



OSCE

**Organization for Security and Co-operation in Europe
Mission to Croatia**

The Ombudsman Institution in Croatia: An Expert Analysis

Croatia

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I Introduction

In April 2003, the Organisation for Security and Cooperation in Europe Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the OSCE Mission to Croatia asked Professor John Hucker¹, an independent expert, to undertake an analysis of the current legal and political environment surrounding the Ombudsman institution in Croatia. Such analysis was intended to lead to the preparation of a report that would identify any legislative, financial or logistical limitations affecting the work of the Ombudsman, and suggest steps that might be taken to strengthen the institution's position.

The present report represents the results of the analysis undertaken. Relevant legislation, reports and other written sources were reviewed. (See Appendix 1.) Subsequently, between April 23 - May 2, meetings were scheduled with a wide range of interested parties, primarily in Zagreb but also in the Karlovac area. In-depth discussions were held with the Ombudsman, Deputy Ombudsmen, senior representatives of Parliament and government agencies, non-governmental human rights organisations, minorities' representatives, constitutional lawyers and representatives of the international community. (See Appendix 2).

Between 4 – 6 June, follow-up meetings were scheduled in Zagreb with key interlocutors to discuss a draft of the report. (See Appendix 3). As a result of those discussions, several revisions were made to the report and the final report issued.

It should be emphasized at the outset that the present report should not be construed as an evaluation of the work of the Ombudsman of Croatia: such would be a separate exercise, requiring a different methodology.

II The Ombudsman – Background

Originating in Sweden in the early nineteenth century, the concept of the ombudsman is now well established throughout Europe and has been widely adopted in other regions of the world. Under the European model the ombudsman (or Parliamentary Commissioner) is appointed by Parliament as its officer to monitor the activities of public officials in administering government programs. He/she usually acts in response to complaints from members of the public who believe they have been the victims of neglect, rudeness or abuse of authority by officials. The ombudsman may also be given a more general authority to investigate government operations. His powers will usually be limited to drawing the attention of responsible Ministers or senior officials to examples of maladministration within their agencies, requesting an explanation and, where necessary, asking that remedial action be taken. He will invariably be required to report to Parliament on his activities and will also generally be free to draw the

¹ Mr. John Hucker currently a Visiting Scholar, University of Ottawa (Canada) is a former Secretary General of the Canadian Human Rights Commission from 1988 to 2002.

attention of the legislature to particular problems of public administration that may have been identified. An ombudsman may be authorised to ask that legal proceedings be brought in respect of serious abuses of authority, but his influence over events is more commonly attributable to his ability to highlight derelictions of duty through his reports. In recent years a number of countries have established specialized ombudsmen to address such issues as racial discrimination, gender equality and human rights more generally.

In Croatia, the office of the Ombudsman is included in the Constitution, where the office holder is described as “the commissioner of the Croatian Parliament protecting the constitutional and legal rights of citizens in proceedings before the state administration and bodies vested with public powers.” An amendment to the Constitution passed in 2001 extended the office’s jurisdiction to include the armed forces and security services and local and regional governments. The Ombudsman, who must be a Croatian citizen, is elected by Parliament for a term of eight years and is eligible for re-appointment. Other than through resignation or loss of citizenship, he or she can only be removed from office by Parliament.

The authority and functions of the Ombudsman are elaborated in the Law on the Ombudsman, enacted in 1992². This provides for the appointment of three deputy ombudsmen who, like the Ombudsman, serve for eight-year terms with the possibility of re-appointment. Under the law, the ombudsman is authorised to “examine individual cases of civil rights violations” committed by state organs. He also “examines other questions of interest to the protection of constitutional and legal rights....”

The Ombudsman has the right to access all relevant documents and other data of state agencies. These bodies are required to co-operate with him and, upon his request, to submit any reports and respond to questions posed by him. Article 7 of the Law states that the Ombudsman “warns, informs, suggests and gives recommendations.” State bodies are required to inform the Ombudsman within 30 days of measures that they have taken in response to his recommendations or warnings. For serious cases, the Ombudsman may recommend the initiation of criminal or disciplinary proceedings. This latter power appears to be rarely used.

Under authority contained in the Constitutional Law on the Constitutional Court of Croatia, the Ombudsman can initiate requests to the Constitutional Court for a review of legislation to assess its conformity with the Constitution. This power has been used on at least two occasions and would appear to be a potentially useful tool for permitting scrutiny of systemic problems identified by the Ombudsman, whether arising from the law as written or as applied by particular Ministries.

The Ombudsman is generally precluded from dealing with cases that are subject to legal or other proceedings. This is not an unusual exclusion, since ombudsmen are not intended to function as a forum for challenging the decisions of courts or similar

² The work of the Ombudsman is regulated in additional detail by Standing Orders on the Work of the Ombudsman and a Rulebook on the Internal Order of the Office of Ombudsman.

agencies. Notwithstanding this limitation, however, the Ombudsman has drawn the attention of Ministries to excessive delays resulting from litigation and to alleged failures by the authorities to enforce court judgments.

The Ombudsman is required to report annually to Parliament on the “information... collected regarding the degree the constitutional and legal rights of the citizens are respected.” He may also suggest changes to laws where he is of the view that these are needed to ensure the protection of constitutional and legal rights.

In its independence, structure and authority, the Office of the Ombudsman of Croatia conforms very much to the European ombudsman model. Whether it is entitled to be viewed as a ‘human rights ombudsman’ presents an interesting question. The Law on the Ombudsman states that, “the ombudsman functions within the framework of constitutional and legal regulations and international legal acts on human rights and freedoms adopted by the Republic of Croatia.”³ Part II of the Constitution of Croatia, which is entitled, Protection of Human Rights and Fundamental Freedoms, enumerates a number of such rights, including equality before the law, minority guarantees, freedom of thought and expression, freedom of association and other civil and political rights, mirroring many of those found in international and European human rights treaties. It also affirms a number of economic, social and cultural rights (for example, the right to ownership and inheritance, the right to work, and an obligation on the state to ensure assistance for the disadvantaged, the protection of disabled persons and a right to health care ‘in accordance with the law’).

