



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

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GENERAL BACKGROUND

The Government of Croatia Renews its Commitment to Fulfil its OSCE Mandate Obligations in the Context of EU Accession

The principal political event of the reporting period July-November 2005 was the EU Council of Ministers' decision on 3 October to open accession talks with Croatia. The decision followed the conclusion pronounced the same day by the ICTY Chief Prosecutor that for the past few weeks, Croatia had been "cooperating fully" with the Tribunal.

In her positive assessment of Croatia's cooperation, the ICTY Chief Prosecutor expressed her confidence that if Croatia continued with the "same resolve and intensity", fugitive ex-General Gotovina, who was according to her sources, either in Croatia or in Bosnia and Herzegovina, would soon be transferred to The Hague. The EU Council confirmed that "sustaining full cooperation with the ICTY would remain a requirement for progress throughout the accession process".

The Government, which had focused its resources since the postponement of the talks in March in achieving full cooperation with the ICTY, celebrated the event. Prime Minister Sanader said that "it has been fully acknowledged that Croatia is a mature democracy". All Croatian parliamentary parties believed that the decision was of historic importance but agreed that the negotiations would be a difficult phase. Public support to the EU accession, which had been remarkably low for the past six months, jumped to a higher level. The decision is expected to provide the Government with an additional incentive to further pursue the fulfilment of the OSCE mandate.

The ICTY further demonstrated its confidence in Croatia by the formal transfer of the Norac-Ademi case to the Croatian judiciary on 1 November. The ICTY cited Mission monitoring as one factor supporting its decision. Positive developments were also noted with renewed investigation of murders of Serb civilians during the war in the Osijek area, although a significant number of such cases remain un-prosecuted. Inter-state judicial cooperation continues to gain ground, although largely on a case-by-case basis at present.

The Capacity of Institutions and Civil Society to Address Outstanding Issues is Increasing

The progress noted by the ICTY is consistent with the Mission's perception of the growing maturity of the Croatian democratic institutions in general. In some areas covered by the mandate, there are signs that the domestic institutional framework and the civil society are gaining confidence in addressing the outstanding issues.

In early July, the adoption by the Government of the Croatian Road Map on refugee return represented an essential step forward in the regional process initiated by the Sarajevo Declaration signed on 31 January by Bosnia and Herzegovina (BiH), Croatia and Serbia and Montenegro (SaM). In September, the appointment of the former mayor of Pakrac, known for his positive record on return and reconstruction, as new head of the Office for Displaced Persons and Refugees has been interpreted as a sign that the resolution of refugee issues could regain momentum. Although adequate solutions for the numerous former holders of occupancy and tenancy rights (OTR) remain largely unimplemented and legal questions

remain open, the repossession of formerly occupied Serb property is nearing completion and reconstruction is also progressing well.

Following the May local elections, many local councils and assemblies faced crises due to attempts of different parties and coalitions to shift the balance of power through post-electoral deal-making, changing of sides or resignation of local councillors. A complaint was filed by GONG, the leading NGO on elections, against a late July Government instruction choosing the 2001 Census, instead of the current voter lists, as a reference for the calculation of minority quotas in local assemblies. To prevent drawn out post-local election bargaining and manipulation of future election results, the Government forwarded to Parliament a draft law to establish the direct election of mayors and county prefects. It also confirmed its commitment to engage in a more ambitious and open electoral reform process by forwarding a key draft law on the establishment of a permanent election commission through normal Parliamentary procedures, thus allowing more time for public debate.

The indictment by the ICTY of journalists for contempt who had published the identity and testimony of a protected witness triggered a public media debate on the need to strike a balance between media freedom, responsibility and observance of rule-of-law principles. The Government continues its preparation of amendments to existing media laws, while the process of election of five Croatian Radio and Television (HRT) Programme Council members (whose mandate expired in October) sparked a debate among media about possible attempts by the ruling majority to regain control of the public HRT. The control of local media by local authorities and the concentration of media power in the hands of a small number of owners remain issues of concern. Conversely, the Law on Access to Information has by and large functioned well.

During the summer there has been an ongoing effort to improve police effectiveness through amendments to the Law on Police. General police reform, however, needs to focus on greater administrative and operational decentralization. A further step would be the revision of the overall human resource management system. The community policing concept still remains to be better recognized and implemented on a larger scale.

The legislative framework to consolidate the general contribution of civil society is still undergoing preparation amid a turbulent but healthy public debate. While official financial support is readily given to cultural, social and humanitarian associations, it continues to be more difficult for human rights and civic NGOs, which play an important role in the democratic evolution of the society, to find access to public funding and to government offices. The establishment, with government financial support, of the UNHCHR initiated Human Rights Centre in Zagreb as a public institution promises, however, to provide an institutional and physical centre for advocacy NGOs in Croatia.

The commemoration of the tenth anniversary of Operation Storm on 5 August revived internal debates about the conduct of the war. Although both the Croatian President and the Prime Minister insisted that the operation was fully legitimate, they also officially recognized, in an important step, that war crimes were committed on the Croatian side during the operation.

Since the beginning of the year the media has regularly reported an apparently increasing number of ethnic incidents. Although there is no specifically elaborated legal definition of what constitutes such an incident, due to the lack of specific legislation on hate speech and

hate crime, Mission analyses indicate that there are at least as many, if not slightly more, ethnically motivated incidents as compared to last year. In most instances, local authorities failed to condemn the incidents.

The implementation of the legal framework on the rights of national minorities continues to be slow in some key areas, in particular when it pertains to the representation of minorities in the State administration, the police and judiciary. However, these guaranteed rights are often under-utilized by national minorities themselves.

Evolution of the Role of the Mission

The visit of Prime Minister Sanader to the Mission headquarters in June, which gave a new impetus to the partnership between the Mission and the Government, was followed in early October by President Mesic's participation in the 30th anniversary of the signing of the Helsinki Final Act launching the Conference on European Security and Cooperation. The President expressed his support for the work of the Mission, saying that "Croatia appreciates the role the OSCE ...continues to play on its territory as well as in the wider region". He also confirmed that the time of monitoring was nearing an end, adding however that cooperation with the OSCE would not diminish but rather acquire new frameworks and a new quality.

The Mission also continued implementing its policy of dialogue during the reporting period with the participation of the ministers of Foreign Affairs and European Integration, of Culture and of Justice, at its extended morning meetings. These invitations have contributed to raising the visibility of the work of the Mission and will continue on a regular two-per month basis.

In the period of partnership and cooperation which lies ahead, the primary objective of the Mission will be to continue to monitor critical mandate-related issues and to accompany the Government to the point where the internal mechanisms of checks and balances will make it possible for Croatia to fully assume the final steps regarding the completion of the mandate.

REFUGEE RETURN

Mission policy continues to be to see the Government establish those political, legal and practical conditions which will permit all refugees who wish to return to Croatia to do so with a sense of assurance that they may resume a normal life in their home of choice.

As of 30 September 2005, 122,000 out of 300,000 Croatian Serbs¹ and 218,000 of 221,000 ethnic Croats² who were involuntarily displaced during the armed conflict have been registered as having returned to their places of origin in Croatia. Although there are no indications that a massive return of Croatian Serb refugees will take place in the next two years, the current return pace (some 8,000 returnees per year) would probably increase if the Government pursues an energetic implementation of housing care programmes for former OTR holders since housing is one of the main conditions for return. The rate of sustainability of return ranges at less than 60 per cent for various reasons including lack of access to

¹ UNHCR data

² Office for Displaced Persons and Refugees data

adequate housing, destroyed infrastructure and poor economic conditions in war affected areas. Humanitarian assistance to the returning populations remains an imperative due to their vulnerable conditions and particular demographic profile. According to UNHCR, a total of 110,000 refugees originating from Croatia remain registered with the Serbia and Montenegro (103,000) and Bosnia and Herzegovina (7,000) authorities.

