



## **Organization for Security and Co-operation in Europe**

### **Mission to Croatia**

#### **Headquarters**

### **STATUS REPORT NO. 13**

**December 2003**

#### **TABLE OF CONTENTS**

EXECUTIVE SUMMARY  
RETURN AND REINTEGRATION  
JUSTICE AND THE RULE OF LAW  
POLICE ISSUES  
FREEDOM OF THE MEDIA  
STATE OF CIVIL SOCIETY IN CROATIA

#### **EXECUTIVE SUMMARY**

1. Developments in the areas covered by the Mission's mandate were less distinct during the reporting period from July to December 2003 than during the previous one. The summer recess and the impact of elections which dominated the autumn agenda offer some explanation to this. Following the elections on 23 November 2003 which resulted in a centre-right majority the leader of the Croatian Democratic Union (HDZ), Ivo Sanader, was mandated by the President to form a new government. Since the HDZ appears to have excluded a coalition with the extreme right the new government is likely to depend on MPs representing the national minorities for support in Parliament.
2. The overriding goal in terms of foreign policy for the outgoing Government has been the consolidation of Croatia's bid to become a member of the EU, possibly in 2007. To that end, the Government in October 2003 delivered its answers to the European Commission (EC) questionnaire, thereby enabling the EC to proceed with the assessment of Croatia's suitability for membership. The Mission's mandate covers a number of the most important political criteria to be applied to Croatia.
3. The *legislative and administrative framework for return* continues to improve, albeit at a moderate pace and without the determined implementing efforts which are required to obtain significant results. Several important issues have not yet been addressed, including the repossession of other properties than housing, such as land and business premises, and issues related to recognition of working years spent in the formerly Serb-controlled areas for, i.a., pensions (convalidation). It remains difficult for the authorities to take positive measures without the active involvement of the international community. A consultation body on refugee return between the Government and international representatives in Zagreb

has been suspended since early 2003, pending renewed government commitment to its work.

The *repossession of occupied private property* continues, but still at a slow speed. In October 2003, the Government adopted exceptional measures to complete the repossession of the 2,700 claimed residential properties by the end of 2003. This ambitious target will not be met as envisaged. Some progress related to work on property repossession by county and municipal attorneys and courts can be noted.

The outlook for displaced former *occupancy/tenancy rights* holders was improved through the Government's decision in June 2003 to secure housing for such persons outside the Areas of Special State Concern (ASSC). This decision complemented the existing similar decision for the ASSC. Implementation has not yet started. Although conditions for leasing or buying the apartments are favourable compared to the market value, it remains to be seen how many potential beneficiaries have the means to make use of the programme. The programme does not address the larger issues of whether the terminations of occupancy/tenancy rights of refugees and displaced persons were legally justified.

The Government's efforts to provide *reconstruction assistance* are bearing positive results. 13,500 reconstruction claims remain to be addressed. Of these, 8,500 are expected to be included in the programme for 2003/04.

4. Croatia's *minority rights regime* has improved following the adoption in December 2002 of the *Constitutional Law on the Rights of National Minorities* (CLNM), which guarantees representation at all levels of elected government for minorities that reach certain thresholds, as well as in the judiciary and state and local administration. During the recent parliamentary elections, the number of minority MPs was raised from five to eight as foreseen in the CLNM. On municipality and county levels the outstanding elections for minority representatives are scheduled for 15 February 2004. Although the minority under-representation in the administration and judiciary remains significant, there is little indication that the CLNM guarantees in this area will be implemented in the near future. In October 2003, the Government adopted a National Programme on Roma.

The Government adopted a plan for *judicial reform* in June 2003. The Government acknowledges two particular challenges for the implementation: the quality and competence of judicial personnel and the case backlog amounting to 1.4 million cases at the end of 2002. While the reform plan addresses technical aspects, judicial reform will also require attitudinal change on the part of all those involved in court cases. The Ombudsman's Office, which could play a central role for safeguarding human rights in Croatia as a transition country, lacks sufficient government support.

The outgoing Government has on several occasions stated that it maintains full *co-operation with the ICTY*. In October 2003, the ICTY Chief Prosecutor addressed the UN Security Council stating that Croatia's obligation remained unfulfilled because of failure to make progress related to the surrender of fugitive General Gotovina. With the Completion Strategy of the ICTY Croatia can expect more *domestic war crimes prosecutions* in the coming years. These cases remain highly charged and require particular attention by the judiciary. The experiences from previous war crimes trials in domestic courts have been mixed. The application of a double standard against Serb defendants and in favour of Croat

defendants continues as a rule. However, the current State Attorney continues to pursue reviews of pending war crimes cases with the purpose of dropping unsubstantiated charges.

5. In the area of *police reform* the community policing programme continues to be the most advanced of the six reform areas detailed in the Ministry of Interior's reform strategy. Minority representation in the police service continues to be at a considerably lower level than foreseen in the CLNM.

6. The Parliament has recently adopted a number of laws relevant to the *freedom of the media*. The laws go some way towards harmonizing Croatian media legislation with European standards, but there are particular concerns related to remaining possibilities of political influence on regulatory bodies. The new system of appointing the members of the Programme Council of Croatian Radio and Television (HRT) through the political parties represents a step backward in ensuring the public broadcaster's independence. A positive development is that HTV news programmes have been balanced during the recent election campaign, and that there are now more reports devoted to refugee return and national minorities. Political interference in the work of local media continues in some places.

7. The *state of civil society in Croatia* has benefited from improved working relations between the Government and NGOs. Encouraging steps have recently been taken by the Government to establish institutional structures and organizational networks to support the development of civil society.

## RETURN AND REINTEGRATION

### **General**

1. The experience of interaction between the Mission, the international community partners and the Government during the reporting period has been mixed. The Government has finally taken steps to find a partial solution to one of the most important and politically sensitive obstacles to sustainable return, the redress for those refugees and internally displaced persons (IDPs) who used to live in apartments with specially protected occupancy/tenancy rights (OTR). On the other hand, delays in implementation of most programmes persist, including those for housing for former OTR holders.

The co-operation has been hampered since the joint Working Group on Legislation (JWGL), which brings together representatives of the Government and the international community, was suspended in January 2003, pending renewed commitment on the part of the Government. There has not been any progress on several issues on the Working Group agenda, which was agreed with the Government in May 2002; in particular, validation of employment-related documents; a comprehensive solution to property repossession also including business properties and land; and compensation for damage caused by armed forces, police and terrorist acts.<sup>1</sup>

2. The displaced population originating from Croatia which remains out of the country amounts to around 210,000 individuals (around 190,000 in Serbia-Montenegro (S-M) and 22,000 in Bosnia-Herzegovina (B-H)). About 107,000 Croatian Serb refugees and IDPs have registered as having returned.<sup>2</sup> Spot checks carried out by UNHCR, the Mission and NGOs at different times suggest that about two thirds of the registered returnees moved to

Croatia on a permanent basis. The pace of minority return has decreased since 1998.<sup>3</sup> The number of Croatian Serb refugees in S-M has decreased and is likely to continue to do so in the next months due to the ongoing deregistration of individuals who have acquired S-M citizenship or have registered as returnees in Croatia.

The laggard return process is conditioned by economic reasons such as high unemployment and lack of job opportunities as well as human rights concerns such as lack of access to housing and the difficulty in having other acquired rights recognized, i.a. pension rights. There are also psychological factors such as remaining inter-ethnic tensions in some areas and apprehension about living as a minority in former Serb-dominated areas. This involves concerns related to bias and lack of transparency in the prosecution of war crimes often triggered by arrests of ethnic Serbs for war crimes which are at times based on weak evidence that has dissuaded some Serb refugees from returning.

