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**Mission to Croatia**

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## EXECUTIVE SUMMARY

The Government has intensified its efforts to amend relevant *media-related legislation*, but progress has been slow. Changes to the 2001 Law on Croatian Radio and Television (HRT) and a new Law on Media are still being drafted. A government working group was only recently established to propose changes to the 1999 Law on Telecommunications. An initial review of the new draft Law on HRT by an OSCE expert in November suggests that the draft does not fully incorporate international recommendations to transform HRT into an independent public service broadcaster. Though expected in March 2002, privatization of the third HRT television channel is not likely to begin before 2003. Legislative changes rationalizing the HRT management structure are needed to enhance the independence of HRT's ruling bodies. At the local level, the development of a free and independent media environment is hampered by financial difficulties and interference by local authorities. Sensational or biased reporting of the return process and the war crimes issue continues in some areas.

In November 2002, the Government adopted a five-year plan for *judicial reform*. The plan puts forward a number of positive initiatives designed to address ongoing deficiencies in the judiciary, as well a wide range of legislative reform measures. Excessive length of proceedings and lack of execution of court judgements continue to adversely affect both civil and criminal proceedings. Delays in decision-making are also seen in the supreme judicial bodies, while adherence to Constitutional Court decisions by the executive, legislative and judicial branches remains uneven.

A number of measures related to the establishment of a full *minority rights regime* in Croatia remain outstanding. The new draft Constitutional Law on the Rights of National Minorities (CLNM) has been pending in the Parliament since late July. Additional elections for representatives of national minorities in regional and local government must also still be conducted in order to correct for the underrepresentation of several national minorities following the publication of the census results in June. In a notable development, the Government initiated a discussion with the Mission on how to balance minority rights in education on the one hand, while preventing segregation in education on the other hand.

The Chief State Prosecutor has reinvigorated the review procedure for pending *war crimes* cases. These efforts have strengthened the principle of individual criminal accountability. With regard to the outcome of trials, however, a pattern of conviction of Serbs and other non-Croats and acquittal of Croats continues. Some courts continue to hold *in absentia* trials. Some war crimes trials were negatively influenced during this reporting period by security concerns of witnesses who were called to testify at trials against Croats. Other war crimes proceedings continue to be subject to judicial delays, including those that negatively affect defendants' right of appeal.

Routine *co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY)* improved in the area of exhumations and access to documents and witnesses. The main problems between the ICTY and the Croatian authorities relate to their failure to fulfil the obligation to arrest and extradite Croatian Generals Ante Gotovina and Janko Bobetko. General Gotovina remains a fugitive from justice, while the Government's failure to serve the ICTY indictment on Bobetko forced the ICTY President and the Chief Prosecutor to warn in late October that the Government's failure to arrest these suspects could result in a formal report to the UN Security Council.

While the current economic situation is an impediment to the *return of all refugees and displaced persons*, the sustainability of minority return remains a concern as a result of legal and administrative obstacles that remain in place. The general level of security has improved since the present Government took office at the beginning of 2000. Yet the Croat majority population in the receiving communities continues to approach the issue of the return of Croatia's Serbs with caution and in many cases suspicion. On a bilateral basis and through the mechanisms of the Stability Pact for South Eastern Europe, the Government continued to build upon its return-related co-operation with Bosnia and Herzegovina and the Federal Republic of Yugoslavia.

The joint Working Group on Legislation, established by the Government and the international community in June 2001 to address *return-related legislative issues*, agreed on a working agenda in May 2002. The Working Group has to date discussed two of the seven agenda items. In August, the joint Working Group forwarded its first 'Joint Recommendation' to the Government, putting forth common proposals to ensure the full implementation of the June 2000 Amendments to the Law on Reconstruction.

Following the Government's commitment in 2001 to return all occupied residential properties allocated under a 1995 law, a new regime for the *repossession of private property* was formally established in September, including deadlines established by law. Furthermore, a significant number of decisions for housing reconstruction assistance were for the first time issued by the Government to Serb beneficiaries. However, the slow pace of property repossession continued to be a significant obstacle to sustainable minority return. Further, the repossession of property by owners can only be realized once temporary occupants have been provided with alternative housing, a policy that continues to be at odds with the right to ownership. The Amendments also do not address several types of other property, including residential properties, business properties, agricultural and forest lands, agricultural equipment and movable property.

The issues of *terminated occupancy/tenancy rights (stanarsko pravo)* to formerly socially-owned housing was partially addressed for the first time in an official government document put forth in October. However, a comprehensive approach to the issue of redress or compensation for the termination of these rights has still not materialized. The Mission continues to seek the advice of the Council of Europe on possible legal and other solutions to this important issue.

Close co-operation on *police reform and training* between the Croatian police, the Mission and its international partners continued throughout the past six months. Reform proposals for new national police organization structures, personnel policies and the introduction of the "community policing" concept in Croatia must still be implemented. The Ministry of the Interior has fulfilled its commitment to the 1995 Erdut Agreement and 1997 Letter of Intent so that the make-up of the police in the Danube Region reflects the current population of the Serb community in this subregion. Ethnically-related incidents involving property disputes, housing evictions and damaged property continue, but remain isolated and police response to them has been appropriate.

The Government continues to recognize the importance of *civil society development*. The Council for the Development of Civil Society continues to implement activities that enhance co-operation with NGOs and other civil society actors, and has set out a number of positive

initiatives for 2003. However, State funding for NGO and civil society development continues to decline and the shifting of international priorities from Croatia to other countries has resulted in a decrease in available international funding. As a healthy civil society represents one of the primary preconditions for the protection of human rights and sustainable return of refugees, the Mission continues to focus its democratization programme towards assisting the Government in this area.

## **BACKGROUND**

In the course of this reporting period, May to November 2002, the Government of Croatia continued its efforts to fulfil the country's international commitments towards further Euro-Atlantic integration. Many of the core commitments are closely linked to the Mission's mandate, including efforts to realize the sustainable return of refugees and displaced persons, reform of the judiciary, and media- and police-related reform measures.

In September, the Ministry of European Integration underlined in its semi-annual report on the Stabilization and Association Agreement (SAA) Implementation Plan with the European Union (EU) the need to fulfil the SAA's political prerequisites by the end of 2002. In those areas related to the Mission's mandate, the Plan calls for the elimination of all administrative and legal barriers to the return process, including the acceleration of property restitution and the return of former occupancy/tenancy rights holders. It also demands a comprehensive judicial reform package and additional efforts to secure the full respect for human and minority rights. The enactment of the Constitutional Law on the Rights of National Minorities (CLNM) is called for without delay. Finally, the Plan calls for a review of the Law on Telecommunications and amended legislation to regulate the role of Croatian Radio and Television (HRT) in order to strengthen its independence. Although efforts have been made to address these concerns, the prerequisites have not been met as of the finalizing date for this report.

However, general political events interrupted and impeded the work of the Government and other institutions during the reporting period. In early summer a dispute within the ruling coalition on aspects of a bilateral agreement with Slovenia induced a government crisis which culminated when the second largest coalition party left the Government. The crisis led to Prime Minister Ivica Racan's resignation and the formation on 31 July of a new Government again led by Racan.

In late September an indictment from the ICTY for war crimes against the former Croatian Army Chief-of-Staff, General Janko Bobetko, immediately dominated the political scene. The Government rejected aspects of the indictment, including the principle of command responsibility, while emphasizing Croatia's readiness to continue co-operating with the international criminal tribunal. The OSCE, the EU Council of Ministers, the Council of Europe, the NATO Secretary General and other members of the international community called on Croatia to continue full co-operation with the ICTY, reminding the Government of its obligation to do so regardless of domestic legislation.

The urgent need to address general border issues with its three immediate neighbours also added to the Government's concerns. The Government announced new proposals to foster relations with its neighbours and to contribute to regional stability. President Stjepan Mesic announced in July, together with his colleagues from Bosnia and Herzegovina and the

Federal Republic of Yugoslavia, that all three countries should intensify their co-operative efforts at the expert level. Open issues remain with Slovenia and Yugoslavia, although a temporary solution with Slovenia has been found and negotiations with Yugoslavia are making progress.

The publication of the 2001 census results in June also sparked a far-reaching and ongoing debate on the consequences of the population displacement that resulted from the armed conflict in Croatia. The total number of persons belonging to national minorities was announced at approximately 7.5 per cent, roughly half of the total in 1991. The most drastic reduction was seen within the Serb community, whose official percentage of the total population is now approximately 4.5 per cent, a two-thirds decline since 1991. Representatives of the Serb minority claimed that many Serbs were left unaccounted for, particularly those who had returned following completion of the census on 31 March 2001. As well, the census had excluded those who fled Croatia (mainly Serbs) and remained outside Croatia longer than one year prior to the census being conducted. Many Serbs may also have declined to denote their ethnicity for a number of objective and subjective reasons.

The 2001 census results continue to have a direct impact on a number of developments related to Croatia's outstanding political commitments, in particular the adoption of the Constitutional Law on the Rights of National Minorities (CLNM). Adoption by the Parliament of the CLNM continues to be delayed as a result of disagreements between Government and minority representatives over how best to ensure adequate representation in the Parliament of Croatia's reduced minority communities. The census results also brought about the need to hold additional elections 90 days after the official publication of the census results in areas where national minorities are underrepresented in local and regional assemblies. This deadline passed on 15 September without such elections being held. There have been suggestions from government sources that the new CLNM should retroactively repeal the legal provisions mandating these elections.

## **FREEDOM OF THE MEDIA**

### **Media-Related Legislation**

The 2001 Law on Croatian Radio and Television (HRT) and other current media-related legislation still require amendments in order to meet international and European standards and the Government's own commitments<sup>1</sup>. The Ministry of Culture was tasked in May 2002 to prepare amendments to the Law on HRT. On 10 September, the Minister wrote a letter to various bodies and senior officials at HRT requesting their input for draft changes to the Law. The HRT Council and Editors-in-Chief of Croatian Television (HTV) criticized some aspects of the letter, characterizing them as political interference in the work of public television. The Minister defended the letter as a necessary means to gather feedback by interested parties on changes to the Law on HRT.

On 4 November, the Ministry of Culture presented the Mission with a new draft Law on HRT. In consultation with the Mission and the Government, the OSCE Representative on Freedom of the Media commissioned a review of the new draft by a leading European expert. The responsible Ministries demonstrated considerable interest in receiving advice. While questioning whether the draft Law would strengthen HRT's independence, the expert analysis praises the composition and the activities of the HRT Council, which comprises both representatives of civil society organizations as well as persons appointed by the President,

the Prime Minister and the Speaker of the Parliament of Croatia<sup>2</sup>. The Mission will recommend that further work be done in order to meet OSCE commitments and European standards. This does not necessarily require adoption of a new law, but could be accomplished through amendments to the existing one in such a way as to ensure that HRT is transformed into an independent service broadcaster. An extended analysis with recommendations on how to achieve these aims will be sent to the Government by the end of November.