Status of the Sarajevo Process on Regional Refugee Return

The Ministerial Declaration on Refugee Return, which was signed by Bosnia and Herzegovina, Croatia, and Serbia and Montenegro at the Regional Conference held in Sarajevo on 31 January 2005 with the aim of resolving the remaining refugee issues through a concerted regional approach, should provide impetus to removing the remaining obstacles to return to and within Croatia. The Ministerial Declaration foresaw the adoption of national Road Maps that are supposed to contain concrete benchmarks as well as the financial commitments for their implementation, and the development of a joint regional matrix in which the national plans shall be unified.

The Government officially shared its draft Road Map on refugee return with the UNHCR Representation, EC Delegation and OSCE Mission and adopted it at its 14 July session. Subsequently, at a meeting between the principals of the three organizations and the Minister of Maritime Affairs, Tourism, Transport and Development held on 20 October the Government agreed to include some of the benchmarks proposed by the international community partners. More specifically these refer to: a) an ameliorated explanation of implementation timeframes and financial commitments in regard to the housing care programmes for former OTR holders; b) remedies for properties that were devastated while under State administration; c) creation of a legal framework for local integration of refugees of non-Croatian ethnicity³, and a uniform set of criteria for the cessation of refugee status. In regard to other issues which were suggested by the international community (IC) such as validation of working years spent in former occupied areas, regularization of status upon return and claims for unsolicited investments in occupied properties, the Government announced on 28 October in the third Task Force meeting of the Sarajevo Declaration that those issues would not be included in the Croatian Road Map. A final position will be discussed in the course of the forthcoming meeting of the Task Force, which will take place on 17 November in Budva, Serbia and Montenegro. This meeting should prepare the ground for the Ministerial Conference of the three Governments where the respective Road Maps and the Regional Operational Matrix will be put forward for adoption in accordance with the Sarajevo Declaration.

During the reporting period, Croatian NGOs expressed interest in their participation in the implementation of the Sarajevo Declaration. Discussion about their role in the process officially started at the meeting of the Open Forum for Legal Aid Provider NGOs at the end of September, and then continued at its November meeting. Participants agreed to appoint representatives with the mandate of articulating NGOs' common positions about the Sarajevo process.

³In cooperation with the BiH authorities and UNHCR, the Ministry is implementing a programme under which the remaining refugees under temporary protection in Croatia could choose whether to return to their country of origin or be locally integrated by the end of June 2006.

Access to Housing

Former holders of occupancy/tenancy rights (OTR) who lived in socially owned flats remain the largest refugee and IDP (internally displaced persons) category lacking access to housing⁴. Housing solutions adopted by the Government in 2000 and 2003 for former OTR holders who used to live in socially owned flats have only just begun to be implemented, and only in very limited numbers. On the positive side, the property repossession process should be completed in the first trimester of 2006, with the exception of a handful of cases pending before the judiciary, and measures adopted in order to remedy various deficiencies will be implemented through the whole year. The administrative process for handling reconstruction at all levels is in place and is functioning reasonably satisfactorily so that most claims for reconstruction should be completed by the end of 2006 and physical reconstruction should be completed in the course of 2007.

Access to housing for former OTR holders

It is estimated that up to 30,000 Croatian Serb households, who used to live in former socially owned apartments, lost their rights as specially protected tenants and physical access to their homes, in the course of and after the war. This is the largest remaining refugee and IDP category still without a housing option in practice. So far 11,275 applications from individuals belonging to this refugee category have been received by the Government for the two housing care programmes targeting respectively the areas directly affected by the conflict and the main urban centres of Croatia.

Since the beginning of the year, i.e. the period corresponding to the extension of the application deadline for OTR holders, more than 1,000 applications have been filed for housing care programmes in the urban areas of Croatia. The significant increase in the rate of applications shows that there is still a strong interest in return among the displaced refugee population provided satisfactory conditions for return are in place. This also comes as a result of increased public awareness efforts by the Government and NGOs in order to promote the housing care programmes in SaM and BiH and to defer the lingering scepticism among potential applicants. Nevertheless, a forceful implementation of the housing care programmes would reinforce the displaced populations' trust in the Government's true commitment.

For a second time, as in the case of the previous 30 June deadline, the agreement between the Ministry and the IC to provide housing to a first group of eligible former OTR holders in the urban areas of Croatia before 30 September was not met. After the IC confirmed that it would not ask for another extension of the application deadline, the responsible Minister committed on 28 September to start resolving, by the end of October, the first group of cases belonging to a list of 41 humanitarian cases provided by the IC. The Government also reiterated its intention to fully exploit the budget line of 44 million HRK expressly devoted to the purchase of 500-600 apartments to be allocated to eligible housing care applicants. As of early November around a dozen of the cases belonging to the list of 41 have been resolved by the Ministry both inside and outside the areas of special state concern (ASSC) i.e. the war-affected areas.

⁴ According to the UNHCR there are currently 43,283 former OTR holders from Croatia who are registered as refugees or war affected persons with the Serbia and Montenegro authorities.

In hundreds of judicial proceedings, the State continues termination proceedings against persons who never left their OTR flats, and is moving ahead with eviction proceedings⁵ in a manner contrary to established Constitutional Court interpretations. In July 2005, however, the Attorney General instructed local state attorneys to delay seeking enforcement of eviction orders against former OTR holders if they had applied for the housing programme, until such time as housing is physically provided.

The legal issues involved in the termination of OTR are currently being reconsidered by the European Court of Human Rights (ECHR) in a review of the Blečić case which began in September 2005. Regardless of the outcome, it appears likely that the Blečić case will not be the last word on the contentious issue of judicial OTR terminations, as the numerous cases proceeding through the domestic courts present different factual or procedural circumstances that could lead to different legal results.

Reconstruction of residential properties

Since 2003, Croatian Serb applicants have been the main beneficiaries of the State reconstruction programme for residential properties: they account for approximately 70 percent of the 8,200 houses and flats being reconstructed in 2005.

The administrative processing of the pending 6,500 requests for reconstruction and 12,000 appeals proceed according to the pace agreed by the Ministry with the IC and included in the draft Croatian Road Map. During the six month transitional extension of the deadline in 2004, requests for reconstruction were filed almost exclusively by Croatian Serb refugees from abroad.

Concerns still remain over the process of re-categorization of war damage assessment of destroyed properties because this process has often been conducted in a manner contrary to the favourable regulations foreseen by the June 2000 Amendments to the Law on Reconstruction. The Mission and the Ministry have set up a joint monitoring system in order to facilitate a correct war damage assessment of the damaged property. The Ministry has clearly instructed officials working in the State Administration Offices in the field to make a careful preliminary review of requests of re-categorization of war damage in accordance with the Law on Administrative Procedure and Mission suggestions.

The 2003 Law on Responsibility for Damage Caused by Terrorist Acts and Public Demonstrations provides that property owners who in the 1990s sought financial compensation for property damage resulting from terrorist acts should instead seek reconstruction. Because some of these claims involve property that is not eligible for reconstruction, the Ministry has denied the requests. As a result, the property owner has no right to compensation either from the court or the Ministry. The Law's retroactive elimination of such pending civil claims, without any remedy, has been the basis for several complaints against Croatia lodged at the ECHR.

⁵ In a series of decisions starting in 1999, the Constitutional Court ruled that terminations of occupancy/tenancy rights under Article 102a of the Law on Housing Relations on the ground of the OTR holder's participation in enemy activity could only comply with constitutional guarantees if the OTR holder had been subject of a prior criminal conviction. See e.g., Republic of Croatia v. Dragica and Dragomir Miljenovic, Karlovac Municipal Court (request to stop eviction denied late August 2005); Republic of Croatia v. Babić, Split Municipal Court, (eviction scheduled for mid-September 2005 postponed). Other evictions ordered after termination for 6 months absence are similarly pending execution at any time. See e.g., Ministry of Defence v. Jovan Aleksić, Zadar County Court.