There is no single definition of a human rights ombudsman or human rights commission. Certain criteria have been developed during the past decade and these will be discussed further below. The two key determinants are independence and a mandate in the field of human rights. In Croatia, the Ombudsman certainly satisfies the first test. On the second, an agency’s authority to act in respect of human rights can take different forms. Sometimes it will involve explicit authority to monitor and report on human rights guarantees contained in domestic legislation; on other occasions the reference may be to international human rights standards; sometimes an agency will be limited to addressing issues of equality or non-discrimination; most statutory human rights commissions (but not all) will possess a complaints investigation function.

In Croatia, the language contained in the Law on the Ombudsman, including the reference to the Constitution (with its panoply of human rights provisions) and to international human rights norms, is certainly sufficient for the Ombudsman to assert that he is a ‘human rights ombudsman’. In fact, much of the Ombudsman’s work involves matters beyond those of simple maladministration. For example, the large number of complaints concerning the alleged adverse treatment of property owners who are primarily from one minority group suggests possible patterns of abuse that go to the

³ Among the qualifications for election as Ombudsman, the law also includes a requirement that the candidate be “known to the public for his personal commitment in the field of the protection of human rights”.

heart of the fundamental human rights principle of equality before the law. Certainly, this is the view the Ombudsman has taken of this and similar issues. While there may be scope for disagreement over the conclusions reached by the Ombudsman in particular cases or over the nature of the criticism levelled at Ministries, it is suggested that his human rights mandate can not be questioned. There is, however, scope for clarifying and strengthening the law in this regard and more will be said about this later in the present report.

The present Ombudsman, Ante Klarić, was appointed to his position in June 1996. The three current Deputy Ombudsmen were appointed shortly thereafter. For the last several years the office has consisted of a total of 16 persons. These are made up of the Ombudsman and three deputies (each of whom is a lawyer), 6 legal advisors, one non-lawyer advisor and 5 staff dealing with administrative and financial matters. For 2003, the total budget for the office was approximately 525,000 Euros, representing a modest increase over previous years. The overall increase appears to be largely attributable to a growth in management costs and materials; the office's salary budget does not show any increase since 1999 and is in fact lower than the figure for the year 2000. The office operates out of premises in Zagreb, having no regional presence other than that resulting from visits by the Ombudsman or his deputies. In the past, the Ombudsman has expressed unhappiness that budget constraints have served to limit his travel to other regions. During 2003, an initiative funded by the Government of Norway and intended to address the lack of regional presence, has enabled the Ombudsman and his Deputies to visit a number of population centres.

For a number of years, the largest category of complaints has concerned alleged violations of ownership rights over houses or apartments, followed by complaints over non-payment of pension and disability insurance, with complaints by defenders and casualties of the Homeland War (involving primarily the reconstruction of property) in third place. A significant proportion of complaints received fall outside the Ombudsman's jurisdiction, primarily those involving court decisions⁴ but including difficulties encountered with banks or private employers.

During 2001 the Ombudsman received 1754 complaints, down slightly from the number of 1873 in 2000. Of the 2001 complaints, 290 (16% of the total received) were beyond his jurisdiction; in 2002 the corresponding figure was 404 (25.9%). For 2002, the number of complaints accepted declined to 1558, primarily because the Ombudsman was forced to limit the intake of new complaints by what he termed "the lack of personnel and financial capacities". In his most recent report, the Ombudsman suggests that future intakes will be limited to around 1600 in number until additional resources are allocated to his office.

⁴ The annual reports of the Ombudsman regularly describe problematic issues arising from the system of courts. While the Office lacks jurisdiction to review substantive decisions by judges, it can and does intervene with Ministries when it is of the view that the nature of the court proceedings is such as to amount to a denial of human rights to the individual(s) affected. For example, in 2001 the Ombudsman transferred 84 complaints to the Ministry of Justice because these involved what were deemed to be "insupportable stalling of procedures". In 2002, 68 such cases were referred to the Ministry.

Complaints come from more than 300 locations in the country and abroad, with the majority originating in Zagreb. The annual report for 2001 notes that the Ombudsman met with 1310 citizens during the year (a figure which presumably includes meetings with either Mr. Klarić or one of his deputies). In 2002, notwithstanding the overall decrease in complaints, the figure for people visiting the Ombudsman's office increased to 1568.

III Observations of Groups/Persons Interviewed

A. The Office of the Ombudsman

A preliminary theme sounded by many interviewees was that the function of the Ombudsman needed to be viewed in the context of current realities in Croatia. Reference was made in particular to problems associated with the court system, including chronic delays and non-enforcement of judicial decisions. A number of persons also emphasized that the Ombudsman was required to operate within a system of public administration often characterized by internal inefficiencies and a bureaucratic mindset resistant to any form of outside scrutiny.

Lengthy discussions were held with the Ombudsman and each of his Deputies. It is clear that representatives of the Office are conscious of its important position as an independent agency, entrenched in the Constitution and reporting to Parliament. Mr. Klarić sees his role as that of a "human rights ombudsman", referring to the language in the Constitution and the Law on the Ombudsman in support of this contention. He did not think that changes to the law were necessary to confirm the human rights dimension of his work and emphasized that matters on which his office had taken a public position fell within the definition of human rights

The Ombudsman and Deputy Ombudsman Mrs. Vidaković-Mukić described the process followed upon receipt of a complaint as follows. First, the Office must identify the nature of the complaint and ensure that it does not involve matters that fall outside the Ombudsman's jurisdiction. (Disputes arising from Court decisions were the most obvious example of the latter.) Then the Office would endeavour to ascertain the facts underlying the complaint in order to prepare a letter to the appropriate government authority seeking an explanation or, where appropriate, remedial action. As already noted, such authorities are required to inform the Ombudsman within 30 days of the measures they propose to take in response to the Ombudsman's intervention. It is clear from a perusal of a series of the Ombudsman's annual reports that responses generally take much longer to arrive and sometimes are not sent at all. It would appear that communications from the Ombudsman are often seen by overworked government departments as just one more intervention on behalf of individuals seeking preferential treatment. The Ombudsman's recently tabled report for 2002 suggests that there has been a significant improvement in overall response rate from 58% to 76%, but even this

figure is less than reassuring. Moreover, the 2002 report contains no breakdown to show what proportion of the responses respect the statutory time limit.