The issue of terminated OTR affects more than 23,700 families of Croatian Serbs from the urban parts of Croatia, which remained under the Government's control during the war. In the Areas of Special State Concern (ASSC) there may be some further 10,000 lost OTR; the Government has not specified the number. Property repossession prevents more than 2,570 families with claimed property from accessing their houses, while the 13,500 unprocessed applications for reconstruction derive largely from Croatian Serb applicants.

In light of the long period of displacement and the persisting obstacles upon return, the number of refugees willing to return is decreasing. The Mission's focus remains on human rights concerns pertaining to minority refugees, particularly their acquired rights such as property and pension rights, which must be respected regardless of return.

### ***Property Repossession***

3. The repossession of housing<sup>4</sup> has not improved significantly during the reporting period. Most of the concerns raised by the Mission remain, in particular the precedence given to the interests of temporary users above the rights of owners. There are several reasons for the delay of the repossession process. First, a high number of temporary occupants (3,700) are still eligible for state-provided housing (housing care/temporary accommodation) to be provided *prior* to their moving out. Second, legal proceedings in courts are generally slow. Third, legal proceedings are often held on cases already decided by administrative authorities. Finally, court-ordered evictions are regularly delayed or thwarted. Efforts of the Government including the State Attorney's office as well as the courts to address cases identified as illegal occupancy remained far from satisfactory. As a result, illegal occupants are actually not evicted. They vacate occupied properties only when they decide that they no longer need the house and voluntarily move out.

4. On 16 October 2003, the Government adopted exceptional measures in order to speed up property repossession and to return by the end of 2003 all remaining 2,700 residential properties that were allocated to temporary users under a 1995 law. The measures foresee the purchasing of vacant houses and apartments, expediting court proceedings to evict temporary occupants (although the authority to do so lies with the judiciary), and ensuring a faster delivery of construction material and electrification of alternative housing. The competent Ministry was instructed to rent a number of housing units as a temporary solution for occupants. The Ministry was also requested to appoint representatives for those owners with whom contact has not been established in order to repossess over 1,500 houses in the

name of the owners. Still, the return of all claimed housing properties by the mentioned deadline remains unlikely.

The deadline for repossession of housing properties - originally set for the end of 2002 through legislation adopted in 2002 - has been extended, but the Minister for Public Works, Reconstruction and Construction acknowledged in October 2003 that the new deadline (end of 2003) would not be met.

5. The rate of repossession of occupied property has improved in a number of municipalities in central Croatia (Petrinja, Glina), because physical allocation of housing to temporary occupants has been accelerated, while the very low repossession rate persists in other areas, particularly in the Knin area in southern Croatia.<sup>5</sup>

Towards the end of 2003, some progress was observed regarding the work of the county and municipal state attorneys and the courts in property repossession cases. Impediments at all stages of the proceedings are, however, still the rule.<sup>6</sup>

Although the Ministry has substantially increased the number of administrative eviction orders, particularly in cases where the occupant has access to other housing or occupies several properties, this has had only a limited effect on the number of repossessions. The Administrative Court has annulled 11 such eviction orders, contesting the ground for the decisions taken.<sup>7</sup> Of more than 1,150 administrative eviction orders in 2003, approximately 720 have been referred by the Ministry to the State Attorney for initiation of eviction/repossession proceedings in court.<sup>8</sup> In approximately 40 per cent of the transferred cases, state attorneys have initiated proceedings in the municipal courts, with the largest numbers of cases pending in Benkovac, Karlovac, Obrovac, and Sisak. However, to date courts have issued few verdicts on eviction and even fewer verdicts have been executed. Thus, there has been no significant increase to date in the number of homes reposessed by owners through the court procedures established by the Law on Areas of Special State Concern (ASSC).

Field reports show that Ministry representatives in some locations have begun discouraging occupants from looting occupied properties upon vacating them by warning that they will be held responsible for any looting.<sup>9</sup>

6. Owners of houses occupied under a 1995 Law are entitled to compensation payments until they repossess their houses, but only a small number of owners have so far been able to benefit from such payments. This special compensation payment was to start from 1 November 2002.<sup>10</sup> This summer, the Ministry started paying such compensation to about 450 owners of occupied housing. Compensation settlement forms<sup>11</sup> have been sent for signing to more than 1,200 of more than 3,900 owners of claimed properties.<sup>12</sup> At least 400 owners have questioned the content of the compensation settlement sent to them. In particular, owners disagree with the Ministry's refusal to pay interest for the delayed payment after 31 October 2002. The Ministry maintains that owners who have not participated in a survey conducted in 2002 will have to apply for settlement forms. This is contrary to the Minister's statement to the Mission, the EC and UNHCR in January 2003.

7. Repossession of other types of property remains unaddressed. This includes business premises and agricultural land as well as a number of residential properties which were

taken over by occupants by other means than by law in 1995. In addition, long-standing property restitution and compensation issues remain unresolved for minority religious communities while property restitution for the Catholic Church is being addressed more comprehensively.

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

8. The most significant housing-related human rights concern and obstacle to refugee return continues to be the lack of legal and practical redress available to families who lived in socially owned apartments and whose OTR were terminated, either by law (in the ASSC) or by court decisions. The total number of affected households remains unknown, since there are no available records of the *ex lege* terminations, but 23,700 households lost their dwellings by court decisions during and following the war. Termination proceedings continue in the courts today, resulting in some cases in the eviction of families from homes they have never left either during or after the conflict.

Although the Government continues to avoid a discussion on the underlying legal and human rights aspects of the termination of OTR, it has, after intervention by the Mission and its partners, enacted provisions for housing assistance to former OTR holders who wish to return and stay in Croatia. This has been done through two different programs, none of which are yet operational. Provisions for beneficiaries *inside the ASSC* are contained in the July 2000 and July 2002 amendments to the 1996 Law on the ASSC. In June 2003, the Government enacted provisions applying *outside the ASSC*. The geographical area covered by the latter programme includes most of Croatia's large cities.

The Mission and its partners have recommended to the Government to make the two programs user friendly, which includes standardization of procedures for applications, eligibility criteria, decisions and provision of housing care inside and outside the ASSC. The Mission is concerned that the Government's June 2003 *Conclusion* and the *Implementation Plan* for the programme outside the ASSC allow for arbitrary delays by leaving a large degree of discretion to low-ranking officials in determining eligibility.

9. The programme for the areas *outside the ASSC* applies to former residents from these areas who want to return and stay in Croatia, including those who never left the country after being displaced from their apartments. Beneficiaries will be able to apply for lease of apartments or purchase them under favourable conditions.<sup>13</sup> The envisaged purchase price of about 80 per cent of the market value is, however, likely to be beyond the means of most beneficiaries.

An amended version of the July 2003 *Implementation Plan* for the program outside the ASSC was signed by the Minister in October 2003. The plan incorporates several suggestions<sup>14</sup> made by the Mission, UNHCR and the EC. Nevertheless, it still places an arbitrary burden on the potential applicants for housing care in the process of submitting proof for their eligibility to the programme. With the assistance of UNHCR, the Ministry will conduct a publicity campaign on the program in Croatia, S-M and B-H. The application deadline is 31 December 2004, although an extension might be contemplated in view of the delays already experienced in the process of launching the programme.