Property Repossession

The pace of property repossession slightly increased during the summer due to the self-imposed deadline of the Government to resolve all the outstanding cases by 10 August 2005. Out of a total of approximately 19,500 private residential properties belonging to Croatian Serbs which had been allocated for temporary use before and after 1995, mainly to Bosnian Croats and Croatian settlers, only 338 remain occupied.⁶ The Government should achieve essential completion of the property repossession process by the first trimester of 2006, when the alternative housing for temporary users will be allocated, mainly in the Dalmatian hinterland. Unclaimed occupied properties and cases pending with the judiciary at different stages might remain outstanding long into 2006.

On 22 July 2005, the Government adopted a long awaited conclusion aimed at compensating owners of devastated properties upon repossession through State-organized repair assistance or cash grants. The implementation of the new model has started for the first 145 out of the 600 cases identified so far and the Ministry intends its completion in the first months of 2006. The Mission is working with Government officials on the refinement of the legal and administrative contours of this compensation model. The distortions of the repossession process which still remain to be addressed pertain to the problem of claims against owners filed by occupants for unsolicited investments,⁷ restitution of occupied non-residential properties such as agricultural land and swift and transparent remedies for owners whose property have been sold through false power of attorney without their knowledge.

The compatibility of the legal framework for the return of occupied private residential property with international standards is subject to further scrutiny as the ECHR accepted a second case in 2005 on this question. In *Kunic v. Croatia* the ECHR will examine whether the Government plan and resultant delays in return of property and compensation arrangements starting only in late 2002 violated the right to property.

The Ministry has implemented a policy under which the owner's right to obtain compensation is limited by when the application is received although no such limitation is stated in the Law on the Areas of Special State Concern. Hence, for example, the Ministry denied compensation to an owner in Knin who reposessed his property in September 2005, on the grounds that he submitted the compensation application in December 2004.

Reintegration Issues and Access to Basic Infrastructure

In addition to housing problems, other factors represent disincentives to minority refugee return. Lack of employment and economic opportunities, including lack of adequate representation of minority members in public administration represent serious impediments for the sustainability of return. In addition, appropriate administrative adjustments are still required to redress the persistent denial of recognition of working years (for pension benefits)

⁶ Seventy occupied properties claimed by owners, 135 unclaimed occupied properties, 107 sent to SAO, 26 cases pending before court.

⁷ The MMATTD committed itself in front of the IC on 28 September 2005 in a meeting with Minister Kalmeta to address the issue with the Ministry of Justice and the State Attorney Office in October 2005 in order to find the most suitable legal solution of the problem. On 3 November, the Ministry of Justice claims that so far it has not been contacted.

in the former Serb controlled areas, a practice which is contrary to the Law on Convaledation of 1998.

The Ministry of Interior initiated legal amendments aimed at extending the deadline for renewal of permanently residing foreigners under more favourable conditions beyond 30 June 2005 (having in mind the commitments made under the Sarajevo Declaration on refugee return). The Mission encourages the Ministry to make additional efforts to ensure uniform implementation of the spirit and letter of the Law on Foreigners in order to facilitate the regularization of status for the returning refugees who failed to acquire the Croatian citizenship prior to the time of their fleeing at the beginning of the war.

In some refugee return areas, the persistent lack of access to basic infrastructures such as electrification and water supply undercut dignified living conditions for the returning population. The Government has increased its efforts, both operational⁸ and financial, in the re-electrification of a progressive number of minority return villages that used to be connected to the power grid before the war. At present, the Mission notes that the complete re-electrification of the minority return areas might still take a decade unless more extensive financial commitments are undertaken by the Government. Similar financial and policy commitments are necessary for the adequate establishment of the water supply network to minority return villages⁹.

At the end of 2005, the Ministry for Maritime Affairs, Tourism, Transport and Development (MMATTD) and the Croatian Electric Company (HEP) are conducting a joint project of electrification of minority return villages following requests from the OSCE and EC delegation. In 2005 62.5 million HRK was allocated to the reconstruction of the low voltage network for 3,700 beneficiaries, to be completed by the end of 2005. The HEP has announced the intention to earmark 40 million HRK for the re-electrification of minority return villages for 2006 which should be adequately integrated by additional funds coming from the MMATTD.

In addition, the MMATTD is currently preparing the legal and operational framework for the implementation of programmes in the field of regional economic development and amelioration of the basic infrastructure in the ASSC. A new Directorate of the same Ministry will be created in order to deal *ad hoc* with economic revitalization issues in the ASSC.

A New Working Atmosphere

The improved working atmosphere with the Government was made evident in July with the adoption of the Government's draft Road Map for return, which gave clear definition to the benchmarks to be fulfilled in the field of refugee return. This positive approach was accentuated after the announcement of EU accession talks. One of the most visible results has been the mutual agreement reached between the Minister for Maritime Affairs, Tourism, Transport and Development and the principals of the OSCE, UNHCR, European Commission

⁸ A permanent supervisory board of the Ministry and the Croatian Electric Company (HEP) will monitor the re-electrification of the minority villages outlined by the IC.

⁹ In early November the Mission shared extensively its report "Water Supply Situation in Minority Return Areas" with a wide range of competent Government bodies, local authorities as well as interested bilateral Embassies and Inter-governmental Organizations. The analytical report provides a detailed description of the minority return villages/hamlets whose water supply network needs to be reinstated or adequately repaired in order to create more dignified living conditions.

Delegation and United States Embassy to hold regular monthly meetings, to take stock of progress on refugee return and to jointly focus energies and resources on problem solving. This renewed commitment contrasts favourably to the earlier, less regularized approach in dealing with these issues. Not only the meetings have improved in regularity, but also in substance, and the best reflection is the acceptance from the Croatian authorities of most of the IC proposals.

JUDICIAL REFORM and the RULE OF LAW

Fair Trial and Access to Justice

Several legislative proposals currently under consideration by Parliament could, if adopted and implemented, reduce the sizeable case backlog observed at all levels in Croatian courts that continues to result in large numbers of findings of violations of the right to trial in a reasonable time. These initiatives will be adopted at the earliest in 2006, with their impact felt, however, only after a significant period. New substantive legislation conferring additional jurisdiction on already backlogged courts may, ironically complicate these reform efforts.

While all residents in Croatia are negatively affected by the current situation in the judiciary, the Committee of Ministers of the Council of Europe underscored in late September 2005 that improved capacity and effectiveness of the judiciary was particularly important for protecting minority rights guaranteed by domestic law as well as European conventions.¹⁰ [See Rights of National Minorities].

Parliament in autumn began debating a law to establish a permanent state election commission, which would free judges at both the national and local level of their current time-consuming responsibility for conducting elections [See Electoral Reform Section]. While not explicitly characterized as a judicial reform measure, relieving judges of non-judicial duties should contribute positively to case backlog reduction. Parliament is also considering a new Law on Courts that proposes a solution to the backlog problem reported by the Constitutional Court (CC) in February 2005 that arises from that court serving as the sole adjudicator of all complaints related to delayed proceedings in lower courts. The CC identified this duty as threatening its ability to serve as an effective domestic human rights remedy.¹¹ In late summer, the Ombudsman suggested an alternative solution to the CC's backlog problem, namely that Parliament amend the Ombudsman's statute to give this institution jurisdiction over lower courts related to delays.

¹⁰ Resolution on the implementation of the Framework Convention for the Protection of National Minorities by Croatia, ResCMN (2005), 28 September 2005.

¹¹ Under the draft law, the CC's jurisdiction to decide complaints for violation of the right to trial in a reasonable time would be delegated to all second-instance courts. In the first nine months of 2005, the CC received more than 1,000 complaints alleging unreasonable judicial delays, finding violations and awarding damages in over 60 per cent of the more than 400 complaints decided in that period. In 2005 alone, the CC has awarded nearly 3 million HRK (in excess of €400,000) in damages.

