the arrest warrant had not been rescinded. In addition, among Serbs against whom charges were dropped was one individual who had been extradited from a third country following his arrest based on an international arrest warrant.

⁶³ In August, the Austrian first instance court denied the extradition of Nikola Vujnovic, sought on a warrant issued from the Gospic County Court. In October, the Norwegian first instance court denied the extradition of Milan Gojkovic, sought on a warrant issued from the Osijek County Court.

⁶⁴ In August 2004, the Supreme Court reversed the 2002 acquittal by the Split County Court of 8 Croats indicted for their alleged involvement in the killing of two Serb detainees and the maltreatment of several other detainees in the “Lora” military prison in Split in 1992. The Supreme Court held that the trial court failed to properly establish the facts in particular as the presiding judge refused to re-summon witnesses proposed by the prosecution who currently reside in Serbia and Montenegro.

Following the issuance of the Supreme Court’s decision, the presiding judge at the “Lora” trial, Judge Lozina, was quoted in the media as stating that “the Supreme Court decision was influenced by the conduct of the Minister of Justice, the OSCE, the Foreign Office and the U.S. State Department”. The media carried similar statements by the President of the Croatian Party of Rights (HSP).

⁶⁵ In the “Lora case” the Supreme Court in October 2004 ordered all 8 defendants into detention, overturning the Split County Court decision denying the prosecutor’s motion to order detention, although 3 defendants had been fugitives during the first trial. The Supreme Court in its decision stated

that the Split County Court “carelessly accepted their promise...” that three defendants would attend the re-trial, As early November only 3 defendants were taken into custody while the remaining 5 are fugitives.

⁶⁶ In 2003, 27 individuals were convicted *in absentia*, while during the first 10 months of 2004 only 5 individuals, all Serbs, were convicted *in absentia*.

⁶⁷ The 2003 Law on the Implementation of the Statute of the International Criminal Court and Criminal Prosecution for Acts against War and Humanitarian International Law (Law on the ICC) prescribes extraterritorial jurisdiction for war-crime proceedings to county courts in Rijeka, Split, Osijek and Zagreb in addition to territorial jurisdiction otherwise provided to all county courts in the Law on Criminal Procedure. Based on the information available to the Mission, no war crime cases have to date been assigned to the “special war crime departments”. On the contrary, procedures where a change of venue was granted, cases were assigned to courts of general jurisdiction.

⁶⁸ E.g., in the “Paulin Dvor case” the Osijek County Court delivered the written verdict seven months after its pronouncement in early April 2004, although one of the defendants remains in detention.

⁶⁹ E.g., in the case of Nikola Cvjeticanin the Gospić County Court did not commence the re-trial until May 2004 although the Supreme Court remanded the case in June 2003. In October 2004 the defendant was acquitted due to lack of evidence. The defendant had been in detention for more than two and half years.

⁷⁰ E.g., in the case of Zeljko Prica and Stipe Tomic, the Supreme Court as of early November has not decided upon the defendants’ appeals that remain in detention since their convictions by the Gospić County Court in April 2003.

⁷¹ The most recent example of cooperation between judicial and police authorities has been the “Ovcara” case currently being tried in the special war crimes chamber in Belgrade. During the last week of October, several witnesses from Croatia travelled to Belgrade to testify before the court. In contrast, an example where inter-state cooperation was not successful was the “Lora” case, in which the Split County Court’s failure to properly summon prosecution witnesses from Serbia and Montenegro and Bosnia and Herzegovina was one ground for the Supreme Court’s reversal.

⁷² In Croatia, a ratio of 1:220 is based on a population of approximately 4.4 million and 19,807 police officers (according to Ministry of Interior August 2004 figures, however these figures are inclusive of the Border Police which has yet to be separated from the regular police). The ratio is approximately 1:367 for England and Wales and 1:360 for Germany.

⁷³ See ODIHR Election Reports on Croatia from 1997 to 2004 at:

<http://www.osce.org/odihr/index.php?page=elections&div=reports&country=hr>

⁷⁴ Law on a permanent State Election Commission. Law on the election of Councils of National Minorities and individual minority representatives. Amendments to regulate the relationship between representative bodies and the holders of executive authority at local and regional level.

The Government has also said it intends to amend the XXX Law on Political Parties to increase transparency of campaign finances and to amend the Law on Voter Lists, although it is not yet clear with what aim in mind.

⁷⁵ See Venice Commission *Code of Good Practice in Electoral Matters* online at:

[http://www.venice.coe.int/docs/2002/CDL-EL\(2002\)005-e.asp](http://www.venice.coe.int/docs/2002/CDL-EL(2002)005-e.asp), Funding, Para. 3.5. See also the following ODIHR Reports for review and recommendations regarding campaign financing: 2000 Final Report on Elections to the House of Representatives in Croatia, 2-3 January 2000; Final Report on the Extraordinary Presidential Elections in Republic of Croatia, 24 January and 7 February 2000; Final Report on Local Government Elections in the Republic of Croatia, 20 May 2001; Final Report on the Parliamentary Elections in the Republic of Croatia, 23 November 2003, <http://www.osce.org/odihr/index.php?page=elections&div=reports&country=hr>

⁷⁶ Constitutional Court Decisions U-I-2494/2002, dated 24 March 2004 (OG 43/04), and U-I-2945/2002, dated 11 May 2004 (OG 69/04).

⁷⁷ It was underlined that after 11 modifications of the Law on HRT since the early nineties, stability was needed for HRT to function in an increasingly competitive environment. In this context, it was recommended that reform had to take into account that the current Law on HRT, adopted in 2003, only really started to be implemented with the establishment of the HRT Council in November 2003. The OSCE/CoE/EC experts recommended that a fast track procedure should not be used when reforming this Law and most importantly, the mandates of senior HRT management and HRT Council members should not be disrupted by the adoption of the new Law on HRT. It was stipulated that specific transitional provisions be drafted to ensure a smooth transition from the current HRT Council’s composition and the new HRT Council to be nominated according to the new Law. This was also recommended so as to avoid the perception that these changes were made by the Government for political reasons. Report by Expertise Mission on the amendments to the Law on Croatian Radio

Television, the Law on Electronic Media and the Law on Media, 2 March 2004 by Sandra Basic-Hrvatin, Karol Jakubowicz and Gavin Millar.

⁷⁸ Article 56 of the Law on Electronic Media

⁷⁹ Article 54