Some developments have taken place with regard to undertaking a review of the amended 1999 Law on Telecommunications, in line with international recommendations and appeals by professional Croatian media associations. The Assistant Minister of Maritime Affairs, Transportation and Communications has indicated that a governmental working group is now being set up to work on this issue. A new Law on Media is still being drafted on the basis of guidelines presented in February 2002 by the Ministry of Culture. The Ministry of European Integration has been instrumental in drawing the attention of line Ministries to the need to align media-related legislation with European standards.

### **Reform of Croatian Radio and Television (HRT)**

The Law on HRT provided for the privatization of the third HRT television channel by March 2002. However, implementation of this law is behind schedule and privatization of this channel is not likely to begin before 2003. In September, Prime Minister Ivica Račan expressed his dissatisfaction with the process of transformation of HTV and announced that the process of privatization of the third television channel would begin as soon as possible, perhaps by the end of 2002. The Mission has long urged the Government to fulfil its obligation to promote the private broadcasting sector and recommends the privatization of the third channel under an open and transparent process<sup>3</sup>.

HRT continues to be afflicted by management problems. This is partly because no overall structural and professional reform of HRT has been carried out since the new Government came to power in January 2000. It is also partly due to an illogical management structure mandated in the Law on HRT, prescribing two lines of communication and command. One line is responsible to the politically-appointed Board of Management, while the other is responsible to the independent HRT Council. OSCE recommendations offered to the Government in December 2001 foresaw that the current Law on HRT would create an unworkable managerial structure within HRT and would slow down decision-making, breed internal conflicts and prevent HRT from utilizing its full potential. This situation has now manifested itself in tension between the HRT Director and the Board of Management, and between the HTV Editor-in-Chief and the HRT Council. Thus, changes to the legislation rationalizing the HRT management structure and enhancing the independence of its ruling bodies should be adopted.

HTV programmes highlighting issues related to national minorities and refugee return are still rare or are covered outside of the news programmes. However, HTV has now a wider selection of current affairs programmes covering issues previously underreported, such as war crimes trials and judicial reform. A proposal by the HTV Editor-in-Chief to introduce a human rights desk in HRT News is not yet operational.

### **Local Media Development**

The local media environment diverges considerably between different parts of the country. In many areas, the development of a free and independent media environment is hampered by a

lack of transparency in ownership, financial difficulties and interference by local authorities, businesses and political groups<sup>4</sup>. This situation underlines the importance of changing current media-related legislation, particularly the Law on Telecommunications and the Law on Media, to make it more difficult for local authorities and other political actors to exercise interference on local media.

Although the Law on Public Information stipulates that media outlets should disclose their ownership structure, this rarely takes place<sup>5</sup>. Broadcasting media at the local level have asked the Mission to mediate between them and the Government to ensure that appropriate changes are also included in the Law on Telecommunications in order to ensure that ownership disclosure is ensured in broadcasting. The Ministry of Culture argues in turn that better implementation is required of the already existing Law on Public Information.

Sensational or biased reporting on the return process and war crimes issues continues to impact adversely on reconciliation and normalization efforts in return areas. ICTY suspects of Croat ethnicity are often represented in the local media as national heroes, and little mention is made of the severity of the crimes they are suspected of committing<sup>6</sup>. Further, property repossession issues in some areas of high return are presented from the perspective of Bosnian Croat occupants, while the plight of Serb returnees attempting to repossess their private properties is ignored or challenged.

## **JUSTICE AND THE RULE OF LAW**

### **Judiciary and the Administration of Justice**

The Government has recognized the links between the state of the judiciary and the sustainable return of refugees and displaced persons. In November 2002, the Government adopted a plan for judicial reform as proposed by the Ministry of Justice, Administration and Local Self-Government. The main items of the plan include dividing the Ministry into two separate bodies (into the Ministry of Justice and the State Directorate for Administration and Local Self-Government) and implementing a range of legislative reform measures. Also envisioned are efforts to raise the salaries of judicial officials, introduce information technology to court management, strengthen judicial education and undertake capital improvements on court buildings. The Ministry anticipates that the plan can be implemented in full by the end of 2007. Actual progress in these reform efforts has been witnessed predominantly in the employment of new judges as well as the disciplining of judges.

To redress the long-standing shortage of judges - one reason cited for the backlog of more than one million cases<sup>7</sup> - the newly-constituted State Judicial Council appointed approximately 110 judges between November 2001 and September 2002. The Council anticipates that it will fill the majority of remaining vacancies by the end of 2002 and all vacancies by mid-2003. These developments should have a positive impact on the performance of the judiciary, particularly in localities such as Korenica in southern Croatia, where after five years the first full-time municipal court judge was appointed in September<sup>8</sup>.

National minorities, particularly Serbs, are underrepresented in the judiciary. Mandatory representation of national minorities in the judiciary at the municipal and county level will be provided for in the Constitutional Law on the Rights of National Minorities (CLNM) (see section on Rights of National Minorities for further information on the CLNM).

The appropriate use of disciplinary procedures is another aspect of judicial reform critical to both the integrity of the judiciary and to the reduction of the case backlog. To date, the State Judicial Council has conducted 20 disciplinary proceedings, the majority of which are based on a judge's failure to issue decisions within a reasonable time, including criminal cases in which the statute of limitations expired while the case was pending<sup>9</sup>.

The judicial reform plan contains no proposals for the reform of the Administrative Court, except for the provision of new facilities. The Constitutional Court found in November 2000, however, that the Administrative Court is not a court of full jurisdiction because it is neither obliged to independently establish facts nor conduct public hearings.

Given the extensive procedural problems in the Croatian judicial system, the Constitutional Court has a heightened role to play in safeguarding procedural rights. There are, however, questions concerning ongoing delays in the Court's decision-making in some cases related to the human rights of national minorities and refugees; the Court's capacity to address the anticipated large number of excessive length of proceedings complaints concerning the lower courts which threaten to overwhelm its docket; the rejection by the Court of complaints related to lack of enforcement of court decisions; and the lack of prompt legislative and Government response to the Court's decisions.

The Constitutional Court continues to experience significant delays in issuing decisions, despite a general rule adopted in 1999 that cases should be decided within one year. The Court has failed to issue decisions, in some instances for more than five years, in a series of cases that challenge laws, decrees and administrative decisions and programmes alleged to infringe the human rights of national minorities and refugees<sup>10</sup>. This pattern of non-decision calls into question the impartiality of the Constitutional Court as an effective domestic remedy. Such delays also have the effect of giving other branches of Government, the Parliament or administrative bodies the role of de facto arbiters of constitutionality.

The European Court of Human Rights (ECHR) determined in July that the Constitutional Court is now an effective remedy for excessive length of proceedings in the lower courts, and litigants must therefore seek relief from the Constitutional Court in these cases before turning to the ECHR<sup>11</sup>. The ECHR had since June 2001 issued several judgements against Croatia underscoring the need for legislative and institutional reform in order to eliminate violations of the right to fair trial and the right to an effective domestic remedy<sup>12</sup>. Addressing one concern raised by the ECHR judgements, the Parliament extended in March 2002 the mandatory jurisdiction of the Constitutional Court to include length of proceedings cases from lower courts<sup>13</sup>.

This exercise of authority by the Constitutional Court should reduce the number of complaints to the ECHR. The ECHR reportedly received 560 complaints against Croatia since the beginning of 2002, hundreds of which relate to length of proceedings. Yet it may in turn lead to a flood of such claims and create a backlog and length of proceedings problem in the Constitutional Court. Since March 2002, the Constitutional Court received more than 270 complaints for excessive length of proceedings, representing nearly half of its current docket.

The lack of enforcement of court decisions at all levels presents a serious problem for the administration of justice<sup>14</sup>. Nevertheless, the Constitutional Court has rejected complaints alleging that the failure of lower courts to execute valid and final court decisions violates the right to fair trial, arguing that it lacks jurisdiction. Such decisions by the Court appear



contrary to precedents of the ECHR, under which execution of a court judgement is an “integral part of the trial” for purposes of finding a fair trial violation<sup>15</sup>.

The failure of the Government and other courts, including the Supreme Court, to adhere to Constitutional Court judgements presents a challenge to the Court’s role as the supreme adjudicator of generally applicable constitutional principles. It also results in unnecessary and repeated litigation of the same constitutional question<sup>16</sup>. In July, the Parliament ended its three-year non-compliance with a 1999 decision by the Constitutional Court requiring it to amend certain provisions of the Law on Compensation for Property taken during the former Yugoslav communist regime<sup>17</sup>. However, it is questionable whether the legislation cures the difference in treatment between citizens and foreigners, which has been deemed unconstitutional by the Court<sup>18</sup>.

Regarding the Parliament’s action on ECHR decisions, there has been no legislative response to the March 2002 decision of the ECHR which established that the Parliament’s 1996 suspension of court proceedings for compensation of damages resulting from terrorist acts under Article 180 of the Law on Obligations violated the right of access to court<sup>19</sup>. The Ministry of Justice is currently developing three draft laws intended to replace relevant provisions of the Law on Obligations. The Government has to date opted not to include the international community in discussions on this issue. In June, the international community provided recommendations through the joint Working Group on Legislation for remedial action required to address the Court’s decision.

### **Rights of National Minorities**

The adoption of a framework law for the protection of national minorities is a remaining international commitment, dating from Croatia’s accession to the Council of Europe in 1996. In mid-July, the Government’s Working Group tasked with redrafting the Constitutional Law on the Rights of National Minorities (CLNM) circulated a new draft to the Mission and the international community. The new draft proposal was the product of extensive government consultations with political parties and minority representatives. It contained two options for the election of minority representatives to the Parliament, one of which provided a dual vote for minorities.

The new draft did not pass parliamentary procedure at the end of July and a second reading has still not taken place<sup>20</sup>. The draft CLNM submitted for urgent parliamentary procedure in July 2002 eliminated the dual vote option. Instead, it provided national minorities with a right to elect a minimum of five minority representatives, with Serbs guaranteed a minimum of one representative and all other minorities a collective right to elect four representatives<sup>21</sup>. In November, the Government sent a new proposal to the Parliament that re-introduced the dual vote option for so-called “small” minorities, while so-called “large” minorities (Serbs) were to receive only one vote. All minority representatives at the national, regional and local level would be elected from party or independent slates, as opposed to being directly elected by minority voters. As of the date of this report, minority representatives, both in the Parliament and civil society, expressed strong objections to the Government’s new proposal, which they viewed as a retreat in the quality of protection for minority representation. Media reports have also reported at this time that the Government may in turn be considering additional changes as a result of this dissatisfaction.