The Mission, with the financial backing of Norway, will continue its support to the Constitutional Court in 2006 for enhanced on-line information that increases transparency as well as public awareness and outreach.

In addition, the Ministry of Justice in September 2005 issued a judicial reform strategy that specifies a number of short, medium and long-term measures to reduce delays. The strategy appears more complete than several prior reform plans, identifying problems and proposing solutions. For the first time, the strategy mentions possible reform of the Administrative Court to address inter alia long-standing fair trial concerns. However, Parliament's expansion of court jurisdiction to address new substantive areas should be harmonized with the overall judicial reform effort. For example, the Law on Access to Information adopted in late 2003 delegated new jurisdiction to the already backlogged Administrative Court. The president of that court has recently commented that the obligation to resolve as a priority access to information complaints would present a significant burden. Amendments to the Law on the State Judicial Council, the body that appoints and disciplines judges, are under discussion. A new draft programme against corruption that includes measures specific to the judiciary was presented by the Minister of Justice in early November.

The Government is currently considering a draft law prepared by the Ministry of Justice with input from the Bar Association, NGOs, and Council of Europe (CoE) experts to establish a general system for the provision of free legal aid in civil and administrative cases.

Underscoring the importance and urgency of the ongoing reform efforts, Autumn 2005 saw a continuation of the previous trend of the European Court of Human Rights (ECHR) issuing repetitive judgments finding violations of the right to fair trial in a reasonable time, access to court, and effective domestic remedies. The ECHR was obliged to consider most of these cases because the Constitutional Court until only recently did not address certain types of violations involving delays and lack of access to court. Of note, in early October the ECHR issued its fifth judgment in 2005 finding excessive delay of nearly four years at the Supreme Court. Significant delays are observed in numerous war crime appeals, particularly in cases where defendants were acquitted or tried *in absentia*.

Rights of National Minorities

Under-implementation of minority protection guarantees from the Government side is arguably matched by under-utilization of the rights from the side of national minorities. Minorities to date have almost exclusively used political means, including the forming of political alliances, to pursue the rights prescribed in the Constitutional Law on the Rights of National Minorities (CLNM) and other laws rather than seeking their enforcement through legal means. The Government has indicated that by the end of 2005 it will issue its first report to Parliament on the implementation of the CLNM, a report prescribed to be submitted on an annual basis.

There has been limited progress in resolving the issue of under-participation of persons belonging to national minorities in the state administration and the judiciary, as well as the executive bodies and administration of self-government units, as prescribed by the CLNM¹². The new Law on Civil Service, as well as amendments to the Law on Local and Regional Self-government recently adopted by Parliament, re-iterate the obligation of government

¹² The CLNM's guarantees appear to apply to only part of public sector employment, and do not extend to "public institutions" such as schools and hospitals.

bodies to implement the CLNM representation guarantees. Local and regional self-government units should develop employment strategies, which based on the current rate of participation of minorities in the workforce, ensure future employment of the appropriate number of national minorities. These two laws make it incumbent upon persons belonging to national minorities to invoke the CLNM themselves during recruitment for government positions¹³, but do not specify how government bodies should facilitate this invocation of rights.

The Committee of Ministers of the Council of Europe (CoE) concluded in late September 2005 that Croatia's monitoring of the levels of minority participation, as well as the implementation of the CLNM's participation guarantees, are yet to be developed, and recommended that the Government pay particular attention to addressing this shortcoming.¹⁴

The Central State Office for Administration contends that in regard to the state administration the CLNM cannot currently be implemented due to the lack of statistics as to the level of minority participation. It would only be implemented when the registry of civil servants, containing data on the national origin of civil servants, becomes operational.¹⁵

However, the existence of statistics on the composition of courts and prosecutors' offices has not to date resulted in the implementation of the CLNM in regard to representation of national minorities in the judiciary. The Ministry of Justice contends that the quantum of minority representation in the judiciary mandated by the CLNM is not self evident, complicating its efforts to design remedial solutions. The National Strategy for Combating all Forms of Discrimination that *inter alia* is intended to address these CLNM implementation issues has been significantly delayed beyond its announced issuance date of late 2004.

There is some observable progress in the implementation of the bilateral agreement with Serbia and Montenegro related to national minority protection, pursuant to which an intergovernmental commission, which ought to have been established within 60 days after the agreement became effective, will meet for the first time in Belgrade on 22 November¹⁶.

While some elements have been launched and certain progress noted, in particular with the Ministries of the Interior and Education, implementation of the National Programme for Roma remains partial. The CoE Committee of Ministers called for increased support for implementation of the Plan in order for it to yield tangible improvements in the protection of Roma in accordance with the set time-frame targets.

Regarding political representation of national minorities in local and regional self-governing units, several issues, principally the question of how proportional representation is calculated, remain to be clarified [See Electoral Reform Section].

The implementation of legislation related to minority education needs further attention, in particular in regard to the training of teachers and provision of teaching materials in minority

¹³ Law on Civil Service, 15 July 2005, Article 45 (3).

¹⁴ Resolution on the implementation of the Framework Convention for the Protection of National Minorities by Croatia, ResCMN(2005), 28 September 2005.

¹⁵ As a first step toward the development of this registry, the Government should issue a decree on the format of the registry by February 2006. Law on Civil Service, Article 146.

¹⁶ The Agreement between Croatia and Serbia and Montenegro on the protection of the Croatian minority in Serbia and Montenegro and Serbian and Montenegrin minority in Croatia became effective on June 1, 2005.

languages. The physical separation between Croat and Serb pupils in some schools in Eastern Slavonia remains an issue of concern, however the Ministry of Education is preparing a plan to address the problem and the local authorities are beginning to express more understanding about the negative consequences of creating segregated educational conditions. On the positive side, an agreement was reached between the Ministry of Education and Serb representatives on introducing a unique history ‘supplement’ covering the period of the Homeland War for pupils of all ethnicities throughout Croatia. The use of minority languages before the state administration should also be fostered.

Cooperation with the ICTY and the ICTY Completion Strategy

On 3 October, the ICTY Chief Prosecutor Carla Del Ponte reported to the EU that for the prior few weeks, Croatia had been cooperating fully with the ICTY in regard to the remaining open issue. Specifically she noted that Croatia was doing everything to locate, arrest and transfer to The Hague fugitive ex-General Ante Gotovina, whom sources indicated was either in Croatia or Bosnia and Herzegovina. While the Prosecutor identified some shortcomings in Croatia’s implementation of its Action Plan issued in late April 2005, such as the non-adoption of new legislation on the reorganization of the security services and data protection¹⁷, she assessed that these did not directly impact the Government’s efforts to locate Gotovina. She concluded that Croatia appeared to possess the requisite political will and the challenge remained to translate that will into results. She expressed her confidence that if Croatia continued with the “same resolve and intensity,” Gotovina would soon be transferred to The Hague. Del Ponte noted the continued importance of international and in particular EU interest in the matter, as a strong incentive.

ICTY Completion Strategy and related issues

In mid-September, the ICTY Referral Bench transferred the indictment against Mirko Norac and Rahim Ademi to Croatia as part of the ICTY’s Completion Strategy.¹⁸ The transfer was formally completed on 1 November with the conclusion of the process of handover of the case from the ICTY Prosecutor to the Croatian Chief State Attorney. The Referral Bench granted the transfer under Rule 11 bis finding that the prerequisites for a fair trial before the Croatian judiciary prevailed, including an adequate legal framework, witness protection, inter-state cooperation, no application of the death penalty, and a monitoring mechanism in place with the OSCE. Important in light of indications of ethnic bias in some domestic war crime proceedings, the Trial Chamber highlighted that fair trial concerns in this case would also include impartiality of the trial in terms of the diligence of Croatian authorities in respect of the interests of the non-Croat victims as well as those of the international community. As noted by the Minister of Justice, the Norac/Ademi case is the first Rule 11 bis transfer to an

¹⁷ As of early November, the Government has circulated for comment a working draft of a new law on the intelligence services as called for in the Action Plan. Among other things, the proposed law would merge the two existing services into one and would provide the intelligence services with more sweeping investigative authority as well as additional oversight mechanisms.