The Ombudsman states that he or one of his Deputies meets personally with most if not all complainants, although it is not clear how this operates for complainants from outlying areas of the country. Meetings may involve giving informal legal advice to people who are unable to obtain legal aid or simply listening to their problems even in situations where the office is unable to be of direct assistance. This kind of informal counselling is not an unusual activity for human rights agencies to undertake.

A major concern expressed by the Ombudsman related to budget and facilities. He is convinced that the Office is underfunded for the work it has to do. Its premises are felt to be inappropriate and too small, and it lacks adequate equipment – points which have been emphasised in a series of his annual reports. The Office has recently received a donation of computers from the Government of Norway but does not yet have a web site. (One is planned for later this year with funds pledged by Norway.) In general, the Office of the Ombudsman seems proud of what it has achieved but frustrated by the continuing difficulties it confronts, which it attributes to a lack of resources and its limited powers to effectuate change.

A number of non-governmental human rights organizations and minority group representatives commented favourably on Mr. Klarić's personal integrity and courage, and were complimentary about Mrs. Vidaković - Mukić's commitment. But some saw the institution as ineffectual. It should be noted that human rights NGOs will commonly argue that statutory human rights agencies should be more interventionist in the particular areas that are of interest to the NGO in question. The Office appears to have suffered some loss of credibility over what is seen as a reversal of its position in regard to issues of Roma education, through testimony given by the Ombudsman in a recent court case. There were also suggestions that the work of the office would benefit if it undertook field work (investigations) rather than operating entirely through written communications with other agencies.

Representatives of some international organizations observed that in its earlier years, before Mr. Klarić's appointment, the office tended to minimize the existence of human rights problems in Croatia. There had also been a perceived reluctance to co-operate actively with international agencies or with fellow ombudsmen agencies. It should be noted that both Mr. Klarić and Mrs. Vidaković-Mukić strongly disputed any suggestion that their Office had been unwilling to work with other bodies. They emphasized also their work with the Council of Europe and with the United Nations Office of the High Commissioner for Human Rights.

B. The Government Human Rights Office

Discussions were held with Mr. Darko Göttlicher, the Head of the Government Office for Human Rights and his legal advisors. Other groups (including the office of the Ombudsman, government representatives, and NGOs) were also questioned concerning their understanding of the role of the Office and its relationship with the Ombudsman.

As explained by Mr. Göttlicher, it was decided in 2000 that steps needed to be taken to systematize the processes for dealing with human rights issues within government. Prior to that time, responsibilities were divided among a number of departments and sections. The Office, which was established pursuant to a government decree of February 2001, was intended to serve as “an expert service of the government” to ensure “a systematic approach...to the protection and promotion of human rights in the Republic of Croatia.” It was given a number of specific responsibilities related to this co-ordinating role, including maintaining a record of international human rights instruments, monitoring reports of international organisations on the human rights situation in Croatia and organizing international gatherings and seminars in co-operation with the Ministry of Foreign Affairs. In this context, the Head referred to a successful major international human rights conference held in Dubrovnik in 2001 and to an important conference on economic, social and cultural rights which is to take place in September this year with support from the International Commission of Jurists and the Government of Finland.

The Office has already been active in producing publications highlighting various human rights processes currently under way in Croatia. Two English-language booklets were made available. The booklet, *System of Bodies for the Exercise of Human Rights in the Republic of Croatia*, includes a detailed listing of the many Parliamentary and government entities (committees, offices, commissions, task forces, etc.) with an involvement in human rights. More than 50 such bodies are listed in the first half of the publication. Interestingly, approximately two pages (of a total of 118) are devoted to a description of the Ombudsman. A second publication, *National Policy for the Promotion of Gender Equality*, published jointly with the Gender Equality Commission, includes an excellent program and work plan. In reporting on a conference, “Women in Croatia 2001-2005”, it includes an assessment reached by the participants that ‘due to a lack of political will, the Commission did not have genuine influence within the Government.’

Mr. Göttlicher briefly outlined various initiatives related to human rights that were under way within government and described the role of different committees and working groups. He also discussed the recent establishment of a number of county-level bodies with responsibilities for reporting on human rights conditions in their respective areas. These groups, which include representation from local NGOs, number around 15. Their reports will be submitted to the Office for Human Rights, which will consolidate them for presentation to the government. Based on discussions with various interlocutors, there is some uncertainty about the role of the county bodies. The national human rights organisations seemed largely unfamiliar with them, while the Ombudsman thought that they were regional arms of the Government Office. The Head said that this was not the case, that although their reports would come to him, the

county bodies operated under the aegis of local administration, while remaining independent in arriving at their conclusions.

In addition to its bureaucratic role, the decree establishing the Office sets out broader responsibilities for it, most notably that it “shall create a complete system of protection and promotion of human rights....and create a national program for protection and promotion of human rights...”. This language is consistent with the provisions of the Declaration and Programme of Action arising out of the 1993 Vienna World Conference on Human Rights, at which the Government of Croatia was a participant. A number of countries have put in place ambitious initiatives pursuant to the Declaration and Program of Action, often featuring the establishment of independent human rights commissions or ombudsmen. It is not clear how the Government of Croatia, through the Office for Human Rights, intends to pursue this challenging agenda. To have credibility, any such national program or system will require extensive consultation with interested groups within and outside of government.

One aspect of the work of his office that was highlighted by the Head was its responsibility for working with international human rights groups and international organisations. An example already mentioned was the Office’s collaborative involvement in staging international conferences. Another is the current co-operation with the United Nations Office of the High Commissioner for Human Rights in connection with the establishment of a Human Rights Centre. This will be discussed further in Part C, below.