The OSCE High Commissioner on National Minorities (HCNM) visited Croatia in September for the second time in 2002 in order to discuss outstanding issues related to the

continued parliamentary debate on the draft CLNM. In addition to minority representation in the Parliament, the discussions highlighted the issues of minority representation in local executive bodies and state administrative and judicial bodies as well as the competencies of regional and local minority self-governments and the new Council of National Minorities. In his address to the OSCE Permanent Council in late October, the HCNM observed little progress toward the adoption of the CLNM<sup>22</sup>.

The deadline for elections to correct underrepresentation of minorities in local and regional representative bodies in nine counties and 73 municipalities expired on 15 September, i.e., 90 days after the publication of the census results (17 June)<sup>23</sup>. The Ministry of Justice publicly acknowledged that the legal deadline was missed, stating that the failure to conduct the elections was linked to the delays in the Parliament to adopt the CLNM. The draft CLNM proposed in early November would retroactively repeal the legal provisions mandating these elections<sup>24</sup>.

### **Minority Education**

Croatian law provides national minorities with the option to request education in minority language and script and with a curriculum that reflects minority history, culture, and literature. Minorities also retain the right to be educated in the majority language and curriculum. Individual members of minority communities can also exercise this option. Full rights with respect to educational autonomy are buttressed in the case of Serbs and other national minorities in Eastern Slavonia by the 1997 Letter of Intent on the implementation of the 1995 Erdut Agreement, which provided the conditions for the peaceful reintegration of the Danube Region.

Serb representatives in Eastern Slavonia have sought to establish separate primary schools in which education is provided in the Serb language and Cyrillic script, consistent with the Law on Education in the Language and Script of the National Minorities<sup>25</sup>. The option of separate schools is available to all national minorities and has been the legal basis for the establishment of a Hungarian language school in Eastern Slavonia and Italian language schools in Istria. Serb language education is already conducted *de facto* at a number of schools (including separate schools) in Eastern Slavonia. However, a request in September to formally register schools that conduct Serb language education sparked strong reactions from the Government. Deputy Prime Minister Dr. Goran Granic stated that this request would result in the segregation of Serb school children. For the Serb community, the essential minority education issues include the employment of qualified Serb teachers, a national curriculum that includes the contributions of national minorities (including history, literature, geography, etc.), as well as additional programmes in their language and script.

In contrast, Roma in northern Croatia have sought greater inclusion into the national educational programme. Several recent events have intensified the attention being given to long-standing concerns about separation of Roma children in education. One such case was the rejection in October by a municipal court of a landmark lawsuit by Roma parents in northern Croatia alleging racial discrimination and segregation in education. Another was the Government's round table in September on the education of Roma, followed by a high-ranking government delegation's working visit in November, which were intended to produce a first version of the National Strategy for Roma in Croatia by the end of 2002.

The Government has requested the Mission's engagement in this issue in order to ensure that minority education rights do not result in exclusion or isolation of the minority. The Mission

and the Government share the belief that school children should be integrated into the community, regardless of their ethnicity. The Mission will continue discussions with Serb and Roma community leaders in order to clarify their concerns and proposals. The Mission's approach will include discussions on how to adjust the national education curriculum in order to reflect the contributions of all national minorities in Croatia.

### War Crimes Issues

The Chief State Prosecutor has reinvigorated the review of pending war crimes cases initiated by his predecessor in order to determine whether evidence is sufficient, particularly in cases with a large number of defendants<sup>26</sup>. He has instructed local prosecutors to work closely with the police in order to avoid the unfounded detention of suspects. He has also advised against *in absentia* prosecutions without his explicit approval<sup>27</sup>, but courts in Eastern Slavonia conduct *in absentia* group trials in which none of the defendants are present<sup>28</sup>. The Chief State Prosecutor anticipates that the review will greatly reduce the number of pending cases, currently estimated at 1,850. As a logical consequence of the reduction in the number of old cases, new investigations account for a significantly greater proportion of the war crimes proceedings<sup>29</sup>. In general, new investigations are conducted more expeditiously, particularly when defendants are in detention.

From May until the end of October 2002, there were 18 new arrests for war crimes (15 Serbs, 3 Croats), involving 10 Serb returnees and 8 long-term residents (5 Serbs and 3 Croats)<sup>30</sup>. Twenty Serbs and one Bosniak have been convicted since early May, while five Croats were acquitted. While statistics about the outcome of prosecutions are not necessarily probative, disparities can indicate a different weighing of the evidence and guilt of defendants, or may simply result from the higher number of proceedings initiated against Serbs<sup>31</sup>.

War crimes proceedings, like civil proceedings, continue to be subject to judicial delays. These delays include trials that are re-started from the beginning due to the expiration of the maximum legal period of two months between hearings<sup>32</sup>. Some trial courts have failed to initiate within a reasonable time re-trials after successful appeals to the Supreme Court<sup>33</sup>, while other trial courts have failed to issue written verdicts within the legally prescribed deadline<sup>34</sup>. In cases of conviction, this delay negatively affects the defendants' right of appeal. Delays are also observed at the appellate level<sup>35</sup>.

The May 2002 amendments to the Law on Criminal Procedure strengthen the role of the State Prosecutor in the pre-investigative stage. They also change the legal standard for detention from "justified" to "necessary", and permit judges to limit actions by parties that lead to obvious procedural delays. As of the date of this report, additional amendments to the Criminal Law proposed by the Ministry of Justice are pending in the Parliament<sup>36</sup>.

Since June, the Supreme Court has issued several corrective decisions concerning detention in response to appeals by the State Prosecutor, rejecting lower courts' interpretation of the "necessity" and maximum legal period of detention. The Supreme Court overruled the Split County Court's release in July of the seven Croat defendants in the well-known "Lora" trial, who are accused of torturing Serb prisoners in 1992 at military prison in Split, southern Croatia. Only five of the defendants returned to prison, while two remain fugitives from justice. It also overruled the Rijeka County Court's decision to release two Croat defendants in the case of the so-called "Gospic Group", involving General Mirko Norac and four co-defendants who are accused of war crimes in 1991 against Serb civilians in Gospic, south-central Croatia.

War crimes proceedings continue to be disrupted by security concerns for witnesses, court personnel and their families. Security concerns were cited as the reason for witnesses from the Federal Republic of Yugoslavia failing to appear on multiple occasions in the “Lora” and “Gospic” cases. Judicial and prosecution personnel also received threats after the conviction of Fikret Abdic<sup>37</sup>. In a number of trials against ethnic Croats, witnesses testified that they were not able to recall facts or statements related to the crimes for which the defendants are being tried<sup>38</sup>. Noting a “... genuine epidemic of memory loss among witnesses”, the Minister of Justice indicated that the Government was preparing a law on witness protection as well as amendments to the criminal law that would penalize attacks on or intimidation of witnesses<sup>39</sup>.

Routine co-operation with the ICTY continued to improve in the area of exhumations and access to documents and witnesses. In October, the ICTY Chief Prosecutor stated that excellent co-operation existed with the Government with regard to the delivery of documentation to The Hague<sup>40</sup>. President Stjepan Mesic testified in October in a landmark appearance as a prosecution witness in the trial of Slobodan Milosevic. The President announced publicly that Croatian Generals and other war veterans who fought for Croatia’s independence, like any other Croatian citizen, were obliged to fully co-operate with the ICTY.

The main problems of the ICTY Chief Prosecutor with Croatian authorities relate to their failure to fulfil the obligation to arrest and extradite General Ante Gotovina, who since July 2001 remains a fugitive from justice, and General Janko Bobetko, the former Croatian Army Chief-of-Staff, the indictment against whom was delivered to the Government on 20 September. The ICTY charges Bobetko individually and in his capacity as a superior for ordering and planning as well as failing to prevent war crimes against Serb civilians and prisoners-of-war during the so-called “Medak Pocket” operation in 1993<sup>41</sup>.

In late October, the ICTY President and the Chief Prosecutor reported Croatia’s failure to arrest Gotovina and Bobetko to the UN Security Council. Noting Croatia’s “ambiguous attitude” toward the ICTY, the ICTY President indicated that if Croatia did not arrest these suspects, despite repeated requests from the ICTY Chief Prosecutor, he would formally refer Croatia to the Security Council<sup>42</sup>.

In November, the Croatian Constitutional Court issued a report in response to the Government’s initiative in early October to examine the constitutionality of the Homeland War, including the Medak Pocket operation. It was also asked for its opinion of the allegation in the ICTY indictment against Bobetko that crimes against humanity occurred in the Medak Pocket operation<sup>43</sup>. The Court upheld the constitutionality of the military action, but found it was not competent to decide on the allegations contained in the ICTY indictment.

The Government has submitted two challenges to the ICTY in the case of Bobetko<sup>44</sup>. Only in mid-November did it begin to engage the domestic legal process after Bobetko agreed to go into hospital on 14 November as a result of his ill-health. According to press reports, the Government Office for Co-operation with the ICTY decided on 14 November to forward the indictment, arrest warrant and order of surrender to the Ministry of Justice. As obligated, the Ministry has forwarded these documents to the Zagreb County Court, which will decide on the service of them upon Bobetko.

The search for missing persons continues to be adequately managed by the Government Office for Missing and Detained Persons. The Mission decided in May 2002 to limit monitoring of exhumations to particularly sensitive cases, but did not need to monitor any such exhumations during this reporting period. Co-operation with the Government Office's counterparts in Bosnia and Herzegovina and the Federal Republic of Yugoslavia was strengthened. Particular progress with Yugoslavia on the exchange of mortal remains was witnessed, including those of Croats killed in the Danube Region of Croatia and later transported and buried in Yugoslavia.

According to the Government, approximately 1,300 persons are still missing in Croatia. However, the Head of the Government Office stated in September that approximately 800 Croatian Serbs were also reported missing since summer 1995, following the Croatian military and police operations "Flash" and "Storm". According the Head, a check of 250 of these persons recently revealed, however, that approximately 40 per cent were found to be alive or whose deaths could be verified today.

## **RETURN, REINTEGRATION AND RESTITUTION OF PROPERTY**

### **The Return Process from, to, and within Croatia**

The general level of security has improved since the present Government took office at the beginning of 2000, and should no longer be considered a primary obstacle to return in most receiving communities. On the other hand, the overriding public attitude and perception of the return of Croatia's Serbs continues to be one of caution and suspicion in many areas, irrespective of recent improvements in some communities. The Government's commitment to refugee return has strengthened but remains ambiguous. Refugee return was not listed as a priority in the new government programme put forth in summer 2002.