¹⁸ The ICTY indicted Norac and Ademi for war crimes allegedly committed against Serb civilians and soldiers *hors de combat* during a 1993 operation by the Croatian military in the so-called ‘Medak Pocket’ in south-western Croatia. They are alleged to be individually responsible as well as responsible as superiors (“command responsibility”) for acts of subordinates. Ademi voluntarily surrendered to the ICTY in 2001 and has been at liberty in Croatia since 2002. Norac is currently serving a 12-year prison sentence handed down by the Rijeka County Court for unrelated war crimes committed in the Gospić area.

entirely domestic judiciary. The ICTY Prosecutor will submit a first report to the Referral Bench on the status of the case prior to the end of 2005.

The Croatian authorities are expected to assign the Norac/Ademi case to the Zagreb County Court, one of the four “special war crimes courts” in Croatia. However, as of early November, a request to designate a court has yet to be submitted.¹⁹ Before the trial can begin, numerous technical steps must be taken, including the ‘translation’ of the ICTY indictment into a Croatian indictment. Legal questions about the use of certain evidence collected by the ICTY are also likely to be raised. Hence, it is anticipated that the trial will not start until early to mid-2006. Once the trial commences, the ICTY Prosecutor must report to the Referral Bench every three months. Norac/Ademi was the only ICTY case under consideration for transfer to Croatia under Rule 11 bis, although other cases are likely to be transferred for further investigation, indictment, and trial. The Croatian State Attorney and the ICTY Prosecutor have been working closely to prepare a framework for the transfer of un-indicted ICTY cases.

Since April 2005, the ICTY has indicted five Croatian print journalists as well as a former head of the Croatian Secret Service for contempt of the Tribunal for allegedly revealing the identity of an ICTY protected witness as well as the testimony of that witness.²⁰ In early September, the ICTY issued its two most recent indictments. Four of the indicted journalists are associated with periodicals that were subject of ICTY orders in 2000 and 2004 to cease publication of this information. All six have pleaded not guilty at the ICTY, five appearing voluntarily, while the sixth, the former editor of the daily *Slobodna Dalmacija*, appeared only after arrest and detention in Croatia for his initial failure to respond to the ICTY summons. It is anticipated that the trial of at least some of the journalists will commence in early 2006.

The ICTY indictments, and particularly its issuance of an arrest warrant that was executed by the Croatian authorities, have been the subject of substantial media discussion, including in the international press. The inditees, some media and media advocates contend that the charges, as well as the arrest of a journalist for failure to comply with a court order to appear, constitute undue pressure on the media; they also deem that publication was in the public interest. Media advocates have presented their views through open letters to the ICTY President and press releases, calling *inter alia* for release of the *Slobodna Dalmacija* journalist and revision of the ICTY’s rule on contempt to exclude journalists who publish leaked information. To date, no media advocacy groups have sought permission to present their views formally to the ICTY Trial Chamber considering the contempt charges. These contempt indictments are being considered amid heightened attention to witness protection and respect for court authority in the context of the ICTY’s transfer of cases to Croatia and other states.

The ICTY trial of Mile Mrksic, Miroslav Radic and Veselin Sljivancanin, known as the ‘Vukovar Three,’ began in The Hague in mid-October 2005²¹. These former officers of the

¹⁹ According to the applicable law, the Croatian Chief State Attorney is authorized to request the President of the Supreme Court to refer the case to a specific court.

²⁰ The contempt indictments relate to multiple publications in 2000 and 2004 of information related to the 1998 testimony of a protected witness in the ICTY case against Tihomir Blaskic. The ICTY convicted Blaskic of war crimes in Bosnia and Herzegovina and after appeal sentenced him to nine years. In Summer 2005, the ICTY Chief Prosecutor appealed the reduction in sentence, arguing that newly available evidence warranted either a more severe sentence or a new trial.

²¹ The ICTY rendered decisions in other cases of interest to Croatia during the past months. In summer 2005, the ICTY Appeals Chamber upheld the sentences imposed on Milan Babic and Miodrag Jokic for war crimes

Yugoslav People's Army are indicted for their responsibility related to the most serious crime that occurred during the conflict in Croatia, the execution of more than 260 Croats and other non-Serbs at the Ovcara farm near Vukovar in Eastern Slavonia in 1991.²²

War Crime Trials in Domestic Courts and Missing Persons

Late summer-autumn 2005 saw increased activity related to domestic war crime prosecutions contrasted with the first half of the year, with an upswing in the number of arrests and extraditions as well as the start or resumption of trials.²³ In addition, the Mission noted in October 2005 an intervention not previously identified whereby border police executed "search warrants" for persons sought for information about war crimes. This resulted in the holding and interrogation of several persons at the Croatian border with Serbia and Montenegro, including the holding of an elected official from Serbia and Montenegro, later determined to have been the result of mistaken identity. However, the overall number of proceedings remained substantially less than in past years.²⁴

Continuing the trend previously identified, the vast majority of persons subject to war crime prosecution are Serbs. Also similar to the first half of 2005, a number of Serbs wanted by Croatia on war crime charges were arrested in third countries, including Austria and Germany, and several extraditions were carried out, including the first known to the Mission from Bosnia and Herzegovina as well as from Germany and Switzerland²⁵. The individual extradited from Switzerland on the basis of a 1996 *in absentia* conviction was acquitted in late October; however the Slavonski Brod County Court ordered that he remain in detention for investigation on a second war crime charge. The court released the detainee after the Ministry of Justice advised the court in early November that continued detention was inconsistent with the European Convention on Extradition that bars proceedings other than those for which the person was extradited, unless the extraditing state consents. At least one

committed in Croatia. Babic was sentenced to 13 years imprisonment after pleading guilty in 2004 to participation in a joint criminal enterprise in 1991 and 1992, the purpose of which was the permanent forcible removal of the majority of the non-Serb population from approximately one-third of Croatia, in order to make it part of a new Serb-dominated state. Jokic was sentenced to seven years imprisonment after pleading guilty in 2003 for his responsibility for failing to prevent or punish the unlawful shelling of Dubrovnik in 1991. In late October, the ICTY accepted the guilty plea of Ivica Rajic for war crimes in Bosnia and Herzegovina. Rajic was arrested in Croatia and transferred to The Hague in 2003. As part of the plea agreement, Rajic admitted that during the period he committed crimes, a state of international armed conflict existed in Bosnia and Herzegovina involving forces of the state of Croatia against those of the state of Bosnia and Herzegovina.

²² The 'Vukovar Three' case was for some time under consideration for referral to either Croatia or Serbia and Montenegro. However, in June 2005, the Referral Bench granted the ICTY Chief Prosecutor's request to withdraw the referral motion, concluding that "the interests of justice appear to be better met by this trial being conducted before this Tribunal." A related trial in the special war crime court in Belgrade, Serbia and Montenegro of 17 lower level perpetrators accused of crimes stemming from the same events as charged in the "Vukovar Three" indictment is nearing completion in late autumn 2005.

²³ As of 4 November, Mission statistics for 2005 are as follows: 11 arrests (9 Serbs, 2 Croats), 22 indicted (all Serbs), 5 convictions (4 Serbs (including 1 *in absentia*), 1 Croat), 5 acquittals (4 Croats, 1 Serb), and charges against 2 Serbs were dropped during re-trial following prior *in absentia* conviction. Eleven trials are currently ongoing.

²⁴ In contrast, Mission statistics for 2004 were as follows: 30 arrests (25 Serbs), 2 indicted (both Serbs), 30 convictions (28 Serbs), 12 acquittals (9 Serbs) and 5 dropped charges (5 Serbs). In 2004, the State Attorney reported 33 convictions and 15 acquittals and dropped charges combined.