A working document, entitled “The Competence of the Office for Human Rights of the Government of the Republic of Croatia”, lists some 36 tasks to be carried out by the Office. These include the following:

“3. It reviews the situation regarding individual human rights and freedoms in Croatia according to the provisions of the Constitution of Croatia, the Constitutional Act on Human Rights and Freedoms and The Rights of National Minorities⁵ and the provisions of ratified international documents relating to human rights....”

“19. On the demand of the Ombudsman’s Office, it co-operates with his or her office on solving individual petitions from citizens and specific problems in the field of human rights which citizens direct to the Ombudsman; it analyzes the annual report of the Ombudsman...and offers proposals to the Government for specific measures for improving the situation in the field of human rights as indicated by the reports....”

The first (#3) is a function that in a growing number of countries is performed by an independent human rights commission or human rights ombudsman. In Croatia, the

⁵ This has now been replaced by the Constitutional Law on the Rights of Minorities (the CLNM) adopted on 13 December 2002. The new law came into force on 23 December 2002. It includes a broad non-discrimination clause, covering the following grounds: sex, race, the colour of skin, language, professing of religion, political and other convictions, national and social origin, connection with a national minority, ownership, the status inherited by birth or pursuant to some other basis. (Article 2)

review of human rights (in effect the compiling of a human rights report card) needs to be seen as an open and objective exercise if it is to have credibility. It is something that can be done by the Office for Human Rights, but it would be unfortunate if it were to become an exercise for rebutting criticisms by the Ombudsman. On the second function (#19), there seems to be in fact very limited co-operation between the Government Office and the Ombudsman. Neither the Ombudsman nor the Office for Human Rights suggested that any significant dialogue occurred between them. As one interlocutor memorably observed: "we don't speak to them and they don't speak to us".

As to whether the Government Office is intended to serve as a rival or alternative to the Ombudsman, this was disputed by Mr. Göttlicher. However, his office does receive complaints from citizens who are encountering difficulties with Ministries. While no precise figures were provided, the Office apparently receives between 700-800 individual petitions on an annual basis. Rather than referring such cases to the Ombudsman, the Government Office pursues matters directly with the Ministry concerned. The approach followed appears to mirror that of the Ombudsman: an initial assessment is undertaken to confirm the nature of the complaint and whether all necessary documents are present; the responsible government agency is identified and a request is forwarded, requesting the agency to resolve the issue presented; and the agency is asked to inform the individual of the results in his case and to provide a copy of its response to the Government Office. On occasion, citizens will be interviewed by a representative of the Government Office, although this was said to be the exception rather than the rule.

Although Mr. Göttlicher suggested that no more than five per cent of his resources are devoted to this function, he indicated that all his staff participated to some extent in complaint handling. In the result, the Government Office is processing an annual caseload that approaches half the caseload of the Ombudsman. Additional analysis would be necessary to ascertain whether a portion of these cases are also being handled by the Ombudsman, in which case there would be a potential duplication of effort.

c. The Human Rights Centre

Beginning in 1993, the UN Office of the High Commissioner for Human Rights (OHCHR) maintained a field mission office in Zagreb until the end of 2002. Initially, the office focused on monitoring and reporting on the human rights situation in the country. The mandate was subsequently expanded to include a technical co-operation program with an emphasis on raising awareness of human rights among professional groups. In support of this objective, a Documentation and Training Centre for Human Rights was established in October 2000. Following a decision in late 2001 to wind down the field mission, the OHCHR proposed to continue the Centre as a meeting place and resource facility to support and enhance activities related to the protection and promotion of human rights.

During 2003, the Centre is functioning under a transitional arrangement with the hope that funding will be available to permit it to function in the longer term as an

independent institution under Croatian law. A co-ordinator and small staff are currently in place at the Centre, whose longer term objective is to be recognised as a major clearing house for human rights related activities in Croatia. It is intended to serve as a resource facility for government officials, academics, national human rights institutions (including the Ombudsman) and NGOs. Activities envisaged include the development of a library and human rights data base, undertaking research, and holding seminars, lectures and debates on human rights issues. The idea is that, while supported by government (and presumably by a continuation of international funding) the Centre would maintain its independence and establish links with similar institutions in other countries.

At present, the Centre operates under the overall direction of a steering committee comprising representatives from the Government Office for Human Rights, the Ministry for Foreign Affairs, the universities, the Helsinki Committee for Human Rights and two other NGOs, and the OHCHR. Based on discussions with most of those involved, the current initiative for the centre appears to enjoy strong support from both the Government Office for Human Rights and the United Nations OHCHR. One noticeable absence is that of the Ombudsman, who was not invited to serve on the steering committee. Different explanations were offered for this omission, including opposition from government and at least some NGOs. Regardless of the reasons, it is unfortunate that the Ombudsman remains a non-participant in this endeavour.

A meeting with the two senior staff people at the Centre suggests that it is being run with energy and commitment. There is optimism that it will develop into a first class facility and a “neutral” territory where substantive human rights issues can be analysed and debated in a productive way. There is also hope that it will help to break down barriers that have traditionally existed in Croatia between government and civil society and have hampered past efforts to advance human rights in the country.

IV Observations and Conclusions

1. Since gaining independence, the Republic of Croatia has taken a number of steps to ensure respect for human rights within the country. Democratic institutions are in place and the Constitution contains a detailed listing of many human rights and fundamental freedoms. Legal safeguards for minorities exist and human rights NGOs are active. It would be premature, however, to claim that human rights are fully realized. Significant challenges remain in a country which is still recovering from the after-effects of a war characterized by severe ethnic tensions and widespread dislocation of population.