10. The housing care programme for former OTR holders *inside the ASSC* is still not operational after more than three years. The Mission and its partners have voiced concern

over the delay as well as over problematic legal provisions that assign a low priority to former OTR holders in the distribution of housing care benefits. The Minister for Public Works, Reconstruction and Construction has asserted that former OTR holders will still enjoy priority. He has also indicated that a special budget item would be dedicated to housing for returning former OTR holders inside the ASSC, starting in September 2003, but this has not yet materialized.

11. The Government adopted a decree on the purchase of state-owned apartments and family houses in the ASSC in March 2003. The decree is important for those who are currently residing in formerly socially owned apartments which were allocated to them by the State (including local authorities) in the liberated areas but did not yet privatize them as well as for potential beneficiaries in the Danube region where there are 10,000 apartments for which OTR were never cancelled and which could be privatized in accordance with the decree.<sup>15</sup> The decree has, however, still not been implemented.

12. The legal and human rights aspects of OTR terminations in Croatia are expected to be addressed by the European Court of Human Rights (ECHR) in the case of *Blecic v. Croatia*.

### **Reconstruction Assistance**

13. Since reconstruction assistance to ethnic Croats was almost completed a few years ago, applicants of Serb ethnicity represent the majority of beneficiaries of the reconstruction programs (75 per cent for 2002/03 and 80 per cent for 2003/04).<sup>16</sup> 8,500 families of beneficiaries with positive eligibility decisions are expected to be included in the reconstruction programs for 2003/04.<sup>17</sup> 13,500 applications are still to be processed. The Offices for Reconstruction and the Ministry make efforts with regard to the administrative processing of applications, but they remain confronted with incomplete claims, mainly from applicants from S-M. This requires an intensified cross-border communication at various levels of the administration to collect missing documentation including proof of ownership.

The Ministry has shown its commitment to implementing the June 2000 amendments to the Law on Reconstruction concerning properties destroyed by so-called *terrorist acts*.<sup>18</sup> It has issued positive decisions on all 95 clear-cut cases submitted by the Mission in February 2003 and is processing individual cases raised later.

### **Regional and Cross-Border Activities**

14. On the political level, a joint declaration on return initiated by President Mesic to be signed in June 2003 by the Presidents of B-H, Croatia, and S-M has not materialized due to disagreements on occupancy/tenancy rights, but it remains on the agenda.<sup>19</sup> On the technical level, Croatia and B-H have made progress regarding the exchange of data related to repossession of property and reconstruction.<sup>20</sup> The Croatian authorities have declined in many cases to use exchanged data. There are efforts within the Stability Pact MARRI (The Migration, Asylum, Refugees Regional Initiative) to assist the three Governments in setting up a more comprehensive mechanism for data exchange.

The Government continues its programme to provide reconstruction assistance to ethnic Croats in B-H<sup>21</sup> in the interest of speeding up the departure of Bosnian Croat temporary occupants of Serb property in Croatia. Interest among this category is, however, very low, and more than half of the beneficiaries are persons displaced internally in B-H.

15. The OSCE Missions in B-H, Croatia and S-M continue to consult on their activities related to refugee return to ensure consistency of the measures taken by each of the Missions and to assist their host Governments in finding solutions that are mutually compatible and conform to human rights standards. The Heads of the OSCE Mission and UNHCR office in the three countries agreed in November 2003 to analyse the status of implementation of the *Joint Action Plan* on regional co-operation and return. The plan is an inter-mission tool aimed at advancing seven *Common Principles on Return* developed by the three Missions with the support of UNHCR.

## JUSTICE AND THE RULE OF LAW

### ***Rights of National Minorities and non-discrimination***

1. The Constitutional Law on the Rights of National Minorities (CLNM) was adopted in December 2002. It guarantees representation at all levels of elected government for minorities that reach certain population thresholds, as well as in the judiciary and state administration. At year's end, the CLNM remains only partially implemented.

2. The CLNM guarantee of minority representation in Parliament was implemented for the first time during the recent national elections, resulting in an increase in minority MPs from five in 2000 to eight. The Serb minority increased its representation from one to three MPs, while five MPs were elected as representatives of 21 other minorities. During 2003 minority under-representation in 62 town and municipality and four county self-government bodies was brought up to legally mandated levels as a result of elections for minority representatives, representing partial but substantial implementation of the CLNM guarantee of minority representation in local self government.<sup>22</sup> Elections for the remaining minority representatives that have been required since September 2001 were re-scheduled three times during 2003; on 13 November the Government cancelled its previously stated intention to conduct elections on 14 December and indicated elections would be conducted on 15 February 2004.

3. The CLNM also provides for the establishment of a national-level Council on National Minorities (Council) as well as local and regional councils for each minority group that reaches certain population thresholds. The councils have an advisory status only, but are designed to permit minorities to formally interact with government bodies on issues of concern to the minority community.

At elections conducted in May 2003, 220 councils and 42 individual minority representatives were elected in 21 counties, 45 cities, and 78 municipalities. As indicated above, additional elections have again been postponed until 15 February 2004.<sup>23</sup> As of late November 2003, 209 councils had been constituted; of those, 115 had completed the registration process with the Ministry of Justice necessary to operate as a legal entity. Co-operation between councils and local self-governments is proceeding well in a few areas, such as Beli Manastir and Slatina where the municipalities were quick to allocate funds, but in most areas co-operation and the allocation of resources is slow or non-existent. In some areas, under-resourced local self-governments may experience difficulty in meeting their obligations and may require financial assistance from the national level.

Before the May elections, minority communities were provided with only the minimum



legal time period for preparations. At least partially as a consequence, the elections showed significant problems including voter turnout of just 13 per cent and minority groups only being able to nominate slates of candidates for less than half of the posts. The Mission financed the activities of the leading election-support NGO in Croatia (GONG) to inform voters through the distribution of information leaflets and promotional activities on television and radio. It encouraged the Government to provide more support to minority associations in order to promote minority awareness of the elections and the role of the councils.

In a joint effort with the national-level Council and an NGO, the Mission financed a pilot project for training of members of local and regional minority councils in central and southern Croatia on rights and responsibilities as well as practical skills. The Government subsequently organized similar training for council members in late 2003. The Mission has agreed with the Government to continue to jointly sponsor such training activities.

4. No efforts have been undertaken by the Government to implement the CLNM guarantees of minority representation in the state administration and judiciary, despite significant under-representation in these spheres.<sup>24</sup> In the absence of a Government plan for the recruitment of qualified minority candidates, significant implementation of this CLNM guarantee may be jeopardized in light of the near completion of large-scale hiring efforts in 2003, particularly in the judiciary. Some Government officials have expressed reluctance towards this part of the CLNM, suggesting that it is “too soon” for implementation that might result in a backlash. The Government is encouraged to obligate public bodies to develop without delay plans of action for implementation of this key CLNM guarantee.

5. The Government has asserted in its answer to the European Commission questionnaire and elsewhere that the adoption of the CLNM has invalidated the Erdut Agreement. This was signed in November 1995 in order to facilitate the cessation of hostilities and the peaceful re-integration of the Danube region under the sovereign control of the Croatian Government as of January 1998. However, the United Nations and the Zagreb-based international community are of the view that, with the exception of the provisions specifically limited to the transitional period, the Agreement and the Letter of Intent [see below] continue to be legally binding obligations in effect to the present day, even though some provisions thereof have been codified into the CLNM and other domestic law.