²⁵ According to Mission information, as of early November, 10 Serbs have been arrested in third countries in 2005 on the basis of international arrest warrants issued by Croatia related to war crime charges. In addition, a Croatian request to extradite from Austria a person wanted for war crimes during World War II was rejected because the individual has Austrian citizenship.

arrest abroad was made on the basis of a warrant that was subsequently withdrawn due to the expiration of the statute of limitations for enforcement of an *in absentia* conviction for crimes against humanity.²⁶ The Supreme Court continued to be active in revising both verdicts and sentences issued by trial courts.²⁷

No new war crime indictments against members of the Croatian police or military forces have been issued, although several arrests were made in autumn 2005 and investigations continued in several high-profile cases, including the investigation of a prominent public official from Osijek. The third re-trial since 1992 of Mihajlo Hrastov for killing more than a dozen Serb prisoners has been indefinitely suspended, given defence evidence that Hrastov is mentally unfit to stand trial. A related development has been an increasing number of prosecutions of members of the military and police for murder which, while not pursued as war crimes, are closely tied to the war. Examples include the September 2005 convictions by Zagreb County Court in the so-called ‘Pakracka Poljana’ case from Western Slavonia²⁸ as well as renewed activity in several long-standing cases from Osijek, such as the 1991 murder of Josip Reihl-Kir, then police chief of Osijek, including new arrests and renewed requests for extradition.

Some known incidents involving Serb victims remain un-prosecuted. At least one police official has publicly suggested that due to the passage of time and difficulties in securing evidence, such crimes in Osijek will likely never be resolved. Similar statements have been issued in relation to crimes in Sisak and Zadar. However, several civil verdicts awarding compensation to Serb survivors for intentional killings perpetrated by members of the army and police suggest that further prosecutions may be warranted.²⁹

While the number of fully *in absentia* trials remained low in the second half of 2005, approximately 60 per cent of all defendants and nearly 75 per cent of all Serb defendants in 2005 were or are being tried *in absentia*, primarily as a result of several large group trials conducted partially in absentia in the Vukovar County Court. *In absentia* trials are a highly visible example of insufficient inter-state cooperation between judicial authorities in Bosnia and Herzegovina, Croatia and Serbia and Montenegro. However, recent progress has been noted in one such case, the ‘Lovas’ case, in which the Vukovar County Court has been

²⁶ In September 2005 the Pozega County Court withdrew the international arrest warrant against Djurdjo Bozicic who was convicted *in absentia* in 1995 and sentenced to less than 5 years for cruel treatment of prisoners of war. This example suggests that for Crimes against Humanity for which the maximum sentence is 5 years, the possibility of executing the conviction can expire as applied to a person convicted *in absentia*. Croatia, Serbia and Montenegro, and Bosnia and Herzegovina have not signed or ratified the European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes.

²⁷ According to Mission information, in 2005 the Supreme Court, as of early November, decided nine appeals in war crime cases. It reversed convictions against 7 Serbs as well as the acquittal of 1 Croat and remanded for re-trial. It further upheld the convictions of 2 Croats, increasing the sentence in one case, and reducing it in the other.

²⁸ In September 2005, 5 former members of the security forces of the Croatian Ministry of Interior were convicted and sentenced to a total of 30 years for crimes including murder committed against Serbs in the Pakracka Poljana prison camp near Pakrac (Western Slavonia) at the end of 1991. Charges were initiated in 1992 and the 2005 re-trial occurred after Supreme Court reversal of prior acquittal. Several defendants became fugitives immediately prior to the court’s issuance of the conviction and remain at large, similar to several defendants in the “Lora” case who became fugitives after the Split court began re-trial proceedings.

²⁹ E.g., Skendzic v. Republic of Croatia and Karleusa v. Republic of Croatia (both Otocac Municipal Court); Ljubicic v. Republic of Croatia (Glina Municipal Court). Croatia was ordered to pay compensation for death caused by members of the armed forces or by terrorist acts.

conducting a trial of 16 mostly Serb defendants, all but one *in absentia*.³⁰ In mid-October, the State Prosecutor for War Crimes in Serbia and Montenegro announced that in cooperation with Croatian authorities it was beginning an investigation of persons wanted in the ‘Lovas’ case known to be on its territory. The extensive past use of *in absentia* trials, however, continues to result in repeat proceedings, as demonstrated by several re-trials conducted after extraditions.

In late September, there was another example of an individual Serb returning to Croatia to voluntarily surrender to address war crime charges for which he was aware he was suspected. The handover almost one year ago of a list of “substantiated” war crime cases by the Minister of Justice to her counterpart in Serbia and Montenegro has not, to date, resulted in any type of systematic bilateral activity to resolve the cases that are a frequent source of tension between the two states due to arrests in Croatia or in third countries of nationals of Serbia and Montenegro. There also remains a significant lack of understanding on the part of the public and the refugee population in particular, about the origin of the list, its contents, and how to resolve individual cases. Several refugee NGOs have called on both governments to work together to find a systematic approach.³¹

Inter-state judicial cooperation between Bosnia and Herzegovina, Croatia and Serbia and Montenegro continues to show improvement in specific cases, particularly in pre-trial proceedings and exchanges of information between prosecutors. Notable examples during the Autumn included cooperation of multiple state institutions, including police, to enable in-court testimony by witnesses from Serbia and Montenegro and Bosnia and Herzegovina at the re-trial conducted by the Split County Court in the so-called ‘Lora’ case. Upon return to Serbia and Montenegro, these witnesses commented positively in the media on their experience testifying in the Croatian court and encouraged other witnesses to come forward. The indictment of members of the ‘Skorpions’ paramilitary unit by both Croatia and Serbia and Montenegro for crimes related to the Srebrenica massacre will require considerable cooperation and coordination.

A third OSCE-facilitated meeting of experts in mid-October 2005 in Mostar, Bosnia and Herzegovina sought to further specify obstacles to cooperation as well as recommendations for overcoming such problems. The practitioners noted that given the current legal impediments to the transfer of accused or proceedings between their states, trials pertaining to the same crime would take place in more than one country and witnesses would be required to testify multiple times.

In recent months, the Ministry of Justice has created a special witness support unit. While there are specific concerns related to the testimony of witnesses who reside abroad, witnesses who reside in Croatia also require assistance and protection particularly since they will remain in the same area where the case is tried. The challenges to maintaining witness protection were highlighted in August during an investigation in Osijek, in the course of which the names of several persons under the protection of the Ministry of the Interior, although not yet formally part of the witness protection programme, were made known to the

³⁰ The defendants are charged with genocide and war crimes against the civilian population in relation to the killing of more than 90 persons, serious injury to more than 30, and the expulsion of the majority of Croats from the village of Lovas near Vukovar in 1991, which included forcing the population to walk through a mine field.

³¹ Recommendations, Workshop and Advocacy Campaign, Repatriation to Croatia – Resolving of Remaining Legal Issues and Issues Related to Incidents, 23 September 2005, Danish Refugee Council and Serbian Democratic Forum.

media. On a related issue, amendments to the current law may be warranted in order to facilitate testimony by video link when in-person testimony is not desirable or possible.³²

Review of a second group of cases for the possible transfer of Serbs convicted of war crimes in Croatia to serve their prison sentences in Serbia and Montenegro was another form of cooperation underway in autumn 2005.

The issue of missing persons received heightened media attention in recent months, in particular whether the official number of missing persons includes all those missing from all periods of the conflict. The Government has expressed an intention to compile by the end of 2005 a unitary list of all missing persons together with the International Committee for the Red Cross, which would replace the two lists it currently maintains, which are from 1991-92 and 1995, respectively, and are largely, although not exclusively, mono-ethnic. In mid-July, the Government adopted a decree establishing a committee for detained and missing persons to serve as an advisory body to the Government.