2. The Office of the Ombudsman has already contributed to the advancement of human rights in Croatia and can continue to do so. As an independent institution reporting to Parliament, it is in a unique position to ensure a degree of transparency and accountability in the administration of public services. In this context, it is important that the Government should view the Ombudsman as an ally in advancing human rights rather than as an adversary. It is; of course, always open to the Government to express

its disagreement with particular findings of the Ombudsman. It is important, however, that such disagreements do not descend into disparagement of the Office.

3. The Office of the Ombudsman is generally said to be respected, but this respect sometimes appears to be ‘pro forma’ rather than real. Examples can be found in the continuing failure by some government agencies to respond in a timely way to requests by the Ombudsman for explanations or to resolve problems identified by his Office. Notwithstanding improvements noted by the Ombudsman in his 2002 annual report, there is an apparent reluctance in some areas of public administration to attribute to his Office any additional authority beyond that possessed by other interveners. This pattern, particularly when viewed together with the dismissive tenor of certain responses to the Ombudsman, is a cause for concern.

4. There is an adequate basis in the current law for the Ombudsman to act as a “Human Rights Ombudsman”. But there appears to be a lack of consensus on his mandate in this regard and consequently a need for clarification. While the Ombudsman’s authority to investigate individual complaints is not contested, his authority to issue more general assessments of the government’s performance measured against human rights standards has been challenged by political representatives and appears not to be conceded by the Government Office for Human Rights.

5. The Law on the Ombudsman is now more than 10 years old and needs updating and strengthening to take into account developments elsewhere in Europe and internationally. Examples of agencies with clearer human rights mandates can be found in the immediate region. A reference point for future legislative change is also to be found in the *Principles on National Human Rights Institutions (the Paris Principles)* adopted by the United Nations General Assembly in 1993.

The Paris Principles serve as the most widely accepted benchmark for national human rights institutions. The Office of the Ombudsman in Croatia already conforms to a number of these principles. (For example, it is entrenched in the Constitution and its independence from government is guaranteed.) The principles also suggest that the mandate for such bodies should be as broad as possible, empowering them to investigate human rights violations at their own initiative or upon receipt of a complaint; to be responsible for promoting human rights through education and other initiatives; to give advice to the executive and/or the legislature; to promote harmonisation of national legislation with international human right norms; and to contribute, as an independent body, to its country’s reports on the implementation of international instruments. Legislative amendment would be needed for the Ombudsman’s authority to extend to certain of these areas.

6. The Office of the Ombudsman in Croatia is significantly under-resourced for the responsibilities it is expected to discharge, particularly when compared to the levels of

funding of similar agencies in other countries.⁶ It should be funded to a level that enables it to maintain at least a modest structure of regional or satellite offices. The fact that it has not been able to move to accommodation in Zagreb that is more suited to its function as an agency that must deal on a daily basis with members of the public is unfortunate. Also troubling is the fact that the Office has been dependent on the help of overseas donors to acquire essential office equipment, including a (yet to be installed) web site.

7. In investigating complaints, the Ombudsman appears to rely primarily upon written communications with government officials and Ministries. This should be supplemented with other techniques including field investigations. The European Ombudsman-Institute has pointed to the advantages of using mediation as an alternative approach, and this is a further possibility that could be explored for use in appropriate cases.

8. The Ombudsman would benefit from a more active communications approach. Consideration should be given to holding additional media interviews and background briefings. These could be used both to highlight particular issues or policies and to enable the media to gain a better understanding of the work of the Ombudsman. There would also be value in more regular dialogue with Parliament, either through additional appearances before Parliamentary committees or by submitting additional reports focused on specific issues. Representatives of Parliament indicated that they would welcome such dialogue.

9. The Office of the Ombudsman in Croatia today appears to be an organisation under stress. Over an extended period and with modest resources, the current management team has had to deal with highly contentious and often intractable issues affecting the lives and well-being of citizens. The present Ombudsman has been in office for almost seven years; all the Deputy Ombudsmen have served for more than six years. Given these factors, it would be surprising if a degree of organisational tiredness had not developed. This is not intended as a comment on any individuals but rather a suggestion that eight-year terms of appointment are excessive by comparison to the terms of four or five years more commonly found for ombudsmen in other countries.

10. At least in the short term, the credibility of the Ombudsman appears to have suffered as a result of recent controversies, most notably the dispute over criticisms of the government contained in its 2001 annual report and its apparent change of stance on Roma education policy. The dispute over aspects of the 2001 annual report seem, to an outside observer, to have involved an overreaction to statements which might have been

⁶ Comparisons between countries can be misleading. But the strong impression gained as a result of reviewing resource levels, including the number of employees, of human rights ombudsmen in South-Eastern Europe suggests that the Ombudsman for Croatia compares unfavourably with institutions in Slovenia and Bosnia-Herzegovina. In addition to having much higher levels of funding, the ombudsmen in each of these countries are able to maintain a network of regional offices – a feature important for ensuring the Office's accessibility to all citizens.

more judiciously expressed but which did not differ in kind from those routinely offered by independent human rights agencies.

11. Pending changes to the Law on the Ombudsman, the office would benefit from assistance in capacity-building. In this regard, various avenues could be explored, including the European Commission, the European Ombudsman-Institute, the International Network of National Human Rights Institutions, and the Human Rights Co-operation and Awareness Program operated under the Stability Pact for South East Europe.

12. Legislation to establish a Children's Ombudsman is currently before Parliament. There are also proposals to establish an Ombudsman to deal with Women/Gender issues. Both these initiatives are commendable and should serve to focus additional attention on important human rights issues. However, it is important that any such new Ombudsmen should not result in a fragmentation or duplication of the Ombudsman function in Croatia. Considerations of cost and efficiency suggest that any new Ombudsman should constitute a specialized unit within the Office of the Ombudsman rather than a separate institution.

13. The Government Office for Human Rights can perform an important function in advancing human rights within government and co-ordinating government initiatives. However, it is viewed in some quarters as a vehicle intended to marginalize the Ombudsman. In view of the fact that the Office now carries a substantial caseload of complaints and that the anticipated human rights status reports from the county co-ordinations will be administered through the Government Office, such an impression is likely to persist.