The Agreement contained provisions specific to the transitional period, but also provisions related to human and civil rights of residents of the region and the monitoring thereof after the transitional period. At the end of the transitional period, the Government forwarded to the UN Security Council a Letter of Intent regarding certain human rights and representational guarantees for the Serb minority.

6. In July 2003, Parliament adopted several measures intended to combat discrimination. New provisions of the Labour Law prohibit discrimination on the basis of national origin, sex, race, etc., by employers over a wide range of employment questions, and introduce as prohibited forms of discrimination harassment and sexual harassment. Notably, the Law on Gender Equality adopted by the Parliament in July 2003 mandates affirmative action to ensure equal representation of men and women in state employment, analogous to CLNM guarantees for minority representation.

7. In October 2003, the Government adopted a National Programme on Roma that covers key areas where Roma face obstacles to full integration into Croatian society, such as education, employment and social programmes. It proposes specific measures by which these problems should be remedied, including legislative reform and concrete actions to be undertaken by relevant state bodies. While certain measures are already ongoing, implementation of the bulk of the Programme is not scheduled to begin until 2004.

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

8. Acknowledging fundamental problems in the functioning of the judiciary, the Government adopted in November 2002 a Judicial Reform Plan, which was followed up in June 2003 by an Operational Plan for its implementation. While the Reform Plan addresses various technical aspects, it leaves other important aspects unaddressed. True judicial reform will require attitudinal change not only on the part of legal professionals, but also those seeking justice through the courts, a type of change not readily reduced to plans or timeframes. Further, judicial reform cannot take place in isolation, but must be coordinated with the reform of other branches of state authority, such as the police and other administrative bodies, responsible for implementation of the law. The need for such coordinated reform is demonstrated by the 13 November 2003 judgement by the European Court of Human Rights (ECHR) in *Napijalo v. Croatia* finding that Croatia violated two provisions of the European Convention on Human Rights at least in part due to the fact that “there was no co-operation or co-ordination both within the police and between the police and the judicial authorities”.<sup>25</sup>

The Government acknowledges two particular challenges for the implementation of the Judicial Reform Plan - the quality and competence of judicial personnel and the case backlog, which approached 1.4 million cases at the end of 2002. The Operational Plan aims at reducing the backlog over a five-year period, recognizing that the upgrading of personnel will be of much longer duration.

9. The Operational Plan sets a series of ambitious benchmarks to diminish the backlog, including adoption of legislation. Some of this legislation has already been passed. The Parliament amended the *Law on Civil Procedure*, which includes provisions that are intended to expedite procedures. Furthermore, it adopted amendments to the *Law on Inheritance*, which re-distributes uncontested inheritance cases from the court to public notaries; the *Law on Mediation*, which introduces a second form of alternative dispute resolution; and the *Law on Pardon*. Effective implementation will depend primarily on the judiciary, but also on attorneys and other parties appearing before the courts. In addition to these legislative measures, the Constitutional Court provides an incentive to expedite proceedings by negatively sanctioning unreasonable delays.<sup>26</sup>

While Parliament adopted amendments to the *Law on Execution*, it will be necessary to follow implementation of these new provisions that re-distribute the execution of final verdicts from courts to public notaries to determine whether they will remedy the widespread failure to enforce final verdicts, a main reason for the case backlog. At the same time, in apparent contradiction to the fair trial jurisprudence of the ECHR, the Constitutional Court has determined that it lacks jurisdiction to decide on this question. The lack of an effective domestic remedy for this issue was demonstrated when the ECHR agreed in September 2003 to review *Pibernik v. Croatia*,<sup>27</sup> the second case admitted on this issue by the ECHR in less than six months. An ECHR judgement may contribute to having

Parliament or the Constitutional Court to extend the Court's jurisdiction to this fair trial issue.

The filling of judicial vacancies is another condition for reducing the backlog. In the first ten months of 2003, more than 100 judges were appointed, nearly half in municipal courts. The Operational Plan acknowledges the need to overhaul the academic programme and in-service training of the judiciary as well as legal education. The Judicial Training Centre has begun to offer training opportunities on an *ad hoc* basis, while the development of a formalized curriculum will begin in 2004. The Mission conducted seminars on fair trial standards for judges in local courts as a pilot project during 2003.

10. The Reform Plan does not address all relevant fairness concerns, and in one important aspect it even impairs the possibility for fair trial. Changes to the *Law on Civil Procedure* will further limit the access of poor people to free legal assistance by allowing only licensed attorneys and close family members to assist a person in court. Although the Government argued that the Bar Association can provide all necessary free legal aid, it is apparent that the need for free legal aid, particularly among minority returnees, far exceeds the Bar's capacity. A project to be implemented by the Government within the 2004 EU CARDS program may, however, begin to provide a remedy to this concern. Further, while certain reform measures are contemplated for the Administrative Court, none addresses the Constitutional Court's 2000 decision that the Administrative Court has failed to provide sufficient fair trial guarantees.

The Judicial Reform Plan does not include measures to relieve the judiciary of its obligations for the organization and supervision of elections. These obligations run contrary to the Plan's intention of freeing judges of non-judicial functions so that they may focus on court procedures. An example of the multiple demands placed upon judges is provided by the current Acting Head of the State Judicial Council who simultaneously served as a member of the State Election Commission in the recent national elections as well as being a sitting judge in the Zagreb County Court. While the establishment of a permanent election body has been proposed for purposes of enhancing election supervision, it would also further the purposes of judicial reform.

Moreover, the failure of the Government, the State Attorney, and the Supreme Court to adhere to the Constitutional Court's judgements not only adds to the overall case backlog but also presents a fundamental challenge to that Court's constitutional role and the rule of law. For example, in late 2003, the Constitutional Court issued two judgements on an issue of law concerning privatization of property owned by the Ministry of Defense that it had first decided in 1997 and again in 2002.<sup>28</sup>

11. The Constitutional Court in July 2003 tackled the sensitive issue of the extent to which wartime conduct can serve as the basis for contemporary ineligibility for the legal profession. Reversing the Supreme Court, the Constitutional Court required the Bar Association to re-consider its denial of membership for lack of sufficient "dignity to practice law" to a Serb lawyer who was absent from Croatia for more than six months in 1991-92. The Court stated that the fundamental question was whether the single act of leaving the country during the wartime could lead to a current denial of the right to practice law. The decision is particularly relevant given that an individual's whereabouts during the conflict has also been used as the basis for rejection of minority candidates for judicial

appointments.

12. Parliament adopted new legislation in July 2003 regulating the extent of Government liability for damages incurred by individuals related to the armed conflict and succession from the former Socialist Federal Republic of Yugoslavia.<sup>29</sup> Two of these laws<sup>30</sup> were adopted in response to concerns stemming from Parliament's suspension in 1996 and 1999 of pending court proceedings seeking compensation for damages resulting from terrorist acts and damages caused by the military and police during the conflict. Local courts have resumed proceedings in several hundred cases that had been suspended. Because the law no longer permits certain claims, some long-pending cases have been dismissed. As a result of this suspension of proceedings, the ECHR has to date issued four judgements against Croatia finding violations of the right of access to court and accepted 24 additional cases for review on the same issue, in which concern remains about past violations despite adoption of new laws. The extensive ECHR intervention has been required as the Constitutional Court has not served as an effective remedy for such violations.