While Croatian Serb refugees and displaced persons continue to return, the sustainability of minority return remains a concern as a result of legal and administrative obstacles and the current economic situation. In contrast, the return of the majority population, i.e. ethnic Croats, to their pre-conflict domiciles has almost been completed. The remaining Croat internally displaced persons frequently note that it is almost exclusively the bleak economic situation that prevents their return to their places of origin. Return figures for Bosnian Croats to Bosnia and Herzegovina remain low.

The Mission is planning a major public awareness campaign on reconciliation and sustainable return. The rationale of the campaign is to inform and motivate refugees to return, and to convince the Croat majority population in the receiving communities that refugee return is not a threat, but an opportunity for developing an integrated and cohesive society in line with the country's European vocation. The Government will be a partner in the campaign.

According to the most recent official data, 96,534 *minority* returns have been registered to Croatia since the end of the armed conflict; 68,150 returned from the Federal Republic of Yugoslavia, 5,716 from Bosnia and Herzegovina, while 22,668 were regarded as internally displaced persons from the Danube Region<sup>45</sup>. However, for personal and objective reasons, many individuals return only to settle their affairs and sell their properties prior to returning to their countries of asylum. Others wish to remain, but cannot because their properties remain damaged, destroyed or occupied, or they do not receive redress for terminated occupancy/tenancy rights.

Likewise, 205,294 *majority* returns have been registered since 1995<sup>46</sup>. This figure indicates that 93 per cent of Croats who were displaced from the occupied territories of the so-called “Republika Srpska Krajina” have now returned to their places of origin<sup>47</sup>. The vast majority have repossessed their pre-war properties or have had their damaged or destroyed houses reconstructed. While the lack of reconstruction assistance is still an issue for some Croat returnees to Vukovar in the Danube Region, problems associated with the sustainability of *majority* return within Croatia stem predominantly from economic stagnation and unemployment in the post-conflict areas as well as landmine contamination. These returnees did not face many of the additional legal and administrative obstacles that Croatian Serbs experienced.

Cross-border return figures from Croatia to Bosnia and Herzegovina, in particular to Republika Srpska, continue to be very low. It is estimated that 128,000 persons from Bosnia and Herzegovina are still living in Croatia, of whom only 8,000 have retained their refugee status<sup>48</sup>. The majority of these Bosnian Croats obtained Croatian citizenship and wish to remain in Croatia. Additionally, 30,563 Croats from the Federal Republic of Yugoslavia (mainly from Vojvodina and Kosovo) still reside in Croatia, 563 of whom maintain refugee status.

### **Property Repossession Procedures**

During the reporting period, only 673 from a total of 8,308 properties that were registered as occupied as of 1 May 2002 have been reported as vacated, empty or repossessed by owners, even though the Government has committed itself to returning all these properties by the end of this year<sup>49</sup>. Of the remaining 7,635 occupied properties, approximately 900 remain occupied by multiple or illegal occupants<sup>50</sup>.

In order to strengthen and speed up the property repossession process, the Law on Amendments to the 1996 Law on Areas of Special State Concern [hereafter: Amendments] was adopted on 12 July, repealing the property repossession regime regulated in the 1998 Return Programme. The Amendments expand the Law’s geographic scope for economic development beyond the areas most directly affected by the armed conflict to include other underdeveloped parts of Croatia. They also establish new procedures for the repossession of private property applicable in all of Croatia<sup>51</sup>. These private properties were taken under government administration almost exclusively from Serb owners and assigned to Croats, pursuant to the 1995 Law on Temporary Take-Over and Administration of Specified Property. If properly implemented, the Amendments should accelerate the property repossession process.

The Amendments do not, however, address several categories of property, including residential properties, business properties, agricultural and forest lands, agricultural equipment and movable property. This refers to property that was assigned for temporary use by bodies other than municipal housing commissions, or was illegally taken from Serb owners and not returned.

The underlying principle for property repossession remains as under the 1998 Return Programme, that is, *prior* to the repossession of property by owners, temporary occupants must be provided accommodation, regardless of whether the occupants have sufficient financial means to care for themselves<sup>52</sup>. In light of severe shortages of housing, the continuation of this policy continues to impede property repossession. As a result, the right

to ownership as provided for by the Croatian Constitution as well as international and European standards remains obstructed.

The Amendments now replace the Return Programme's concept of "alternative accommodation" for eligible temporary occupants with two new concepts, "housing care" and "temporary accommodation". The new concept of temporary accommodation, which refers to housing solutions below the standard of housing care, may speed up the vacating of residences and property repossession<sup>53</sup>. The Government has announced that it intends to resolve the issue of housing care for temporary users of occupied property by the end of 2003. According to the Government, 63 per cent of the funds will be taken from the State budget, while a loan for the remainder has been requested from the Council of Europe Development Bank (CEB).

The Amendments also reform the administration of property repossession by abolishing municipal and city housing commissions as the responsible State bodies. Their administrative responsibilities have been transferred to the central Government (Ministry for Public Works, Reconstruction and Construction). The State Attorney will now assume the housing commissions' role as legal representative for the State, seeking evictions against temporary occupants who failed to follow administrative orders issued by the Ministry to vacate occupied property. Many of the local housing commissions had obstructed the process of property repossession or fulfilled their role only reluctantly. As a result, housing commissions were actively involved in less than half of the 2,200 actual cases of property repossession since 2001<sup>54</sup>.

The Amendments recognize the owner's right to initiate a private lawsuit for repossession of his/her property independently of legal action by the State Prosecutor<sup>55</sup>. Though this right was explicitly acknowledged by existing Croatian legislation, many courts rejected private lawsuits for eviction until recently. They argued that the 1998 Return Programme was *lex specialis* and divested the civil courts of jurisdiction over private actions. In a series of corrective judgements in 2002, however, the Supreme Court held that the local courts erred in applying this reasoning and that the owner retained a right to initiate an ownership lawsuit under the Law on Ownership.

Two fixed deadlines have been set out in the Amendments. Both relate to the cancellation of administrative decisions granting permission for temporary use of housing belonging to others. The Ministry for Public Works, Reconstruction and Construction was required to issue decisions by 30 October 2002 in cases where owners requested repossession of their properties before 1 August 2002. By 31 December, the Ministry must cancel the decisions for temporary use in cases where owners either requested repossession after 1 August or have not done so to date<sup>56</sup>. The Amendments stipulate that if occupied property is not returned within these deadlines, and continues to be used to accommodate the occupant, the State will compensate owners. The Government is still elaborating a mechanism for the payment of compensation, despite the passing of the first deadline at the end of October.

In defiance of the Amendments' provisions holding temporary users responsible for property damage and utility debts, the Zadar regional office of the state-owned Croatian Electrical Power Company (HEP) informed the Mission that clients cannot obtain electrical reconnection to their homes unless the entire accumulated debts are paid for by the owner. This policy is being pursued regardless of whether the debt was incurred by previous temporary users who used the property with the explicit consent of the State. In addition, a

HEP official of the head office in Zagreb also stated to the press in October that owners are held liable for unpaid bills because the company has no records of the temporary users. The Mission and its international partners continue to remind government and HEP officials of this specific issue and its particularly adverse affect on sustainable return, but to no practical effect.

### **Terminated Occupancy/Tenancy Rights**

Many refugees who lived in socially-owned housing with occupancy/tenancy rights are still unable to reclaim their former homes or secure substitute housing. The widespread termination of occupancy/tenancy rights (*stanarsko pravo*) thus continues to impede sustainable return. This applies to thousands of Serbs who fled or were forced to flee during and after the armed conflict.

These rights were terminated through *in absentia* court proceedings under legislation of the former Yugoslav regime. In addition, at a time when there was no mechanism for return in place, the August 1995 Law on the Lease of Flats in the Liberated Territories terminated these rights *ex lege* upon the expiration of short deadlines (i.e., 90 days after its enactment). The issue of terminated occupancy/tenancy rights is today most acute in cities that remained under Government control during the conflict. According to the Government, there were approximately 24,000 court judgements in this regard, affecting the families of occupancy/tenancy rights holders from 85 municipalities. Seven large cities (Zagreb, Osijek, Zadar, Karlovac, Split, Sisak and Rijeka) account for two-thirds of all cases, with Zagreb accounting for 20 per cent of terminations<sup>57</sup>. The process of termination through court procedures is ongoing.

The Government continues to argue that no redress or compensation for terminated occupancy/tenancy rights should be provided since these rights no longer exist as a legal construct in Croatia. However, some very limited possibilities for redress have in fact been recently introduced. The Minister for Public Works, Reconstruction and Construction stated in October that former occupancy/tenancy rights holders who return to the Areas of Special State Concern can receive temporary accommodation in collective centres before being offered alternative solutions at a later date. The latter provision was made possible through the July 2000 and July 2002 Amendments to the Law on Areas of Special State Concern and the entry into force in October of the Rulebook on the Order of Priority of Housing Care in the Areas of Special State Concern. The Rulebook is the first official government document that explicitly refers to the issue of terminated occupancy/tenancy rights.

The scope of the Rulebook is, however, very limited. First, former occupancy/tenancy rights holders are given the lowest priority behind the priority categories of temporary users of claimed and unclaimed properties. Second, the application of the Rulebook is limited to the Areas of Special State Concern and does not extend to the major urban areas where most former occupancy/tenancy rights holders lived. Third, there are no mechanisms for the legal enforcement of the Rulebook's provisions, and it is therefore unlikely that any of the Rulebook's provisions in favour of former occupancy/tenancy rights holders will be implemented before the end of 2003.

While Government officials have also suggested that individuals whose rights were wrongly terminated could obtain remedies through the courts, the results of court proceedings do not support this claim. With very few exceptions, no legal remedy is in fact available for those



seeking review of the termination of their occupancy/tenancy rights, even in cases of acknowledged forcible eviction<sup>58</sup>.

The Mission holds that State deprivation of occupancy/tenancy rights are subject to domestic and international human rights standards, including freedom from discriminatory deprivation and the right to procedural safeguards including fair trial. In consultation with the Council of Europe, the Mission continues to explore further possibilities for the provision of legal advice to the Government in accordance with Council of Europe resolutions. It also continues to discuss a model of co-operation with the Government in support of a request to the Council of Europe Development Bank (CEB) to fund housing care for former occupancy/tenancy rights holders who wish to return to Croatia.