14. Finally, a cumulative impression gained from meetings with a wide range of interlocutors is that there is a serious lack of communication among institutions and groups within Croatia which should share a common interest in the advancement of human rights. There is virtually no dialogue between the Ombudsman and the Government Office for Human Rights. Current plans to develop the Human Rights Centre appear to have excluded the Ombudsman. On the government side the important recent initiative to establish a Children's Ombudsman appears to have proceeded without consultation with the Ombudsman. For human rights to move ahead in a meaningful way, this pattern of isolationism must be changed.

Recommendations

1. The Government should review the current budget for the Office of the Ombudsman with a view to increasing funding to more appropriate levels. This review should be undertaken by, or in collaboration with, an independent assessor. The Ombudsman should be fully consulted at each stage of the review. The resources to be

allocated should be sufficient for the Ombudsman to establish a presence in major population centres outside Zagreb and to strengthen its analytical capacity.

2. The Ombudsman should ensure that it has in place strategic and operational plans that would serve as an input into the resource review proposed under #1 above. (It is not realistic to expect a government to allocate significant amounts of new resources without a clear explanation of how these will be spent.)

3. The Government, if necessary with support from the international community, should allocate funding to support a short-term (3-6 months) capacity-building program for the Office of the Ombudsman. This could address such matters as structure/organisation, planning and the use of alternative operational techniques including on-site investigations and mediation. It would tie in well with #1 and #2 above.

4. The Government should ensure that the Ombudsman is provided with office accommodation better suited to its function as a complaints-receiving agency meeting with the public on a daily basis. The location should be chosen with due consideration to the availability of public transportation and should be fully accessible to persons with disabilities. The need for new accommodation is urgent.

5. The Government should review the current Law on the Ombudsman with a view to strengthening the human rights mandate of the Ombudsman. Such a review should include meaningful consultation with human rights and minorities groups, and with the Ombudsman. Any new legislation should be drafted with due consideration to the Paris Principles for National Human Rights Institutions. Specific changes to the law that should be considered include: changing the name to Human Rights Ombudsman (an important symbolic change); reducing the term of appointment to a shorter period of 4 or 5 years, with a possibility of re-appointment; and requiring that due consideration be given to ensuring the representation of ethnic minorities when selecting an Ombudsman or Deputy Ombudsman.

6. The proposed Ombudsman for Children, and any other specialised ombudsman to be created, should operate as part of the existing Office of the Ombudsman rather than as a separate and parallel organisation.

7. The Ombudsman should adopt a more proactive approach to communications. This should include more frequent meetings with Parliament, media interviews, briefings and press releases.

8. The Ombudsman should participate more fully in regional and international networks of similar human rights agencies. The office has participated in some regional meetings, but it would benefit from an increased opportunity to exchange ideas and experiences with similarly placed agencies. (It is recognised that this may require additional funding. But if there is a genuine interest in this activity, sources of funding can often be found.)

9. The Government Office for Human Rights should examine its ombudsman-like function in response to complaints received and consider referring such complaints to the Ombudsman. At a minimum the two agencies should exchange information to ensure that there is no overlap or duplication of responsibilities. The Government Office should also establish a regular schedule of meetings with the Ombudsman. Such meetings would be valuable for the exchange of information between two agencies with human rights mandates. The Ombudsman could alert the Government Office to trends or particular problems he is encountering with Ministries. The Government Office should be prepared to advise the Ombudsman of planned Government initiatives in the human rights field and, where appropriate, seek comments or advice from the Ombudsman. It is believed that such meetings would not compromise the independence of the Ombudsman.

10. The Government Office for Human Rights should take steps to ensure that there is a wider understanding of the precise role and status of the county “coordinations” that have recently been established and which are expected to provide report cards to the Office on human rights protection in their areas.

11. The Human Rights Centre should continue to be supported. It can play a useful part in helping to advance public understanding and acceptance of human rights principles. The Ombudsman should be invited to join the Centre’s steering committee.

Appendix 1

List of Documents Considered:

1. Constitution of the Republic of Croatia, as amended 15 April, 2001.
2. Law on the Ombudsman of the Republic of Croatia, 25 September, 1992.
3. Decree Establishing Governmental Office for Human Rights, 22 February 2001.
4. Ombudsman Annual Reports – for 1999 and for 2001 (in full) for 2000 and 2002 (excerpts).
5. Government of Croatia Report on the Status of Human Rights- 2002
6. EC Second Report on Implementation of the Stabilization and Association Agreement with Croatia
7. US State Department Report on Human Rights in Croatia for 2002
8. Budget overview for Ombudsman Office for years 1995-2003
9. System of Bodies for The Exercise of Human Rights in the Republic of Croatia (Government of Croatia Office for Human Rights, 2002)
10. National Policy for the Promotion of Gender Equality (Govt. of Croatia Commission for Gender Equality, Office for Human Rights and State Institute for the Protection of Family, Maternity and Youth, 2003)
11. Excerpts from OSCE Mission Bi-weekly reports and miscellaneous briefing notes.
12. Croatian Judiciary: Lessons and Perspectives (Croatian Helsinki Committee for Human Rights and Netherlands Helsinki Committee, 2002)
13. Independence and Impartiality of the Croatian Judiciary (International Commission of Jurists, Croatian Helsinki Committee for Human Rights, and Croatian Law Centre, 2002)
14. Human Rights Commissions and Ombudsmen Offices: National Experiences throughout the World (Kluwer Law International, 2000)
15. Marta Vidaković-Mukić, Specific Problems Encountered in Strengthening Ombudsman Institutions in South East Europe: The Particular Challenges for Countries in a Post-Crisis Situation
16. Principles Relating to the Status of National Institutions for the Promotion and Protection of Human Rights (the Paris Principles). Adopted by the UN General Assembly (Res.48/134. 20 Dec.1993)
17. Minority Rights in the Republic of Croatia (Croatian Helsinki Committee, September 1999)
18. A number of web sites were also visited to obtain information on human rights ombudsmen in other selected countries, including Sweden, Slovenia, Bosnia-Herzegovina, etc.