13. The Constitutional Court in late November 2003 invalidated amendments to the *Criminal Code* that were to take effect 1 December 2003 on the grounds that Parliament adopted the legislation without the constitutionally required number of votes.<sup>31</sup> The invalidated amendments included provisions designed to harmonize domestic law with the Statute of the International Criminal Court.<sup>32</sup>

14. Parliament adopted the *Law on Protection against Domestic Violence* effective late July. However the failure of Parliament to co-ordinate the repeal of previously applicable legislation and the new law resulted in the technical de-criminalization of domestic violence for an 8-day period. The High Misdemeanor Court in late October 2003 interpreted this gap as creating a law more favourable to defendants, thus mandating the dismissal of all domestic violence complaints pending under the previously applicable law.

### **State Administration and Ombudsman**

15. Recent legislation established two new specialized Ombudsman institutions, the Ombudsman for Children and the Ombudsman for Gender Equality. However, given the limited resources available to the existing human rights Ombudsman, it is uncertain how three institutions will be adequately resourced. The human rights Ombudsman lacks sufficient Government support. The lack of staff, adequate premises and regional presence are some issues that undermine the efficiency of the Office. In order to strengthen the institution, the Mission has supported several initiatives, such as facilitation of systematic visits by the Ombudsman to regional centres so as to bring the institution closer to the citizens throughout the country.

In October 2003, the Mission hosted a Round Table where implementation of recommendations in the external expert analysis on the human rights Ombudsman from June 2003 was discussed. The recommendations include improved interaction with the Government Office for Human Rights and bodies of public administration; increased financial and logistical support; as well as a recommendation to review the Law on the Ombudsman with a view to enhancing the human rights mandate of the Ombudsman.

### **International Co-operation on War Crimes**

16. The UN Security Council called upon Croatia in August 2003 to intensify its co-operation with the ICTY and in particular to surrender indicted fugitive General Ante

Gotovina to the Tribunal. The Security Council also explicitly acknowledged the nexus between Croatia's domestic prosecution of war crimes and its co-operation with the ICTY, observing that the success of the Tribunal's completion strategy depended upon the capacity of domestic jurisdictions to prosecute cases transferred from the ICTY.

In her October 2003 address to the UN Security Council, the Chief Prosecutor reported that Croatia's obligation remained unfulfilled because of failure to make progress related to the surrender of Gotovina. She informed that her office intended to refer three cases to Croatian authorities following the decision to focus solely on the most senior perpetrators. Government co-operation was adjudged significantly improved in relation to the handover of requested documents.

The Mission's observations through trial monitoring have exposed substantial irregularities, [see below] which raise questions as to the current capacity of the judiciary to prosecute war crimes, including cases transferred from the ICTY, in an appropriate and even-handed manner. Against that backdrop, the Government's blanket assessment that all parts of the judiciary are sufficiently prepared does not seem justified.

17. In October 2003, Parliament adopted *the Law on the Implementation of the Statute of the International Criminal Court and Criminal Prosecution for Acts Against War and Humanitarian International Law*. The Law primarily regulates Croatia's co-operation with the International Criminal Court, but also includes provisions relevant to proceedings referred from the ICTY, in particular facilitating the use of evidence collected by the ICTY in domestic proceedings. Further, it contains provisions related to the processing of domestic war crime trials, including the specification of courts that can be assigned to try cases in response to a request for change of venue. It remains unclear whether these new provisions will result in an improvement in the processing of war crime cases.

### **War Crimes in Domestic Courts**

18. In the first eleven months of 2003, the domestic prosecution of a significant number of war crimes cases continued, primarily against Serb defendants, but also including some Croats, involving courts and prosecutors across the country. The most frequently prosecuted crime was war crimes against civilians, with a smaller number of charges alleging genocide or war crimes against prisoners of war. At all stages of procedure from arrest to conviction, the application of a double standard against Serb defendants and in favour of Croat defendants continues as a general rule.<sup>33</sup>

Observations during the last year indicate that these cases remain highly charged and require particular attention to assess impartiality and professionalism. Thus, the Gospić County Court found a Serb returnee guilty not only for war crimes, but also of a 500-year history of Serb crimes against Croatia, and explicitly criticized the provision of Government assistance to returned refugees. Courts were inconsistent in the manner in which they sought to invoke international legal assistance from the judiciaries of neighbouring countries and the degree to which they made use of statements given by witnesses before foreign courts. Lengthy delays occurred in several cases and at all stages of the procedure.<sup>34</sup>

Local prosecutors and courts continued to conduct *in absentia* proceedings, with some of the longest sentences being issued in such cases. Notably, 85 per cent of all Serbs convicted of war crimes in 2003 (27 of 32) were convicted *in absentia*, with the Zadar court alone

conducting five full *in absentia* proceedings against 14 Serbs and one Bosniak who were each sentenced to between five and 20 years imprisonment. Continuation of this practice creates an additional burden on the courts as defendants convicted *in absentia* regularly make use of their guaranteed right for re-trial.

The Supreme Court has ordered a significant number of retrials in war crimes cases, largely as a result of irregularities in lower courts. The Court reversed 18 of 19 lower court convictions upon the defendant's appeal in 2002, a reversal rate of 95 per cent; so far in 2003, it reversed seven of 14 convictions (50 per cent reversal rate), affirmed two convictions, and increased the sentence in five cases. The Supreme Court has, however, failed in numerous cases to comply with the legal obligation to render a decision within two months after receiving the appeal when the defendant remained in detention.<sup>35</sup>

## **POLICE ISSUES**

### ***Police Reform and Restructuring***

1. In April 2003, the Minister of the Interior announced the implementation of a comprehensive strategy of police reforms called "Action Strategy - Community Policing". The strategy covers reform of the uniform police; development of crime prevention; organization of communal prevention; reform of public relations; reform of police training and professional improvement; and internal democratization of the police service. Progress has so far been uneven between the six areas.

### ***Community Policing***

2. Community Policing is the most advanced of the six reform areas detailed in the Ministry of Interior's reform strategy. Six Community Policing pilot projects started in April and July 2003. The Croatian Police, in conjunction with the Mission, have made a number of presentations internally to police officers and externally at community forums. Public awareness of the programmes has been increased through media and news coverage. The Ministry originally planned to substantially expand the implementation of Community Policing by the end of 2003, but due to financial constraints the further implementation has been postponed until 2004. The Police then plans to train and deploy several hundred community policing officers (Contact Officers) in the rest of the country.

### ***Police Performance, Recruitment and Training***

3. The Croatian Police has implemented an "in-service" training programme and advanced training courses in the Police Academy supported by the Mission and other international actors. The general result is a higher degree of educational standard within the Police. In October 2003, the Ministry of Interior recruited 278 police cadets, of which 69 were women (25 per cent) and 23 belonged to national minorities (eight per cent).

4. Croatia has committed itself to supporting the Conclusions on Border Management adopted at the EC-OSCE Conference in Ohrid on 22 May 2003. The conclusions call for the creation of a joint regional training of border police in South East European countries. The Mission is advising on the development of the Ohrid commitments.

### ***Security Situation***

5. The general level of security in Croatia remains satisfactory. There are only few

ethnically related incidents. Nevertheless, the prosecution of such incidents is hampered by a lack of adequate legal provisions characterizing such behaviour as criminal acts.

6. The security of witnesses in major crime and war crimes cases remains a weak point in the judicial process in Croatia. The Mission provided expert advice on the draft Law on Witness Protection which was adopted by the Parliament in September 2003.