Government efforts will be required to change both the legal and societal climate in which the terminations by courts and *ex lege* were accomplished during and after the armed conflict. Along these lines, the Presidents of Croatia and the Federal Republic of Yugoslavia stated in June in Sarajevo that both of their Governments should commit themselves to providing solutions to terminated occupancy/tenancy rights in order to promote the return of refugees and displaced persons.

#### **Reconstruction Activities for Minority Returnees**

Croatian Serb beneficiaries have for the first time been given access to State reconstruction assistance at a significant scale in recent months. A significant number of decisions on eligibility for State-provided housing reconstruction assistance were thus issued during spring and summer 2002 for Croatian Serb beneficiaries by the State Administration Offices at the county level, under the supervision of the Ministry for Public Works, Reconstruction and Construction. According to Government officials, an unspecified number of these houses are under reconstruction. A few years ago, the Mission could not even identify a handful of cases of reconstructed Serb houses facilitated by the Government<sup>59</sup>.

In addition to central Croatia, reconstruction has progressed well in Western Slavonia, where two-thirds of reconstruction beneficiaries are now Serbs. Additionally, authorities in most other regions of Croatia have worked hard to accelerate the processing of requests for reconstruction assistance. At present, the Government cannot estimate when the reconstruction process will be completed, although it is not unlikely that it could last into the second half of the decade in spite of additional State resources being devoted to reconstruction assistance

In August, the joint Working Group on Legislation (see below) forwarded a 'Joint Recommendation' to the Government on ensuring full implementation of the June 2000 Amendments to the Law on Reconstruction<sup>60</sup>. Most applications for reconstruction assistance in these cases have, since the 1996 Law on Reconstruction came into force, been put forward almost exclusively by Croatian Serbs. However, the authorities consistently rejected them both before and after the June 2000 amendments came into force. Since spring 2002 the authorities began to issue decisions recognizing the right for reconstruction assistance of this category of applicants. In accordance with the joint Working Group's recommendation, persons who received final negative decisions before June 2000 shall be invited to re-apply. The Mission encourages the Government to take subsequent action on this positive development as soon as possible.

### **Joint Working Group on Legislation**

The joint Working Group on Legislation, established by the Government and the international community in June 2001 to address return-related legislative issues, agreed on a working agenda in May 2002. The Working Group has, apart from issues related to the recent Amendments to the Law on Areas of Special State Concern, completed discussion of two of the seven agenda items. These items address the right to unconditional return and legalization of status upon return and the full implementation of the June 2000 Amendments to the Law on Reconstruction. In response to a joint demarche by the international community in October, Prime Minister Ivica Racan committed the Government to reinvigorating the Working Group.

Through direct contacts with the Ministry of Labour and Social Welfare, as well as through the joint Working Group on Legislation, the Mission and the international community have provided recommendations for resolution of the convalidation issue. The one-year application deadline for convalidation of working years and pension decisions issued by the so-called "Republika Srpska Krajina", which expired in April 1999, remains a long-standing obstacle to sustainable return. Through the application deadline, the Government imposed an additional eligibility requirement not mandated by the legislature in the 1997 Law on Convalidation. This negatively affects Serb refugees, of which approximately 40,000 (60 per cent of all registered minority returnees from abroad) returned to Croatia after the expiration of the deadline.

### **Citizenship and Permanent Residence**

As a result of discussions in the joint Working Group on Legislation, the Ministry of the Interior, based on instructions from April 2000, has reinstated the permanent residence of more than 380 Croatian Serb non-citizen returnees. These returnees can now regulate their status, obtain identity documents and avail themselves of pension benefits, which will substantially improve their ability to reintegrate into their pre-conflict communities. Concern has arisen, however, that despite reinstatement of permanent residence, these individuals experience significant delays in obtaining decisions from the Ministry on receiving citizenship by naturalization.

Further, the present transitional solution is contrary to the rule of law since the Ministry's instructions contradict the Law on the Movement and Stay of Foreigners to the extent that the instructions waive application of standard immigration requirements of financial and property guarantees for non-citizen returnees that would otherwise be applicable to them as foreigners. Although the solution is a positive one in terms of results, it is contrary to the harmonization of the law and its implementation. As a result, the international community, through the joint Working Group on Legislation, has recommended incorporation of lesser requirements for reinstatement of permanent residence for returnees into the draft Law on Foreigners currently pending before the Parliament. Such codification would not only serve to support the rule of law but would continue to allow new returnees the possibility to successfully reintegrate. The joint Working Group on Legislation will soon finalize its second 'Joint Recommendation' to the Government on this issue.

### **Regional Co-operation on Return**

On a bilateral basis and through the mechanisms of the Stability Pact for South Eastern Europe, the Government continued to develop its return-related co-operation with Bosnia and Herzegovina and the Federal Republic of Yugoslavia. A related December 2001 agreement between Croatia and Bosnia and Herzegovina has not yet been ratified in either country, but

some initial improvements in the exchange of data on the property status of occupants have been observed. An informal 2001 agreement between Croatia and the Federal Republic of Yugoslavia to provide housing to 65 families of former occupancy/tenancy right holders has not yet been implemented.

In support of the Government's efforts, the Mission intensified its regional co-operation with international organizations, the Stability Pact's Regional Return Initiative and NGOs<sup>61</sup>. In June, the Head of Mission briefed the European Council Working Group on the Western Balkans (COWEB) on the core issues of sustainable return in Croatia. As OSCE focal point for the Stability Pact's Steering Committee on Refugee Matters (Working Table I) since mid-2000, the Mission has also contributed actively to the preparation of the second phase of the Stability Pact's Agenda for Regional Action (AREA II) which was officially launched on 27 June in Geneva. The AREA II document presents analysis and recommendations in order to advance the efforts of relevant governments, organizations and institutions in achieving sustainable return-related solutions for one million remaining refugees and internally displaced persons in Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia. It addresses the full spectrum of return- and reintegration-related issues, including property legislation, reconstruction, legal aid, education, pensions, health, and employment. It includes the "Common Principles on Return" prepared by the three relevant OSCE Missions and presented to the OSCE Permanent Council in October 2001.

## **POLICE ISSUES**

### **Police Administration**

The process of police restructuring at the central level continues to be reviewed by Ministry of the Interior officials. Specific proposals for a restructured police directorate and a model police administration must still be formulated<sup>62</sup>. The most notable result of these delays is that major police reform, such as eliminating the heavily centralized system of decision-making and introducing new management practices, has not yet taken place. In addition, personnel policies should also be amended in order to protect police professionals from undue political interference in their duties.

The Ministry of the Interior has fulfilled its commitment to the 1995 Erdut Agreement and 1997 Letter of Intent by re-deploying additional Serb police officers and supervisors to reflect the current percentage of the Serb population in the Danube Region. A commitment by the Ministry to provide additional training and proactive recruitment will support this process and address the issue of employing members of national minorities in the police throughout the country. The Mission continues to encourage new recruitment and personnel policies that focus on minority and gender opportunity within the police, as well as appropriate deployment of these new recruits in 2003 to areas where there are significant minority populations.

### **Community Policing**

The Ministry of the Interior has recognized the importance of community policing, involving the establishment of devolved responsibility through extensive police-community networking, which can lead to proactive problem-solving, reduced crime and improved public security. It has therefore undertaken a long-term commitment to introducing the community policing concept throughout the country, and has supported many locally-driven initiatives in this regard. These include landmine and weapons awareness campaigns in co-

operation with media, schools and war veterans' associations, as well as the introduction of new techniques such as assigning the same officer to one geographical area in order to develop community trust.

The Police General Directorate asked the Mission in September to begin a series of orientation presentations that promote awareness of community policing concepts. The Mission has begun these presentations to police in the Danube Region and within the Police General Directorate. In co-operation with the British Embassy, the Mission also facilitated a visit in September by senior Croatian police officials to observe community policy initiatives by the Sussex Police in the United Kingdom. The Mission will continue to work with British, American and German police associates in order to assist the Ministry in establishing a comprehensive basis for a locally-sustainable community policing programme. The extent of co-operation between the Mission and Croatian police in this and other areas was highlighted in October in a joint presentation before OSCE delegations in Vienna, and has generated interest among other OSCE Missions.

### **Security**

Police in many of the war-affected areas continue to report property-related incidents involving minorities, to which the police response has been reactive but appropriate. The Mission continues to consult with senior police officials in order to establish uniform national policies that properly identify, manage and allocate resources to address ethnically-motivated incidents and hate crime.

Some police officials in central Croatia have initiated more proactive crime solving and patrol techniques, resulting in a reduction of ethnically-related vandalism and assaults in areas previously regarded as problematic. However, events such as the distribution of intolerant materials related to the armed conflict remain a concern<sup>63</sup>. The Ministry of the Interior recognizes the potential for ethnically-motivated incidents against Serb returnees in these cases.

The Mission continued to facilitate co-operation within the European Commission police assistance programmes and other international and bilateral programmes designed to enhance the Ministry's capacity to address regional security concerns such as transnational crime and terrorism. This assistance involves, *inter alia*, enhancing investigative capacity and border management through advanced computer technology and developing a witness protection programme.

### **WORKING WITH NON-GOVERNMENTAL ORGANIZATIONS (NGOs)**

Large urban centres like Zagreb and Rijeka, where public investment, new technologies and international organizations are concentrated, do not experience most of the problems affecting return and reconciliation in the war-torn areas, including ethnically-related incidents, social exclusion and suspicion towards the return of refugees. The rule of law and a healthy civil society are two of the primary preconditions for the protection of human rights and sustainable return of refugees and displaced persons to their communities of origin. The Mission continues to focus its democratization programme towards these goals.

Nevertheless, additional efforts by relevant State bodies to close the gap between the development of civil society in rural war-affected areas and the urban centres are required.

The largest proportion of State funding for NGOs goes to those in Zagreb that have a better knowledge and experience in applying for national funds. The Government Office for Associations provides approximately 70 per cent of its total funding to NGOs in Zagreb, but is addressing some of the imbalance through a series of seminars initiated to respond to the financial and other needs of NGOs at the most local level. Likewise, the Mission is addressing this problem by working with local community groups, associations and volunteer initiatives in rural areas and by supporting training and capacity-building for these local associations.

State funding for NGO development continues to decline. From a total of approximately €3 million in 2001, €2.3 million was budgeted for 2002. To some extent, this decline in State funding could be offset through the adoption of new provisions to the Law on Public Benefit Organizations and the Law on Tax Benefits for NGO Donors, which have been welcomed by the NGO sector and relevant Ministries. However, these laws remain in draft form. Outside the urban areas, both the business and NGO sectors are still at an infant stage of intersectoral development and communication, and neither sector is familiar with how to approach the other on funding and sponsoring opportunities.