Appendix 2

List of the persons/institution met with during the visit to Croatia from 23 April- 4 May 2003:

1. Ante Klarić - Ombudsman
2. Zeljko Thür - Deputy Ombudsman
3. Branko Tinodi – Deputy Ombudsman
4. Marta Vidaković- Mukić- Deputy Ombudsman

Governmental Officials:

5. Dr. Ante Simonić - Deputy Prime Minister for Social Affair and Human Rights
6. Darko Göttlicher – Head of the Governmental Office for Human Rights
7. Zdravko Stojanović - Assistant Minister, Head of Department for the International Legal Aid , Co-operation and Human Rights, Ministry of Justice
8. Lovre Pejković - Assistant Minister, ODPR (Office for Displaced Persons, Expellees and Refugees), Ministry of Public Works, Reconstruction and Construction
9. Andrea Feldman - Advisor for Human Rights and Civil Society, Ministry of Foreign Affairs

Members of Parliament:

10. Mato Arlović – Deputy Speaker of the Parliament, President of the Committee for Constitution, Standing Orders and Political System
11. Josip Leko - President of the Committee for Legislation
12. Nenad Stazić

Academics:

13. Prof. dr. Siniša Rodin- LL.M., Department of the Constitutional Law Faculty of Law, University. of Zagreb

Human Rights NGOs/ minority representatives and individual lawyers:

14. Žarko Puhovski – President, Croatian Helsinki Committee
15. Zoran Pusić – President, Civic Committee for Human Rights
16. Tin Gazivoda – Coordinator, Human Rights Center
17. Mirjana Radaković- Head of Information and Research Department, Human Rights Center
18. Ramiza Memedi – President, Roma Women Association ‘Better Future’
19. Ivan Pandža – President of the City of Zagreb Branch, HVIDRA (Croatian Homeland War Military Invalids Association)

20. Milorad Pupovac – President, Serb National Council
21. Tomo Aračić – President, ZUNH (Croatian Settlers Union)
22. Lovorka Kušan - independent lawyer

Media representatives:

23. Tihomir Ponoš – Vjesnik
24. Veronika Rešković – Jutarnji List

Ambassadors:

25. H.E. Mr. Dennis Snider, Canadian Embassy
26. H.E. Mr. Knut Tøraasen, Norwegian Embassy

Visit to Karlovac area:

27. Čakić returnee family in Popović Brdo
28. Borislav Kasljević - the Bosnian Croat settler from Plaški municipality, head of the local Bosnian Croat community
29. Gaza Collective Center for refugees
30. Roma settlement in Orlovac

OSCE Mission to Croatia:

- Peter Semneby- Head of Mission,
- Todd Becker - Deputy Head of Mission
- Mary Wyckoff - Head of Rule of Law unit
- Axel Jaenicke - Head of Return and Integration unit
- Kevin Steeves - Political Officer
- Tom Timberman - Head of Civil Society and Project Management unit
- Andrey Kandybko – Head of Field Office Karlovac and various other members of the Mission

Officials of the United Nations Office of the High Commissioner for Human Rights (Geneva) – telephone interview and e-mail communications.

Appendix 3

List of the persons/institution met with during the follow-up visit to Croatia from 4-6 June 2003:

Ante Klarić - Ombudsman
Marta Vidaković- Mukić- Deputy Ombudsman

Governmental Officials:

Dr. Ante Simonić - Deputy Prime Minister for Social Affair and Human Rights
Darko Göttlicher – Head of the Governmental Office for Human Rights

Members of Parliament:

Josip Leko - President of the Committee for Legislation

President's Office:

Professor Igor Dekanić, Domestic Affairs Adviser to the President of Republic of Croatia

Professor Smiljko Sokol, President of the Constitutional Court

Kishore Mandhyan, Head of United Nation Liaison Office

Ambassador Jacques Wunenburger, Head of the European Commission Delegation

Appendix 4

Zagreb, 25 April 2001

President
of Committee for Constitution, Standing Orders
and Political System of the Croatia Parliament
Mato Arlovic, M.Sc., signed

CONSTITUTION OF THE REPUBLIC OF CROATIA (Cleared text)

Article 92

The Ombudsman shall be the commissioner of the Croatian Parliament protecting the constitutional and legal rights of citizens in proceedings before the state administration and bodies vested with public powers.

The Ombudsman shall be elected by the Croatian Parliament for a term of eight years.

The conditions for the election and relief of duty, scope of activities and mode of work of the Ombudsman and his deputies shall be regulated by law.

The protection of constitutional and legal rights of citizens in the proceedings conducted by the Ministry of Defence, armed forces and security services, protection of the rights of citizens before the bodies of local and regional self-government, as well as protection of the right to local and regional self-government before the bodies of state authority shall be provided within the framework of institution of the Ombudsman.

Zagreb, December 22, 1990:

Article 93

An Ombudsman, who shall be a commissioner of the Croatian Parliament, shall protect the constitutional and legal rights of citizens in proceedings before government administration and bodies vested with public powers.

The ombudsman shall be elected by the Chamber of Representatives for a term of eight years.

Conditions for the election and relief of office and the mode of work of the ombudsman and his deputies shall be regulated by law.

Appendix 5

LAW On The Ombudsman

I. GENERAL PROVISIONS

Article 1

The law regulates the scope, manner of work, conditions for election and the dismissal of the ombudsman and his deputies.

Article 2

The ombudsman is independent and self-reliant in his or her work. Nobody can give him or her instructions or order in his work.

The ombudsman functions within the framework of constitutional and legal regulations and international legal acts on human rights and freedoms adopted by the Republic of Croatia.

The ombudsman is obligated in his work to follow the principles of equality and morals.

Article 3

The ombudsman is chosen and dismissed by the House of Representatives of the Parliament of the Republic of Croatia.

The ombudsman has three deputies.