## **FREEDOM OF THE MEDIA**

### ***Media-related Legislation***

1. In the reporting period Parliament adopted in urgent procedures new laws on Electronic Media, Telecommunications, Media and Access to Information. Parliament also made controversial changes to libel provisions in the Criminal Code before the Constitutional Court invalidated them. The Mission provided expert assistance to the respective ministries on these laws in co-operation with the OSCE Representative on Freedom of the Media, the Council of Europe (CoE) and the European Commission. Though the new laws were adopted with the intention of harmonizing Croatian media legislation with European standards, there are concerns for the remaining possibilities of political influence on regulatory bodies that have been created. The legal framework in which the media operate is still subject to review and testing in practice, and will require close attention over the coming months as a new Government comes into power.

2. The *Law on Electronic Media* was adopted in July 2003. It included several recommendations made by international experts, but fails to incorporate OSCE and CoE recommendations designed to protect the independence and transparency of the selection procedure for candidates for the Council for Electronic Media. In September 2003, the Secretary-General of the CoE wrote the Prime Minister expressing his concern about the failure of the law to meet CoE standards in the two substantial areas and the lack of full compliance with the European Convention on Trans-Frontier Television. The Secretary-General urged the Government to rapidly propose appropriate amendments to the law, but this has not happened. The Prime Minister replied saying that the solutions foreseen in the law are based on European democratic practice.

3. The *Law on Telecommunication* was adopted in July 2003 before an OSCE/CoE analysis could be prepared and after only limited consultation with international bodies. Although the law no longer regulates matters related to broadcasting, the new law requires reviewing as it still covers broadcasting frequencies, which can have implications for the electronic media.

4. The *Law on Media* was adopted in October 2003. While the international community considered the existing Law on Public Information to be generally in line with OSCE/CoE standards, the Government maintained that a new law was needed to regulate the work of the media and its ownership. Early drafts of the law were criticized in the local press as attempts to place the media under state control. A request by journalists and NGOs to annul the adoption of the law on procedural basis is before the Constitutional Court while an OSCE/CoE review is being prepared.

5. On 27 November 2003 the Constitutional Court annulled a Law on Changes to the

Criminal Code, which was adopted in July 2003. The law expanded the type of actions punishable as libel under criminal law and removed a provision which previously had protected journalists from prosecution if their intention to commit libel could not be proven. The changes were made in spite of criticism by the OSCE as well as national and international media watchdogs. The OSCE Representative on the Freedom of the Media produced an analysis at the Government's request and concluded that Croatia's criminal defamation regime, exacerbated by recent amendments, is inconsistent with international legal standards regarding free expression. The law was invalidated by the Constitutional Court on procedural grounds as it was not adopted by an absolute parliamentary majority.

6. The *Law on Access to Information* was adopted in October 2003. A joint OSCE/CoE expert review is being prepared.

### ***Reform of Croatian Radio and Television***

7. A key aspect of the Law on Croatian Radio and Television (HRT) from February 2003 is the formation of a new HRT Programme Council which formally took place in October 2003, several months after the deadline foreseen in the law. The law changed the previous system of appointing the Council members by civil society organizations to a parliamentary selection process in which the political party caucuses have the principal say. While the Mission and its international partners maintained that this change constituted a step backward in ensuring the independence of Croatia's public broadcaster, the Government argued that the new system was "more accountable" and "operational". The delay in appointing a new Council was caused by disagreement between ruling coalition and opposition parliamentary clubs over prospective candidates for the eleven-member Council. It is a matter of concern that candidates were eventually selected more on political preference than journalistic, media or public interest criteria. The Council will now have to appoint the HRT management, program editors and directors, a process the Mission will follow with particular attention. A spokesman for the HDZ said on 29 November 2003 that an HDZ-led Government would again change the Law on HRT.

Failure by the Parliament to select a new Council has contributed to problems in the internal functioning of HRT in recent months. The HRT leadership is working under the transitional provisions of the new HRT law granting them transitional status and will continue to do so until the newly selected HRT Council makes all the key appointments. Meanwhile, the former Council was unable to conduct regular work. The Council's former chairperson and members made public their discontent as did the journalist associations (HND, Forum 21) and the HRT Director-General, who complained that HRT was left unsupervised.

8. In September 2003, the Council for Radio and Television allocated a ten-year concession for the frequency of the third national television channel to the Croatian RTL (HRTL) consortium. The Mission has welcomed the decision, hoping this will promote the development of the private broadcasting sector in Croatia and introduce healthy competition and pluralism within the television market. Some of the losing bidders appealed the decision in court on procedural basis.

### ***Media Monitoring***

9. The Mission funded a media monitoring project on pre-election media coverage on broadcast and print media. The main findings suggest that media covered the campaign in a



fair and balanced manner. HRT fulfilled their legal obligations to provide free airtime to parliamentary candidates and maintained sufficient campaign coverage without bias. Partial results of the monitoring were discussed with the HRT News Editor and then presented to the public at joint press conferences. The preliminary statement of the ODIHR Election Observation Mission concluded that electronic and print media, as a whole, provided voters with a variety of political views and candidates were able to present their platforms and convey their message freely. However, it was noted that both private and public media considered the regulations adopted prior to the elections by Parliament on the conduct of media during the elections campaign as inappropriate; this had resulted in an ineffective coverage which reduced the analytical capacity of HTV. After an earlier OSCE-funded monitoring project found that HTV was ignoring refugee returns and national minorities, HTV news programs have begun to include more reports devoted to these issues.

### **Media Development**

10. On 5 November 2003, the Croatian Privatization Fund announced a tender for the sale of the *Slobodna Dalmacija* daily after a decade of financial problems and failed privatization attempts. The paper, which dominates in southern Croatia, urgently needs re-financing to modernize production. One major national daily, *Vjesnik*, also remains in Government hands. The ownership status of *Nova TV*, the only functioning private television with a national concession is the subject of an ongoing court procedure.

Political interference in the work of local media continues. Journalists complain that political parties, though legally barred from owning media outlets, exert control over reporting and editorial content through elected city and county leaders who own local radio stations and papers.<sup>36</sup> Many journalists also complain that their legitimate access to information from municipal authorities, courts and the police continues to be blocked on a regular basis. Print media coverage of refugee return and minority issues has improved across the country.<sup>37</sup>

## **STATE OF CIVIL SOCIETY IN CROATIA**

1. The past six months have seen the continuation of a positive trend toward greater awareness at the national governmental level of the importance of the role of NGOs and volunteer groups in governance. Encouraging steps have been taken to enhance institutional structures and organizational networks to support development of civil society.

Progress at the regional and local level has not kept pace with the national level. The acceptance of NGOs and their ability to participate at the local and regional level is mixed at best. The greatest improvements have been registered outside the war-affected areas as well as in the Danube region, where NGO participation in local and regional governance has been encouraged and supported by the two prefect offices. Elsewhere in the war-affected areas, there are several examples of local officials who continue to resist NGO efforts to become more engaged in governance. Even where municipal governments prove to be open to supporting local NGOs, the ability to co-operate is hampered by the inability of different community sectors to work in concert.

2. Civil society development in Croatia will be supported by a new structure. The Council for the Development of Civil Society will serve as an advisory body to the Government and

the NGO sector with logistical support from the Office for Civil Society. The Law on a National Foundation for Development of Civil Society was passed in October 2003.

The Foundation will accumulate and disburse funds geared toward, i.a., support to citizens' active participation in innovative partnerships at the local level, improved inter-sector co-operation, research, development of corporate social responsibilities, education, and promotion of philanthropy and voluntarism. The Foundation will also offer a team of experts to provide evaluation services to the donors for various programmes and projects.