Legal Climate is Improving

In the autumn, the ICTY demonstrated increased confidence in Croatia in both political and legal terms. The ICTY Chief Prosecutor reported for the first time that Croatia was “cooperating fully” in meeting all obligations to the Tribunal, while the Trial Chamber determined the Croatian judiciary was prepared to handle the Norac/Ademi case transferred from the ICTY. The Ministry of Justice’s most recent judicial reform strategy appears to outline in greater detail both problems and solutions. Inter-state judicial cooperation in the prosecution of war crimes continues to improve. These developments underscore increasing political support for an improved legal climate in Croatia that will enhance legal security as well as protection of human rights. Consolidation of institutional reforms will no doubt require a considerable period of time and a sustained effort will be necessary to ensure a uniform delivery of justice to all those who come before the local courts.

POLICE REFORM

The Ministry of Interior, supported by the Mission, continues its efforts to reform the police in line with the Ministry’s Road Map. However, the reform of the police should be seen as a part of a reform of the entire judicial system and therefore be linked to reform that is currently ongoing within the Ministry of Justice. Especially in the light of the threat from organized crime, it is extremely important that the cooperation within the whole judicial system functions smoothly. For the Croatian Police as a part of this system, there is a need for a long-term and purposeful development of the capability to control the influence of organized crime in the country.

³² As noted by the practitioners at the Mostar meeting, the permissibility of using testimony obtained by video link remains an open question. Croatia has signed but not yet ratified the Second Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters that provides a set of guidelines for witness testimony obtained by video link.

In addition the police human resource management system still needs to be revised in order to enhance the logistical and operational capacity and efficiency of the organization as well as to safeguard the police from unwarranted political interference.

The implementation of the Community Police Concept needs to be given a broader acknowledgment within the police as well as in the society as a whole to make the reform sustainable and worthwhile. The Ministry of Interior is currently making efforts to raise the overall standard of police education. There is an ongoing procedure to revise and amend the Police Law.

Police Reform

In early 2004 the Mission and the Ministry of Interior (MoI) agreed to work together to develop a Road Map for the further development of the police in Croatia. It was intended to complement the Ministry's already adopted reform measures and to place them in a broader inter-agency context. A comprehensive report from the workshop was handed over to the Ministry, including problem analysis and measures to address these problems. A working group was established in the MoI in December 2004 for the implementation of the Road Map but the group has not yet formally started its work. The Road Map should be seen as a tool for the Ministry's reform strategy and the working group should, on this basis, make plans, timelines and goals etc to realize the strategy. As long as this is not done there will be difficulties in getting a full picture of the development within the organization.

The Mission has continued to assist the Croatian Police in the provision of expert training and advice for the training programme of community policing 'Contact Officers', a major part of the police reform. Over 400 officers have been deployed since training recommenced in January and it is envisaged that the number of trained officers will reach 700 by March 2006. During September 2005 fifty contact officers were trained at the Police Academy. The Community Police Concept can be described, *inter alia*, as a way to make the police a 'service' to work in close cooperation with the public with a proactive focus. As a consequence there are plans to establish crime prevention councils in Osijek, Sisak, Split, Vukovar and Zadar. The Mission is supporting the development of these councils by arranging seminars involving the mayors from these cities and mayors from other European countries with experience in crime prevention work. It should be mentioned, however, that deployment of contact officers is insufficient in all areas of return where reconciliation is a highlighted need. Bearing in mind ethnic tensions in some municipalities, the presence of a sufficient number of contact officers would be welcomed as an important component of reconciliation.

A project to educate school children about the work of the police, involving the NGO Mali Korak, and several schools and the police in the Zadar area, commenced in September. These types of awareness raising measures are important to gain acceptance of the community policing concept.

The human resource management system within the Ministry of Interior still needs to be revised to safeguard the police from unwarranted political interference and to enhance the administrative, economic and operational efficiency of the police. The Mission continues to emphasize the importance of the development of a fully transparent human resource management system in all its details regarding police and civil staff. A Human Resource Management workshop took place in June 2005. The Mission and German police experts

facilitated the workshop, which included all the heads of Police Administrations from Croatia. The conclusions from this seminar clearly point at the necessity of an urgent change of the current system. One very important part of the human resources management system is the delegation of responsibility, which means to decentralize and to delegate decision making to the lowest possible operational level throughout the organization. Although the Ministry has applied for assistance under a European PHARE project, “Strengthening the Human Resource Management, Education and Training System of the MoI” there is a need for instant measures. Conclusions are at hand and the task now is to proceed with implementations.

National minorities and women are still under represented in the Croatian police; the MoI has still to produce a clear strategy to address this issue. The latest available figures show that of the total police workforce, two percent are from minority groups (as compared to 7.5 per cent in the population) and eight percent females, which is not the common average in other European countries. The ongoing reform of police education is currently focusing on bringing it into line with the Bologna Declaration on the European Space for Higher Education.

International Cooperation

The Mission continues to advise the Croatian border police on the implementation of its “Border Police Development Strategy 2004-2007”. The Mission continues to coordinate police-related assistance to Croatia through its chair of the International Donor Coordination Group on Police Assistance to Croatia, which comprises representatives of nine embassies, the European Commission Delegation, the International Office for Migrations and relevant Croatian Ministries.

Police Operational Issues

According to official statistics, there are relatively few ethnically motivated incidents reported by the police. However, there is no specifically elaborated legal definition of what constitutes such an incident, which means that there is the potential for under-reporting. There are also inadequate directives and procedures to deal with such incidents when reported. Information gathered by the Mission gives a rather darker picture at hand and there is without a doubt reasons to revise the method for dealing with such incidents comprehensively.

ELECTORAL REFORM

The increased problems with the functioning of local governmental bodies, political deal-making and manipulation after the May local elections raised the awareness among the authorities and the public of a need to engage in an electoral reform effort. The first concrete moves included the submission to Parliament of two draft laws – on permanent State Election Commission and direct election of mayors and prefects. The present Government methodology for determining the proportion of minorities to be represented in local and regional elected bodies is being challenged before the Constitutional Court.

Post Local Elections Situation

The political bargaining initiated after the recent local elections (May 2005) has led to crises in a number of local government units. In some places, it took months to form workable councils. In a few cases, local councillors changed sides to shift the balance of power. Alleged manipulations also involved councillors from the ranks of national minorities, who resigned: their replacement procedure defined in the Law on Local Elections (LLE) has been subject to different interpretations. The Government has requested from Parliament an authentic interpretation of the relevant articles of this law; some suggest that it should be the role of the judiciary, instead of a political body like Parliament, to give such an interpretation.

In order to address the problem of post-electoral political manipulations, the Government forwarded to Parliament a draft law on the Election of County Prefects, the Mayor of the City of Zagreb, Mayors and Municipal Prefects. The draft was approved in the first reading by Parliament in September. The main feature of the draft is to establish a direct election of prefects and mayors; however, the relationship among the directly elected official, local government board and representative body still remains to be defined before the second reading of the draft due in March 2006.

In September, the issue of how the percentage of minority representation in the assemblies of local and regional self-government units is to be calculated triggered a vivid discussion. In a Conclusion issued (but not published) on 22 July, more than two months after the local elections, the Government determined for itself that the calculation of minority quotas ought to be based on the 2001 population census, since the latest voter lists, including the voter lists used in the 2005 local elections, were judged by the Government to have been “flawed.” The Government later on explained that the voter lists contained people who no longer lived in an area, but did not deregister, which is why the lists could not be the criterion for determining population representation. The Government, however, said that they would compare the national minorities’ participation in the May local elections with the census data, and in case of discrepancies undertake measures to ensure adequate minority representation.

In September, when the Government Conclusion became generally known in public, the National Council for National Minorities rejected it as being contrary to the Constitutional Law on National Minorities (CLNM), which requires the census results be updated with the latest confirmed voter lists (in this case the voters lists used for the May 2005 elections). Some minority MPs argued that the latest voter lists from the 2005 elections contained higher numbers of national minorities than the 2001 census, and thus called the 22 July Government Conclusion discriminatory against national minorities. In October GONG, the leading election NGO, filed a complaint to the Constitutional Court.