The deputy ombudsmen are chosen and dismissed by the House of Representatives of the Parliament of the Republic of Croatia upon the proposal of the ombudsman.

The ombudsman and his deputies are elected for a term of eight years and are eligible for re-election.

Article 4

While performing the tasks in his jurisdictions, the ombudsman can request assistance of scientists and experts from universities, institutes and similar institutions, and they are obligated to offer the requested assistance within an appropriate time period.

The ombudsman has a professional function.

II. JURISDICTION AND MANNER OF WORK

Article 5

The ombudsman examines individual cases of civil rights violations committed by organs of the state authorities, bodies with public authority, or officials in those organs or bodies during the execution of their duties in their jurisdiction.

The ombudsman also examines other questions of interest to the protection of constitutional and legal rights which are based on other media sources (via the mass media), and relate to the irregular work of the organs and the bodies from Paragraph 1 of this Article.

Article 6

The ombudsman, by rule, does not deal with cases under legal or other proceedings.

Article 7

The ombudsman warns, informs, suggests and gives recommendations.

If he determines that a violation of rights with elements of a criminal act, an offence or a violation of working discipline has occurred, the ombudsman can recommend the initiation of criminal, misdemeanour or disciplinary proceedings.

The organs of the state authority and the body of the public authority must immediately, i.e. within a period of 30 days, inform the ombudsman about the undertaken measures related to his warning, suggestion or recommendation.

If the organs and the bodies from Paragraph 3 of this Article do not undertake such measures within the designated time period as requested by the ombudsman or they fail to act according to his recommendations, the ombudsman will inform the Parliament of the Republic of Croatia and the public about those violations.

The ombudsman can inform the public about his warnings, notices, suggestions, recommendations, and reports through the media which are obligated to report about it.

Article 8

The ombudsman shall submit a report to the Parliament of the Republic of Croatia annually.

In his report, the ombudsman shall report the information he collected regarding the degree the constitutional and legal rights of the citizens are respected.

Article 9

In the event of a violation of a higher degree in issues of interest to the protection of constitutional and legal rights, the ombudsman can submit a report to the Parliament of the Republic of Croatia and the authorized Ministry in addition to the annual report.

Article 10

The ombudsman can initiate the Parliament of the Republic of Croatia to bring changes to a law connected to the protection of constitutional and legal rights of the citizens.

Article 11

The ombudsman shall have access to all the data and information and has the right to access all the documentation of the authority of the Republic of Croatia, and all the acts of the organs of the state authority and the bodies with public authority and even to those which were decided upon based on the rights of discretion, regardless of the level of their confidentiality. The regulations on maintaining the confidentiality bind the ombudsman and his deputies even upon the termination of the service.

The organs of the state authority and the bodies of public authority are obligated to provide the ombudsman with access to information and documentation referred to in Paragraph of this Article, as well as to offer any other form of assistance as requested by the ombudsman.

The officials in the organs of the state authority and the bodies of legal authority are obligated to co-operated with the ombudsman and on his request submit reports and respond to the questions posed to them.

III. PROCEDURAL PROVISIONS

Article 12

The ombudsman shall investigate the individual violations of the constitutional and legal rights of citizens, the neglect or other irregularities in the work of the organs of the state authority or the bodies of public authority on his own initiative or on the request of a citizen.

Everyone has the right to file a grievance to the ombudsman whether the violation of the constitutional and legal rights of the citizens caused direct injury to the citizen or not, and the ombudsman shall freely decide If he shall take the grievance into consideration and in which capacity.

Article 13

There is no fee for filing a grievance to the ombudsman.

Article 14

When the ombudsman completes proceedings initiated at the request of citizen, the ombudsman must inform the submitter of the grievance about the actions undertaken. The ombudsman must submit an opinion in regard to the violation of the constitutional authority, including a warning, suggestion, or recommendation.

Article 15

The ombudsman can at any time inspect correctional institutions and other institutions in which there is a restriction of movement. The ombudsman has the right to gain access and examine all the rooms in those institutions.

After the inspection, the ombudsman, if necessary, shall compile a report which he shall submit to the organ supervising those institutions. If the report includes objections to the work of the institution, the supervising organ shall immediately, within thirty days, inform the ombudsman about measures undertaken in regard to the report.

IV. THE ELECTION AND DISMISSAL OF THE OMBUDSMAN

Article 16

To be elected ombudsman, the individual must be a citizen of Croatia, a graduate lawyer, with at least 15 years of working experience in the legal profession, distinguishing themselves in that profession, and known to the public for this personal commitment in the field of the protection of human rights.

Article 17

Before taking office, the ombudsman and his deputies must be sworn in before the House of Representatives of the Parliament of the Republic of Croatia.

The oath states:

“I pledge to abide by the Constitution and the law in my work and that I will respect the legal order of the Republic of Croatia and that I will perform my duty in a legal, honourable and conscientious way.

Article 18

To be deputy ombudsman, the individual must meet the conditions mentioned in Article 16 of this Law.

Article 19

The ombudsman and his or her deputies shall be dismissed before the expiration of the term for which they were elected if:

1. they tender a resignation which is accepted by the House of Representatives of the Parliament of the Republic of Croatia;
2. they lose their Croatian citizenship;
3. if the House of Representatives of the Parliament of the Republic of Croatia decides so.

V. THE TRANSITIONAL AND CONCLUDING PROVISIONS

Article 20

The ombudsman shall adopt the rules of procedure of his work, which stipulates the organization and the conduct of work, which shall be confirmed by the House of Representatives of the Parliament of Republic of Croatia.

Article 21

The funds for the work of the ombudsman, his deputies and expert service are provided from the budget of the Republic of Croatia.

Article 22

This Law goes into effect eight day after it is published and in the “National Gazette”.

Class: 713-02/92-01-08
Zagreb, September 25, 1992

HOUSE OF REPRESENTATIVES OF THE
PARLIAMENT OF REPUBLIC OF CROATIA

Speaker of the Croatian Parliament
House of Representatives

Stjepan Mesić