The adoption in 2003 of the *Law on Games of Fortune* will provide a source of funding for NGOs from the proceeds of the State Lottery. Currently there is approximately 10 million kuna from the Lotteries and Games available for civil society development. The available amount from these proceeds for 2004 will be approximately 120 million kuna.

*The Law on Public Benefit Organizations* remains in draft form. The law is seen by the international donor community to be a natural complement to the establishment of the National Foundation. It would contribute to stimulating private sector contributions to NGO activities and to creating a domestic system of private funding at a time when international funding is diminishing or shifting to other areas.

3. At the same time, some questions persist about the actual distribution of existing national funding. NGOs throughout the country continue to point out that government funds tend to go more to sports clubs and veterans groups rather than to NGOs working on questions of governance, environment, human rights etc. Geographically, most government support still goes to NGOs located in the greater Zagreb area and two or three other larger cities, with comparatively little making its way to NGOs in rural communities. An example of a well-developed NGO being active throughout Croatia is GONG, which engages in i.a., civic education, voter's awareness and election observation.

The Mission continues to work extensively with local institution building and civil society development, and provides support for local institutions, municipalities, courts, media, police and schools. It supports reconciliation through awareness raising efforts and reconciliation in media, interethnic youth and grass-roots initiatives, and human rights and multicultural awareness education. In 2003, the Mission contributed some one million euro in support of more than 70 projects, many developed jointly with government offices and institutions.

4. Another positive step towards the development of a solid civil society base is the election of local and regional Councils for National Minorities, established under the Constitutional Law on the Rights of National Minorities and eligible for some government funding. While these local councils are only beginning to organize, they hold the promise for becoming an important voice in the local governance process.

END.

## END NOTES

<sup>1</sup> *Joint Recommendations* were adopted and referred to the Government only in regard to points 1 and 2. The recommendation in point 2 is being implemented by the Government, while the recommendation in point 1 has been taken into account in the Law on Foreigners (July 2003). Its implementation is to start on 1 January 2004.

<sup>2</sup> Source: GoC MPWRC/ODPR 1 November 2003.

<sup>3</sup> By 1998: 30.019; 1998: 24.922; 1999: 12.329; 2000: 10.576; 2001: 10.572; 2002: 9.640; by Nov. 2003: 8.826. Total: 106.884

<sup>4</sup> Based on the Law on Amendments to the 1996 Law on Areas of Special State Concern (LASSC), Official Gazette, 88/02.

<sup>5</sup> The number of occupied properties whose occupants have been held eligible for alternative housing is more or less equivalent in FC Sisak (1.966) and FC Knin (1.864) AoR. Nevertheless, the Ministry has in October approved housing care options for 37 per cent of the eligible occupants in the FC Sisak AoR and only 18 per cent in the FC Knin AoR.

<sup>6</sup> Despite a significant increase in the number of cases transferred to state attorneys, deficiencies remain in the co-operation between the MPWRC and the state attorneys who function as the state administrator of occupied property in court proceedings under the LASSC. Delays arise because of incomplete documentation in a significant number of transferred files, for example in Sibenik three quarters of the files are incomplete.

<sup>7</sup> The Administrative Court ruled that the administrative eviction orders issued by the Ministry lacked legal ground since they failed to adequately prove that the occupants had access to their original properties in Bosnia-Herzegovina.

<sup>8</sup> During autumn 2003, there has been a significant increase (more than 50 per cent) in the number of cases transferred from the MPWRC to state attorneys. Users, particularly in the Sisak and Knin areas, are increasingly likely to vacate after the involvement of the state attorney. In the cases where state attorneys have initiated court action they have adhered to legal deadlines. Their efforts are, however, often thwarted by municipal courts, where proceedings suffer chronic delays.

<sup>9</sup> In the Sisak area, Ministry representatives have cancelled previous eligibility decisions for State provided housing care to few occupants because they removed integral parts of the building including doors and windows before their departure.

<sup>10</sup> Although it is positive that timely limited compensation payments finally are being considered, it has to be noted that a constitutional obligation for the State to compensate every use of private property remains unaddressed. Art. 12 par. 7 of the Law on the Areas of Special State Concern sanctions the occupants in light of their responsibility for the damage incurred in the occupied object during the period of allocation.

<sup>11</sup> The settlement (*nagodba*) form contains the square-meters of living space of the house in question and contains a provision according to which the owner renounces his right for payment of interests for delayed payment by the State (such interests payments are foreseen by the Law on Obligations).

<sup>12</sup> 3,900 is the number of claimed occupied properties on 30 October 2002, which is the first statutory deadline after which the Ministry is obliged to pay compensation to the owners who were unable to repossess their property within that date.

<sup>13</sup> The purchase conditions of the apartments are regulated by the Law on Social Subsidized Housing, while for the lease option the legislative framework is provided by the Law on Lease of Apartments and the LASSC in the regard to the amount of rent.

<sup>14</sup> The recommendations of the Mission and its IC partners revolved around the eligibility criteria for the Programme which addressed initially only refugees and not displaced persons or remainees, the deadline for applications and the procedure of appeal during the administrative processing of the applications.

---

<sup>15</sup> Occupancy/Tenancy Rights over these apartments were never cancelled neither *ex lege* nor through court procedure since the Republic of Croatia regained sovereignty over this territory only in January 1998 through the peaceful reintegration.

<sup>16</sup> 121,340 objects have so far been reconstructed through Government funding, the figure includes also the repair of State-owned apartments and the correspondence of cash grants to the beneficiaries in case of lower damage. The Government has reconstructed 8,000 objects in 2003.

<sup>17</sup> Out of that around 4,000 through organized reconstruction of family houses from IV-VI category of damage, around 1,500 families in damaged apartments and the rest through models of financial support.

<sup>18</sup> Damages caused by terrorist acts, as opposed to war damages were not covered by the 1996 Law on Reconstruction, which referred to the reconstruction area, the directly war affected area only. Thousands of Serb properties located in areas which always remained under the control of the Croatian State were destroyed by terrorist acts. The Mission and its partners have always advocated related amendments to this Law (enacted in June 2000) and their comprehensive implementation. The joint Working Group on Legislation had adopted a Joint Recommendation to the Government to that effect in summer 2002.

<sup>19</sup> The text of the Trilateral Declaration should have been launched by the Presidents of Croatia, B-H and S-M during the Summit of the Central European Heads of State which took place on 23 May 2003 in Salzburg. Disagreement arose among the three Heads of State over the clause of the Declaration referring to the remedies for lost occupancy/tenancy rights.

<sup>20</sup> A meeting took place between the Croatian Minister for Public Works, Reconstruction and Construction and the Bosnian Minister for Human Rights and Refugees where it was agreed to increase the exchange of data on refugee status and property related issues among the two countries.

<sup>21</sup> The Ministry for Public Works, Reconstruction and Construction has so far provided 1,223 Croatian families with building material in B-H. It is assessed that more than 80 per cent of the beneficiaries are displaced families within B-H and only a limited part refers to B-H Croats displaced in Croatia.

<sup>22</sup> On the basis of the 2001 census, minorities were under-represented in a total of 80 town and municipality and five county self-government bodies.

<sup>23</sup> Based on the 2001 census, minorities in 263 municipalities and 18 counties are entitled to elect a total of 471 minority councils. Minorities in an additional 40 municipalities and 21 counties are entitled to elect a total of 141 individual minority representatives.