The lack of Croatian funding sources and the poor economic situation across the country continue to make NGOs dependent on international funding in order to survive. Furthermore, the shifting of international priorities from Croatia to other countries has resulted in a decrease in available international funding.

The Council for the Development of Civil Society was created in March 2002 as a decentralized advisory body to the Government and tasked to strengthen the overall NGO sector. Positive examples in the Council's work have been noticed, such as its comprehensive activity plans and criteria for projects that were sent to NGOs in time for early tender in 2003.

Insufficient support from local municipalities to the NGO sector and the difficulties for NGOs in securing funds and premises still represent the principal hindrances to the development and sustainability of civil society. Funding from local governments, when existing, is often allocated to traditional associations like sports clubs and cultural associations. In order to address these problems, the Governmental Office for Associations has started a programme to provide guidelines to local authorities encouraging them to co-operate more with NGOs and other civil society actors, and informing them how to launch public tenders within their communities.

The attitude of local authorities towards NGOs and other civil society actors in areas such as Knin in southern Croatia and Vukovar in Eastern Slavonia is starting to improve. However, there has been little change in municipalities like Zadar in southern Croatia and Sisak in central Croatia, where the quality of local government co-operation with the NGO sector remains inadequate.

The Mission acts as a catalyst in the development of civil society by linking non-governmental organizations (NGOs) and encouraging interaction between NGOs and local authorities. It also supports mandate-related, grass-roots activities in the field of reconciliation, human rights protection, trust establishment and legal assistance. These Mission activities continue to contribute to the development of both the NGO sector and public awareness of related civil society issues, which have assisted in the sustainability of newly established NGOs in the Danube Region and the Knin area of southern Croatia.

For example, the Mission co-funded and helped establish several new youth clubs in co-operation with local authorities throughout the war-affected areas, followed by a comprehensive training programme for youth leaders and local officials<sup>64</sup>. This major project has contributed to revitalizing civic spirit in the concerned municipalities and has helped build local government capacity to organize and work with NGOs.

The problem of return and integration of refugees and displaced persons is being addressed through increased cross-border activities between Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia. The Mission recently supported one such activity at the regional level, in the form of a conference by the East-West Institute, entitled the 'South Adriatic Trans-frontier Co-operation Forum'. These cross-border activities continue to strengthen the process of reconciliation, return and post-conflict normalization between Governments and peoples in the region.

## CONCLUSIONS

In the past six months, the Government of Croatia has undertaken efforts towards resolving several of the outstanding issues related to the Mission's mandate and the Stabilization and Association Agreement with the EU.

But although many important decisions have been taken and the trend is positive, the overall picture remains contradictory. Progress in terms of implementation remains slow. Many initiatives have stalled or remain incomplete. There are several reasons for this, such as the protracted Government crisis during much of the reporting period and the focus of political attention on the ICTY indictment against General Bobetko. More importantly, the Government's commitment to some of the issues, notably refugee return, is still ambivalent. This was demonstrated by the omission of refugee return from the list of priorities that was adopted by the Government in July 2002.

There have been further efforts to develop the dialogue and co-operation, and to resolve outstanding issues with *regional neighbours*. Negotiations with the Federal Republic of Yugoslavia are making progress. The Government has engaged itself in a constructive way in Bosnia and Herzegovina, where Bosnian Croats are being told to seek their future within the framework of that state. But the normalization with Croatia's regional neighbours has sometimes been overshadowed by border issues. Progress in some areas has been hampered by a reluctance to address issues in a regional format.

On *refugee return*, which remains the Mission's overriding concern, there have been legal changes that facilitate the repossession of housing properties by Serb returnees and refugees from temporary occupants. Reconstruction assistance has for the first time been extended to Serb beneficiaries at a noticeable scale. There have also been limited reinforced efforts to reinstate permanent residence for Serb returnees.

However, the decisions to facilitate property repossession have still not been underpinned by a credible organizational structure to ensure that legal deadlines will be met, and they must still be followed up by decisions on the repossession of land, business properties and other occupied properties than housing. A sustainable programme for refugee return will also have to include remedies for former residents of socially-owned apartments, where they had so-

called occupancy/tenancy rights. Many of these refugees do not have access to any housing if they decide to return. The extension of reconstruction assistance to Serb beneficiaries at a larger scale is still hampered by financial constraints and local resistance in many communities.

*Minority rights* are closely related to the return issue, since the majority of Croatia's minority population remains outside the country. The presentation of a largely acceptable Constitutional Law on the Rights of National Minorities to the Parliament for a first reading in July was therefore an important step towards providing reassurance to the minority population inside and outside the country. However, the Constitutional Law has still not been adopted because of disagreements regarding the model for minority representation in the Parliament.

The Government has taken important steps to strengthen *the rule of law* by adopting a judicial reform programme and reinforced efforts by the Chief State Prosecutor to review questionable war crimes indictments. Although it is too early to evaluate the judicial reform programme, the challenges related to its implementation are enormous, because of the magnitude of the problem and the relative weakness of the Ministry of Justice and the judicial administration. The reinvigorated war crimes review has been largely overshadowed by controversies around the ICTY as well as problems in domestic war crimes trials against former Croatian military personnel.

Further steps have been taken to modernize *media-related legislation*, in particular legislation on radio and television, with the involvement of expertise commissioned by the Mission and the OSCE Representative on the Freedom of the Media. These efforts have, however, revealed sharply conflicting interests on key issues.

Within the field of *policing*, the Government has decided to develop a community policing programme. Croatia is now in compliance with the commitments on Serb participation in the police force in the Danube Region, which were made in 1997 when that subregion was peacefully reintegrated. The crucial reform of police administration has, however, progressed slowly.

There is an increasing awareness of the importance of the role of *NGOs and civil society development*, represented by the establishment of a new semi-government body for civil society development. Still, civil society development is still hampered by a shortage of financial resources and a regional imbalance that limits resources available to the war-affected areas.

Based on these assessments, it seems appropriate and possible for the Government to make efforts on the following issues during the next six months:

*First*, there should be a stronger Government endorsement of refugee return, which could include - but should not be limited to - support for the public awareness campaign on reconciliation and sustainable return, which the Mission is preparing. There should also be further efforts to engage with neighbouring countries within the framework of the "Common Principles on Return", which have been included in the Agenda for Regional Action II of the Stability Pact.

All returnees should be provided access to adequate housing, regardless of whether they came from areas directly affected by the war or from other parts of Croatia, and regardless of what type of housing they had before the war. This would require:

- the development of a mechanism for redress to all returnees who lived in socially-owned housing and whose occupancy/tenancy rights were terminated;
- a vigorous implementation of the property repossession scheme already adopted;
- an extension of the provisions for property repossession to other types of property than housing, notably land and business premises;
- continued improvement in the availability of reconstruction assistance to minority returnees; and
- the removal of other legal and administrative obstacles to return.

*Second*, the Constitutional Law on the Rights of National Minorities should be adopted and should provide a high degree of protection for national minorities. The new Constitutional Law should address the real concerns of the minorities and safeguard rights that they have already acquired. In particular, this would involve:

- fair and non-discriminatory representation in the Parliament and other elected bodies through representatives elected by the minorities;
- institutions with appropriate competencies to represent minority interests, in particular at the local and regional level; and
- representation in administrative and judicial bodies commensurate with the minorities' share of the population.

*Third*, the judicial reform programme should be pursued vigorously and be supported by adequate resources. In the area of the rule of law, the conditions for the work of domestic "watchdog" institutions, notably the Constitutional Court and the Ombudsman, should be safeguarded. The domestic war crimes review should be continued, with dubious cases dropped and serious crimes prosecuted.

*Fourth*, in the media field, legal inconsistencies, particularly regarding radio and television, should be eliminated in order to bring legislation in conformity with European standards.

*Fifth*, the reform of the police should continue with particular emphasis on efforts to make the police more representative and responsive to community needs. This approach would involve further efforts designed to affect recruitment and training, and the introduction of community policing.

*Sixth*, civil society development should be supported by adequate resources. A reasonable regional balance should be ensured, and efforts should be made to inform local and regional political leaders about the role of NGOs and civil society.

The Mission will assist the Government of Croatia in these efforts together with its partners, notably the EU and the UNHCR, and within the framework of the Stability Pact.



## ENDNOTES

<sup>1</sup> See *inter alia*: OSCE Analysis and Comments on the Law on Croatian Radio and Television (2001); the Law on Telecommunications of Croatia (1999, as amended in 2001); Recommendation (2000)23 of the Committee of Ministers of the Council of Europe to member states on the independence and functions of regulatory authorities for the broadcasting sector; Recommendation No. R(96)10 of the Committee of Ministers of the Council of Europe on the guarantee of the independence of public service broadcasting; Report of the Council of Europe Expert Mission on the Draft Telecommunications Law of Croatia (24-25 October 2000); Report of the Council of Europe Expert Mission on the Draft Law on Croatian Radio and Television of Croatia (28 June 2000); Report of the Council of Europe Expert Mission on the Draft Telecommunications Law of Croatia (9-10 June 1999); Recommendation of the Council of Europe experts for the further democratization of the broadcasting sector in Croatia (10-11 March 1998).

<sup>2</sup> In his ‘Initial Analysis and Comments on the Draft Law on Croatian Radio-Television (November 2002 Working Version) drafted by the Croatian Ministry of Culture’, the President of the Council of Europe Standing Committee for Transfrontier Television states that the HRT Council “... is a solution which deserves applause and commendation as equalling the best achievements in this area, and being more democratic than in many other countries”.

<sup>3</sup> Council of Europe Parliamentary Assembly Resolution No. 1185, dated 29 April 1999, calling on the Croatian authorities “... to reconsider the decision not to privatize the third channel of HRT”.

<sup>4</sup> Croatian legislation forbids political parties, state administrative bodies and advertising companies from owning media, but not individuals such as local political leaders. Many journalists complain about local authorities owning local radio stations and papers, stating that this leads to outright control on editorial content. Thus, city and county authorities continue to feel that they have a right to control local media, to use it for their own self-promotion and to prevent local journalists from criticizing local government. The Croatian Journalists’ Association has been campaigning to highlight the dangers associated with city, municipal and county authorities owning and abusing local media.

<sup>5</sup> According to the Minister of Culture, only six of 100 radio stations volunteered to state their ownership structure to the Government; none of the television stations did so. The Minister concluded that media ownership in Croatia is not transparent; source: Helsinki Committee Summer School, Sibenik, 26 August 2002.

<sup>6</sup> A particularly worrying situation has evolved in the Zadar area of southern Croatia, where regional newspapers close to nationalist groups continue to use hate speech and incite animosity towards actual and potential returnees. These papers include *Zadarski Regional*, *Narodni List*, and *Zadarski List*.

<sup>7</sup> According to the Ministry’s plan, three urban court jurisdictions – Zagreb, Split, and Rijeka – have the highest backlog affecting both civil and commercial courts. Comparative statistics demonstrate that while Croatia has 55 per cent of the population of Austria, it has a greater total number of judges and 10 more judges per 100,000 in population. Through the use of such statistics, the Government acknowledges that increases in the number of judges alone will not resolve the backlog problem.

<sup>8</sup> As a result of filling this vacancy, the municipal court in neighbouring Donji Lapac no longer has a full-time judge. However, some courts in areas most directly affected by the armed conflict, for example in Dvor in south-central Croatia, remain without any full-time municipal court judge after more than two years. Further, many new appointees have never served as judges. Included among the State Judicial Council’s new appointees are 13 former judges whose complaints against their dismissals were upheld by the Constitutional Court, of which five or six are Serbs. While only anecdotal information is currently available, several former Serb judges appear to have been rejected by the Council on the basis of their employment during the conflict in the judiciary of the so-called “Republika Srpska Krajina (RSK)”; in Gvozd in central Croatia, the rejection of a former “RSK” judge resulted in the judicial vacancy going unfilled. An extensive media debate in late October surrounded one judicial candidate from Vukovar who was amnestied in 1997 for armed rebellion and supported by the Vukovar court council. He was also serving as a member of the city council. The President of the Croatian Judges’ Association and other judicial officials, veterans’ associations, as well as local political representatives stated publicly, as well as in complaints lodged with the State Judicial Council, that former “RSK” officials should be considered permanently ineligible for the judiciary. They questioned whether Croats could trust such judges to impartially uphold the law, particularly in the adjudication of an interethnic dispute.

<sup>9</sup> In one extreme case, a judge from Pula in Istria County was dismissed for failing to write a decision after ten years. Disciplinary proceedings have been initiated against other judges on allegations of criminal corruption.

<sup>10</sup> Cases that have been pending from one to five years include challenges to: the 1995 law terminating occupancy rights *ex lege* within 90 days (submitted in 1997); the 1996 law suspending all pending court cases seeking compensation for damage from terrorist acts (submitted in 1997; the ECHR's decision in *Kutic vs. Croatia* established that the law denied access to court); the 1998 Return Programme's alternative accommodation requirement for occupants prior to return of private property to owners (submitted in 2000); Government decree establishing the 1999 application deadline for convalidation of working years and pensions (submitted in June 2001). Each of these cases is presented in the form of an abstract proposal for constitutional review rather than a concrete case or controversy. Hence the applicants cannot pursue their complaints to the ECHR.

<sup>11</sup> Also in July, the Constitutional Court issued its first judgement awarding damages for excessive length of proceedings. In a case in which the applicant had been waiting eight years for a decision (a mine explosion had destroyed her home), the Constitutional Court ordered the Split Municipal Court to issue a decision within six months (by mid-January 2003) and ordered non-pecuniary damages. In contrast, in late October, the Constitutional Court rejected a length of proceedings complaint finding that the lower court's failure to conduct proceedings for more than eight years was reasonable and thus excused due to the court's inability to contact the defendants in the Federal Republic of Yugoslavia as a result of the disruption of normal communications during the armed conflict.

<sup>12</sup> While the majority of ECHR judgments have involved procedural questions, it has also accepted review of several substantive issues. After a fact-finding mission to Lepoglava prison in north-central Croatia, the ECHR issued a judgement in November on friendly settlement on an application that alleged that conditions of detention amounted to inhuman and degrading treatment and prison rules about correspondence amounted to unlawful interference with the right to respect for correspondence. In June, the ECHR agreed to review an application alleging violation of the right of freedom of movement. The applicant's passport was taken by customs officials at the border and not returned for two years. During that time, state officials did not initiate any proceeding against the applicant related to the passport.

<sup>13</sup> The ECHR issued several additional negative judgements since May 2002, as well as friendly settlements on excessive length of proceedings.

<sup>14</sup> For example, an occupancy rights holder in Zagreb who was forcibly evicted from her flat obtained a court order in 1993 acknowledging her right to repossession. Despite three attempts to execute the court order and evict the occupant over a period of nine years, the latest being in June 2002, the court's decision has to date not been executed.

<sup>15</sup> *Hornsby v. Greece*, 107/1995/613/701, ECHR decision, dated 25 February 1997, para. 40.

<sup>16</sup> In 1997, for example, the Constitutional Court proclaimed as unconstitutional several provisions of the Law on Selling Apartments on which occupancy/tenancy rights exist. In lawsuits subsequently brought by individuals negatively affected by the unconstitutional provisions, the Ministry of Defence contested application of the Constitutional Court decision. On review of lower court decisions, the Supreme Court failed to enforce the decision. As a result, the Constitutional Court has been required in 2002 to reiterate in multiple decisions the constitutional principle announced in 1997.

<sup>17</sup> Concurrent with its adoption of the legislation, the Parliament adopted a conclusion obliging the Government to forward a proposal for a comprehensive law within six months.

<sup>18</sup> The Constitutional Court invalidated that part of the law that limited eligibility to citizens, finding a violation of the right to equal treatment for all. Under the amended law foreigners are eligible, but eligibility is conditioned upon the existence of a bilateral agreement between their country and Croatia. The law that allows claims for property seized by authorities of communist Yugoslavia between 1945 and 1991 also contains a six-month application deadline that expires on 5 January 2003.

<sup>19</sup> Further developments on this issue include the ECHR's referral in autumn 2002 to the Government of a second case involving Article 180, as well as its decision to review several cases challenging the Parliament's

1999 suspension of court proceedings seeking compensation for damages caused by the Croatian army or police under Article 184a of the Law on Obligations as a denial of the right of access to court.

<sup>20</sup> During an extraordinary Parliament session in July, the Government's request for urgent procedure was rejected. The Parliament instead completed the first reading and voted to forward the Government's proposal for a second reading when the Parliament resumed work in autumn, at which time the Government's proposal together with any amendments would be considered. A second reading must be completed within six months, i.e., by the end of January 2003, or the law must be withdrawn and re-submitted.

<sup>21</sup> Serb voters would have the ability to elect additional representatives depending upon their participation in the election.

<sup>22</sup> The HCNM noted the disruptive effect of the Government's response to The Hague's indictment in September against Croatian General Janko Bobetko, as well as the linkage of the adoption of the CLNM to the adoption of election legislation not yet proposed.

<sup>23</sup> The Law on the Election of Members of the Representative Bodies of Local and Regional Self-Government Units requires such by-elections to be held within 90 days after the release of the 2001 census results. This requirement was cited in the Mission's Progress Report No. 9, dated 12 November 2001, Status Report No. 10, dated 21 May 2002, as well as the Mission's Background Report on the Constitutional Law on National Minorities, dated 20 August 2002.

<sup>24</sup> "Article 61 [of the Law on the Election of Members of the Representative Bodies of Local and Regional Self-Government Units] provides for additional elections in cases where the elections have not resulted in proportional representation of national minorities. It is not clarified, however, how such additional elections will be held and who may participate in them. It is also not clear how the results of these additional elections will be combined with the results of the original elections. Article 61... does not regulate these by-elections any further, provides no means of enforcement and is in any case an interim provision applicable only to the 2001 local and regional elections". Source: Consolidated Opinion on the Law on the Election of Members of Local and Regional Self-Government Units of Croatia, adopted by the Venice Commission at its 50<sup>th</sup> Plenary Meeting in Venice, 8-9 March 2002, published on 12 March 2002, paras. 27, 28, and 72. See also OSCE/ODIHR Final Report on Local Government Elections in Croatia, 20 May 2001, Section VIII.A.

<sup>25</sup> Article 2 of the Law provides that "... education in national minority language and script shall be conducted in ... school institutions ...Provisions of other laws and regulations shall be applied to the establishment and legal status of school institutions with the classes in national minority language and script ...". Article 3 provides for the establishment of such schools "... for a smaller number of students...". Article 4 provides that "... if there are no conditions for the establishment of a school institution in accordance with Article 3..., the education in national minority language and script shall be conducted in a class department or educational group".

<sup>26</sup> As stated by the Chief State Prosecutor, the need for review arose because "... [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". Source: July 2002 instructions issued by the Chief State Prosecutor to local prosecutors.

<sup>27</sup> According to the Chief State Prosecutor, *in absentia* trials "... proved to be a loss of time and dissipation of funds, because the trials were repeated in the presence of the defendants when they had become accessible...". Source: July 2002 instructions issued by the Chief State Prosecutor to local prosecutors.

<sup>28</sup> Since May, the two county courts in Eastern Slavonia conducted three *in absentia* trials. In May, the Osijek County Court convicted and sentenced 12 Serbs *in absentia* in the so-called "Branjina" case. In July and October, the Vukovar County Court continued *in absentia* trials against six Serbs in the so-called "Vukovar Group I" case and against 11 Serbs in the so-called "Bapska Group" case, respectively. In addition, the Osijek County Court began a trial in November against one defendant present in court and nine others *in absentia* for war crimes alleged to have occurred in the village of Luc. Examples of *in absentia* proceedings from other parts

of the country include the re-trial of one Serb before the Pozega County Court in Western Slavonia. The Split County Court continues with an *in absentia* trial in the “Lora” case against three of eight defendants, two of whom remain at large after their release in July 2002.

<sup>29</sup> Since May, four new investigations were initiated in the Gospic area, two in the Sibenik area, one in Sisak and five in the Danube Region respectively.

<sup>30</sup> Of 18 persons arrested since May, seven have subsequently been released as a result of charges being dropped or courts allowed persons to defend themselves from freedom.

<sup>31</sup> The Mission is currently monitoring 59 cases involving Serb defendants, 11 cases involving Croat defendants and one case involving a Bosniak defendant. Of the 59 cases (including *in absentia* cases) against Serbs (involving 330 persons), 67 per cent involve one defendant whereas 33 per cent involve groups of defendants. Half of the cases against Serbs are in the Danube Region. Of the 11 cases (4 individual and 7 group cases) against Croats (involving 34 persons), the majority (6 of 11) are in the Knin area in southern Croatia.

<sup>32</sup> In September, the Zadar County Court re-started the trial of a Serb, Zorana Banic, after a hiatus of nearly five months. In the “Hrastov” case, the re-trial was re-started on two occasions, first in 2001 and again in 2002. In the so-called “Pakracka Poljana” case, which involves the common crime of murder, the Zagreb County Court re-started the trial twice, first in May, due to delays caused by the absence of defendants or their attorneys, and again in September. In another case, a trial re-started when a lay judge withdrew immediately prior to delivery of the verdict.