<sup>24</sup> Government information as of 31 October 2003 indicates that 95 per cent of all judicial personnel are Croats, while 2.5 per cent are Serbs (compared with 4.5 per cent of the total population) and 2.6 per cent (compared to 2.9 per cent of the total population) are other national minorities. These statistics reflect the same percentages as reported in 2002 despite the employment in the intervening year of a total of 66 additional judges and state attorneys, 65 of which were Croats. Serbs are represented in proportion to their representation in the population in county state attorney offices (an increase from 2002) and approximate proportionality at county courts. Serbs are significantly under-represented at the municipal court and particularly municipal state attorneys offices. There continue to be no Serb or other minority judges on the Administrative Court, no Serb and only two other minority judges on the Supreme Commercial Court and regional commercial courts (160 judges total), whereas there is one Serb and two other minority members on the Supreme Court.

<sup>25</sup> In *Napijalo v. Croatia*, the ECHR found a violation of both the right to a fair trial within a reasonable time and a violation of the right to freedom of movement. The applicant's passport was seized at the Croatian border by customs officials for an alleged customs violation. However, no procedure against the applicant for the border offense was ever initiated by the authorities. Nonetheless, the authorities retained the passport for more than two years. A civil procedure initiated by the applicant attempting to retrieve his passport lasted more than two years, during which time he was unable to leave the country.

---

<sup>26</sup> As of late November 2003, the Constitutional Court registered over 500 new complaints alleging unreasonable delays, more than in the entire year of 2002. To date, the Court has decided more than 50 per cent of these complaints, and in 38 cases found a violation of the right to trial within a reasonable time and ordered lower courts to reach a decision within a fixed time and awarded monetary damages to the complaining party. The magnitude of the delays throughout the judiciary, including the Supreme Court, is demonstrated by the increasing number of such complaints received by the Constitutional Court. Complaints concerning excessive delays constituted 13 per cent of all cases received and over 50 per cent of all constitutional violations found by the Constitutional Court in 2003.

<sup>27</sup> In *Pibernik v. Croatia*, the applicant was forcibly evicted from her apartment in September 1995. A court order from 2000 granting repossession that was opposed by both the Ministry of Defence and Ministry of War Veterans was only implemented on the seventh attempt in March 2003 after the applicant submitted her application to the ECHR. In April 2003, the ECHR agreed to review the same question in *Cvijetic v. Croatia*.

<sup>28</sup> In 1997, the Constitutional Court determined that certain provisions of the *Law on Selling Apartments on which an Occupancy Right Exists* were unconstitutional as of the date of the law's adoption. U-I 697/1995 (Official Gazette 11/97). In late 2003, the Court made the same determination in two individual cases in which the State Attorney, representing the Ministry of Defence, challenged a lower court's application of the Court's 1997 decision and the Supreme Court held that the Court's decision was inapplicable because it could only be prospectively applied. U-III-754/2000 (Official Gazette XX/2003); U-III-86/2001 (Official Gazette 159/2003). As reported in the Mission's Status Report 12, the Constitutional Court issued a similar decision in late 2002. U-III-88/2001 (Official Gazette 125/2002). See also U-III-326/1995, 24 February 1999 (unpublished); U-III-435/2000 (Official Gazette 56/2000); U-III-457/2000 (Official Gazette 131/2000) (repeated adjudication by Constitutional Court required due to State Attorney's failure to follow the Court's constitutional interpretation of Article 102a of the Law on Housing Relations under which occupancy rights can only be terminated for "participation in enemy activity" upon the basis of a criminal conviction).

<sup>29</sup> However, the new legislation provides only partial remedies, as indicated by Parliament's recommendation from July 2003 in which it requested the Government to produce within six months new legal provisions covering property damage resulting from terrorist acts. In November 2003, the Government concluded no new legislation was required. In October 2003, the ECHR observed in *Acimovic v. Croatia* that the new legislation pertaining to pending cases seeking damages caused by the military and police retroactively "interfere[d] with the applicant's previously established right to compensation from the State by imposing new conditions". While finding a violation of the right of access to court, the ECHR withheld its judgment on that law, given its broad definition of "war damage". In contrast, the new law regulating compensation for damages resulting from terrorist acts eliminates certain pending claims, i.e., property claims, substituting a remedy under the Law on Reconstruction that is unavailable in many cases. The retroactive elimination of all pending property claims is likely to be reviewed by the ECHR in a pending case.

<sup>30</sup> The *Law on the Responsibility for Damage Caused by Terrorist Acts and Public Demonstrations* and the *Law on the Responsibility of the Republic of Croatia for the Damage Caused by Members of the Croatian Armed Forces and Police During the Homeland War*. The third law was the *Law on Responsibility of the Republic of Croatia for Compensation Resulting from Damage caused in the former SFRY for which the former SFRY was responsible*.

<sup>31</sup> Under the Constitution, laws affecting human rights must be adopted by a majority of vote of all representatives, i.e., 76 out of a total of 151. However, the Criminal Law was adopted by a simple majority of representatives present and voting.

<sup>32</sup> The amendments created two new offences, crimes against humanity and the offence of subsequent assistance to a perpetrator of war crimes, specified command responsibility as a basis for criminal liability in war crime prosecutions, and increased to life imprisonment the maximum sentence for serious offences, including war crimes. The amendments also outlawed glorification of ex-fascist states or organizations and slavery and trafficking in persons. Finally, the invalidated provisions also increased criminal sanctions for libel.

<sup>33</sup> Since the beginning of 2003, 30 Serbs, seven Croats, and one Bosniak were arrested on suspicion of having committed war crimes or based on previous *in absentia* convictions. More than one-third of all those arrested

---

(11 Serbs, 3 Croats) were released the same year. In the same period, prosecutors filed 12 new indictments against 31 Serbs and 4 Croats. The cases monitored by the Mission in 2002 demonstrated a significantly different rate of conviction and acquittal depending upon the national origin of the defendants. While 83 per cent of Serbs (47 of 57) were found guilty, only 18 per cent of Croats (3 of 17) (although based on a limited number of cases) were convicted. Conversely, 17 per cent of Serbs were acquitted or the prosecution dropped, while 82 per cent of Croats were found not guilty. As of November 2003, in cases monitored by the Mission in 2003, nearly 85 per cent of Serbs (32 of 38) were convicted, whereas 57 per cent of Croats (4 of 7) (in a very limited number of cases) were convicted. In contrast, 15 per cent of Serbs were either acquitted, charges dropped or amnestied and 43 per cent of Croats were acquitted or had charges dropped.

<sup>34</sup> For example, there was a six-month delay in the issuance of the written verdict after the Rijeka County Court orally convicted Mirko Norac and two other former members of the Croatian Army.

<sup>35</sup> E.g., Republic of Croatia v. Zorana Banic (defendants' appeal, pending more than one year); Republic of Croatia v. Fikret Abdic (defendant's appeal pending nine months).

<sup>36</sup> Two notable cases were monitored by the Mission over the last six month period - Radio Sinj and Radio Otocac, which are owned and run by various municipalities and counties. At this year's annual assembly of the Trade Union of Journalists held in Dubrovnik, Radio Sinj was highlighted as the most drastic example of media owners violating worker, social and professional human rights. On Radio Otocac, a local party president has been appointed as director and editor-in-chief.

<sup>37</sup> One notable example is an unprecedented article by a Zadar daily highlighting the difficulties facing Serb former tenancy rights owners. A more positive picture about cross-border co-operation and good neighbouring relations has emerged in the Vukovar area. In two areas, however, Osijek and Zadar, coverage of political and ethnic-related issues has been at times inflammatory.