<sup>33</sup> In September the Karlovac County Court in central Croatia verbally acquitted Mihjalo Hrastov, a Croat, on charges of killing 13 Yugoslav National Army prisoners-of-war in his capacity as a member of the Special Forces of Karlovac Police in September 1991. The re-trial and verdict followed the Supreme Court’s 1994 decision granting the prosecutor’s appeal. In the Arsenic case, the Pozega County Court initiated a re-trial in 2002, more than two years after the prosecutor’s appeal was granted by the Supreme Court.

<sup>34</sup> For example, while Fikret Abdic was convicted at the end of July, no written verdict has been issued to date. As noted, this is a case in which court personnel have been threatened.

<sup>35</sup> Eight appeals against convictions involving nine defendants in detention have been pending in the Supreme Court longer than the legally prescribed period. Other appeals in which defendants are not in detention have been pending from six months to more than two years.

<sup>36</sup> Proposed amendments include repeal of all provisions related to amnesty and pardon. Proposals would increase the maximum sentence from 40 years to life imprisonment, introduce a new criminal offence for improper conduct by judges that benefit or harm parties to a legal dispute, and outlaw slander of the President of Croatia and promotion of ex-fascist states or organizations.

<sup>37</sup> After a year-long trial that ended in July, the Karlovac County Court in central Croatia convicted Abdic, a Bosniak with Croatian citizenship, on the basis of command responsibility and sentenced him to 20 years imprisonment for war crimes committed in the area of the “Bihac Pocket” in north-western Bosnia and Herzegovina.

<sup>38</sup> Numerous witnesses in the so-called “Prokljani” case against four Croats (subsequently acquitted) were unable to remember information previously given before the investigative judge. Similarly, a number of witnesses in the “Lora” case presented contradictory testimonies as compared to those given during the investigation stage.

<sup>39</sup> However, a recent trend of Croatian, Yugoslav and Bosnian authorities to communicate and co-operate in securing witness testimony, either by transport of witnesses to Croatia or by taking their testimony before Yugoslav courts, has occurred. At the request of the Rijeka County Court, for example, 17 witnesses who did not wish to travel to Croatia due to security concerns in the trial of the “Gospic Group” provided their testimony before a court in Belgrade. More recently, however, the Yugoslav Ministry of Justice has failed to deliver subpoenas in the “Lora” case for witnesses in the Federal Republic of Yugoslavia, claiming that it needed 60 days to serve the subpoenas.

<sup>40</sup> The ICTY Annual Report issued in August 2002 indicated that despite considerable improvement in general, "... problems still persist [with Croatian authorities] in gaining access to specific documents and witnesses".

<sup>41</sup> The State Prosecutor is currently pursuing a domestic investigation for war crimes alleged to have been committed during the Medak Pocket operation.

<sup>42</sup> In the ICTY Annual Report issued in August 2002, the ICTY President noted that "... [w]ith appropriate judicial reform and adequate witness protection facilities, it may be possible in the future for the Tribunal to remit some of its cases to ... local/domestic courts". However, for the present time, referral is only being concretely considered for Bosnia and Herzegovina where there are plans for the establishment of a specialized war crimes court.

<sup>43</sup> In its proposal, the Government relies on authorization provided to the Court by the constitution "... to monitor the exercise of constitutionality and legality and report to the Croatian Parliament about noted occurrences of unconstitutionality and unlawfulness", as well as Croatia's law for co-operation with the ICTY.

<sup>44</sup> The first from late September challenges the legality of the arrest warrant and order of surrender. The Government argued that there is no evidence that arrest is required in order for Bobetko to appear for trial. The second in early October challenges the legality of the ICTY trial chamber's confirmation of the indictment. The ICTY Appeals Chamber joined these two challenges and allowed the ICTY Chief Prosecutor to submit her objections to them. A decision is expected within the coming weeks or months. The Government unsuccessfully raised similar challenges in 2001 to the indictments against Croatian Generals Ante Gotovina and Rahim Ademi that were rejected by the ICTY. General Ademi, who was also indicted in connection with events in the Medak Pocket, voluntarily surrendered to the ICTY in July 2001 and was granted a provisional release in February 2002. In addition, although numerous officials reject the notion of command responsibility for purposes of ICTY proceedings, domestic convictions on the basis of command responsibility have been issued in Croatia against two Serbs and one Bosniak.

<sup>45</sup> Source: Ministry for Public Works, Reconstruction and Construction, Department for Expellees, Returnees and Refugees (ODPR), 1 October 2002.

<sup>46</sup> Source: ODPR, 1 October 2002.

<sup>47</sup> Approximately 220,000 Croatian Croats were displaced from the Serb-controlled areas at the beginning of the armed conflict; source: ODPR, 1 October 2002.

<sup>48</sup> Approximately 120,000 of these persons lost their refugee status by obtaining Croatian citizenship. Source: ODPR, 1 October 2002.

<sup>49</sup> These are private residential properties that were taken over and allocated for temporary use through the 1995 Law on Temporary Take-Over and Administration of Specified Property. Source: ODPR, 1 October 2002.

<sup>50</sup> The Government identified 1,613 cases of multiple/illegal occupancy by its 2001 review of properties allocated through the 1995 Law on the Temporary Take-Over and Administration of Specified Property. Multiple occupancy refers to beneficiaries of State-provided reconstruction assistance who continue to occupy properties of others. Illegal occupancy refers to those who occupy property allocated for use to others by the 1995 Law without an authorization to do so. As of 1 October, the Government reported that in 686 cases, including empty houses, owners had repossessed their properties. In most of these cases occupants should move out or be evicted without the provision of alternative accommodation.

<sup>51</sup> The 1996 Law established incentives for municipalities, companies and persons in the war-torn regions to revitalize and re-populate these areas.

<sup>52</sup> The practice of property repossession in the Danube Region, however, differs from other parts of Croatia. Most owners in the Region are ethnic Croats, while most occupants are ethnic Serbs. Legal and administrative obstacles to property repossession have rarely existed, effectively creating a double standard in this area. Croat property owners in the Region repossessed their property occupied by Serbs relatively easily through housing commissions, or through civil procedures without any prior processing by housing commissions.

<sup>53</sup> “Housing care” represents a permanent housing solution, while “temporary accommodation” represents the provision of a temporary housing solution until permanent housing care is provided. One of these solutions must be provided before the eligible occupant is required to vacate the property in question. Temporary accommodation is restricted to state-owned houses or flats. A third option of “organized accommodation” (mainly referring to collective centres) was deleted from the draft law due to pressure from the Bosnian Croat community, the Croatian Catholic Church, as well as the Opposition and members of the ruling coalition, before it was proposed to the Parliament for the second reading and adopted.

<sup>54</sup> Many housing commissions, including those considered by the Mission to be the most obstructive, ceased to function already in early 2002, in anticipation of these changes. As a result, there were very few State actions to return occupied housing in the first half of this year.

<sup>55</sup> According to the Government, the exemption from court and other fees contained in the Law on Areas of Special State Concern will also apply to all private actions for eviction initiated after the adoption of the Amendments. Pending lawsuits for repossession initiated by housing commissions have been transferred to the Department for Expellees, Returnees and Refugees (ODPR). However, only a few such lawsuits have been transferred to State Prosecutors for continuation of the proceedings. Thus, most of these proceedings are currently in limbo.

<sup>56</sup> The administrative cancellation of permission for temporary use of property belonging to others does not, however, automatically lead to owners repossessing their property. Occupants are only ordered to physically vacate occupied property within 15-60 days *after* housing or reconstruction of their own residences is provided to them.

<sup>57</sup> Another unresolved aspect of the occupancy/tenancy rights issue is unique to Eastern Slavonia. The legal status and rights of former occupancy/tenancy rights holders of both Croat and Serb ethnicity in this subregion have remained in limbo for nearly five years since the integration of this territory into the legal system of Croatia. While occupancy/tenancy rights as a legal construct was terminated as in other parts of Croatia, those who prior to the conflict held such rights in Vukovar and surrounding areas retain rights to those flats and are treated for purposes of law as constructive owners. At present, the Government has begun to consider measures which would allow for the privatization of these apartments.

<sup>58</sup> In a number of cases in which military personnel forcibly evicted occupants from their flats, the occupants obtained court orders during the armed conflict requiring the return into possession of their flats. However, these court decisions were never implemented and the occupancy/tenancy rights were terminated by subsequent court decision. Occupants who have sought to have such cases reviewed have been opposed by the State Attorney who represents the Ministry of Defence, claiming that the failure to execute prior court decisions is irrelevant to the request to review. Despite evidence that recourse to civil remedies proved ineffective, reviewing courts in other cases have nevertheless found the termination justified when occupants did not initiate proceedings for repossession after forcible eviction.

<sup>59</sup> For further information, see: Report of the OSCE Mission to the Republic of Croatia on Croatia’s progress in meeting international commitments since July 2000 (dated 13 November 2000).

<sup>60</sup> This first recommendation of the Working Group refers to residential objects that were damaged or destroyed by terrorist acts in territories under Government control during the armed conflict and until the peaceful reintegration of the Danube Region in January 1998.

<sup>61</sup> On 28 August, the Mission organized a seminar to discuss the new property repossession regime under the July 2002 Amendments to the Law on Areas of Special State Concern. About 80 members of the OSCE and UNHCR Missions to Croatia, Bosnia and Herzegovina and the Federal Republic of Yugoslavia discussed a joint monitoring mechanism between the Mission and the UNHCR Mission to Croatia. The Assistant Minister in the Ministry for Public Works, Reconstruction and Construction and Head of the Department for Expellees, Returnees and Refugees (ODPR) briefed the participants on the Amendments.

<sup>62</sup> These and other police reform proposals are being discussed in the Working Group of the Ministry of the Interior for Development. The Working Group was created jointly by the Ministry and the Mission in October of 2001 and is made up of a panel of police experts who are tasked with forwarding police reform proposals to the Minister’s Cabinet.

<sup>63</sup> Presentations of documentary films entitled “Amarcord” in central Croatia are one example in this regard. These films are being used by a small number of local extremists to portray enemy images of Serb returnees through the depiction of the activities of the Serb militia in central Croatia.

<sup>64</sup> The PRONI Social Education Centre has since 1997 been implementing activities for young people and organizing training for local authorities throughout and beyond the war-torn area of Eastern Slavonia, Baranja and Western Sirmium (eastern Croatia). Currently, the PRONI Centre is widening its activities in other post-conflict areas in Croatia, Bosnia and Herzegovina and the Federal Republic of Yugoslavia.