Legislative Reform

The post-electoral situation has raised awareness among the stakeholders about the need to undertake electoral reform. Both the Prime Minister and the Speaker of Parliament voiced the need to engage in a serious electoral reform effort. Consequently, two draft laws were sent to Parliament and approved in the first reading; one on the direct election of mayors and prefects [see above], the other on the establishment of a permanent State Election Commission.

The main feature of the draft law on the State Election Commission is the establishment of a permanent body to administer the electoral process, which is also a recommendation by the OSCE/ODIHR. The permanent State Election Commission (SEC) should relieve the judiciary of its present burden of supervising the elections in addition to their regular duties, as the members of the existing *ad hoc* State Election Commission are judges from the Supreme Court and local courts. Amongst others, the new Commission should look after the legality and regularity of keeping and updating the voter lists. The Commission would comprise of a chairman, two deputy chairmen and two members, elected for a term of eight years by a majority of vote of all MPs. The chairman is elected on the basis of a public competition, while the other four members are elected upon proposals of the majority (2) and the opposition (2).

The Mission welcomes the effort to establish a permanent SEC, and the Government's willingness to engage in a public discussion of the drafts. The Mission has expressed its readiness to contribute to the process, through opinions of the ODIHR and the Council of Europe's Venice Commission (VC) experts and facilitation of the public discussion. As a first step, the Government has agreed to join with the Mission to organize a series of roundtables in December and January to provide a public forum for all concerned stakeholders. At the same time, the ODIHR and the VC have agreed to review the draft law on the permanent State Election Commission. Their recommendations will be submitted to the Croatian Government and Parliament by December, and discussed at the December roundtable. The Prime Minister has also confirmed his participation in the event.

The Mission stands ready to assist further the Croatian authorities in addressing the most pressing issues of the electoral reform, including regulation of campaign funding, sorting out the voter lists, and minority representation at local elections.

FREEDOM OF THE MEDIA

Media legislation is undergoing a period of changes, as the Ministry of Culture is working on draft amendments of the Law on Croatian Radio and Television (HRT) and the Law on Electronic Media. The Ministry of Justice also set up a working group to revise articles in the criminal code pertaining to libel.

Until about one month ago, the overall situation with freedom of media had followed the same pattern as in the past. Journalists in Zagreb enjoy relative freedom of expression and access to information, while journalists in the rest of the country work sometimes under political pressure.

However, in the past few weeks there have been some attempts to increase political pressure in the print and electronic media which are quite worrying. It is important that there are no steps backwards and that all political parties grant journalists independence in their reporting.

Media Legislation

During the reporting period the Ministry of Culture has started a process of amending some articles of the Law on Croatian Radio and Television (HRT) and the Law on Electronic Media. The Ministry of Culture is currently finalizing the draft amendments to the Law on HRT and the Law on Electronic Media. Such amendments will be submitted to the International Community for review before being submitted to Parliament. The Mission hopes that the amendments will take into account recommendations made by OSCE/CoE/EC to enhance the role of the HRT Programme Council, the supervisory body of the public broadcaster. It is important that the oversight body be shielded from political interference. Amendments on the Law on Electronic Media should tackle concerns related to the independence and appointment of the regulatory body, the Council for Electronic Media, and the definition of its powers.

During the reporting period, a journalist received a five month suspended prison sentence, and some other journalists are currently tried for libel. The Mission has repeatedly expressed its concern over continuing court decisions to convict reporters for libel, despite changes to the Criminal Code in 2004. The amendments to the Code allow for a more liberal regime, as responsibility arises only when the plaintiff can prove that the author intended to harm their honour and reputation through the published content. The Government considers that such amendments are *de facto* a full decriminalization of libel. Pursuant to a decision of the Minister of Justice of 21 July 2005, a Working Group for the “Harmonization of Legal Provisions on Libel with the Legislations of Member States of the European Union and the Court Practice of the European Court for Human Rights” was established. It includes representatives of the Ministry of Justice (the State Secretary and the Special Adviser of the Minister of Justice), of the Supreme Court of the Republic of Croatia, of the Chief State Prosecutor of the Republic of Croatia, of the Zagreb County Court, of the Zagreb Law School and of the Croatian Journalists’ Association. This working group is looking at the possibility to amend the articles pertaining to libel in the Criminal Code.

Media Freedom

The election of five members of the HRT Programme Council whose mandate expired on 17 October provoked considerable turmoil among Parliamentary representatives and media. Criticism over the work of the current HRT Programme Council started during the 18th session of the Parliamentary Committee for Information, Computerization, and the Media, held on 27 September which debated the 2004 financial report of the HRT management and latest six-monthly report by its supervisory body - the HRT Programme Council. Following debate, the Committee failed to accept these reports and further recommended that Parliament not accept the reports.

Both the HRT management and HRT Programme Council have been strongly criticized for bad financial management and a drop in profits. Such criticism happened during the process of replacement of five of the 11 members of the HRT Programme Council. On 21 October, there was a heated debate in Parliament over the approval of a package of five candidates for the Council. The package included an agreement between the ruling coalition and the opposition on the selection of the five candidates (two from the opposition and three from the ruling coalition, including a minority representative). Some HDZ representatives wanted to refuse the approval of the package because of reservations towards one of the candidates (the president of GONG, the leading election monitoring NGO) who had publicly condemned the

attacks of some HDZ members on HRT as political pressure. The debate was concluded with the intervention of the Prime Minister who personally invited all members of Parliament to approve the package.

The Mission has been following this process closely because of the concerns of possible unwarranted political interference in the appointment of the new members of the body. One of the tasks of the HRT Programme Council is to elect and dismiss members of the HRT management and information programmes.

In addition, recently there have been worrying signs on the editorial freedom of HRT. The management of HRT has punished two journalists from HRT, one with a 10% reduction of his salary, the other with a permanent suspension of his position as co-editor of a political talk show. The reasons for these sanctions have raised questions. Particular attention should be paid on how to find a balance between freedom of information and media professionalism and responsibility. Excessive sanctions can have an inhibiting effect on journalists working for a public broadcaster which has responsibility for fair and pluralistic reporting.

The process of privatization of one of the major Croatian dailies (number three in terms of sales), state-owned *Slobodna Dalmacija* was completed in August when the company's shareholders allowed Europa Press Holding (EPH) to inject a much needed financial boost of 83.5 million HRK into the company. By so doing, the EPH gained a 70 per cent share of *Slobodna Dalmacija*. The Europa Press Holding and its partner WAZ, the second largest German newspaper publisher, already owns the largest share of Croatia's print media market. Concentration of too many media outlets in the hands of the same owner could restrict media freedom.

Local media

Problems still persist in media freedom at the local level. Many local authorities continue to co-own local electronic and print media. This constitutes a potential threat to editorial independence and often results in political pressure on local media. Most of the media outlets in the various municipalities in Croatia are partly or predominantly owned by the local authorities. In addition, the poor economic situation of both those media outlets and their employees is affecting media freedom. Local politicians and strongmen remain prone to sue journalists for mental anguish and libel.

At the end of August, the Council of Electronic Media allocated from the Fund for Pluralism (set up by the Law on Media) 18 million HRK (approximately €2.4 million). This amount of money has been distributed among 93 local radio stations and 17 local TV stations for the production of programmes focusing on issues such as, among others, minorities and culture. The Council of Electronic Media has been criticized by media outlets because the criteria for the allocation of funds have not been determined in a transparent way.

CIVIL SOCIETY

Much of what pertains to the Mission's previous Status Report also applies to this reporting period. No significant developments were recorded within the sphere of civil society development, though there were some improvements in some NGO sectors and regions of the country.

A disparity in civil society development still exists between urban and rural areas, particularly in the war-affected areas. The two main national institutions dealing with NGOs and civil society, the National Foundation for Civil Society Development and the Government Office for Associations, have continued to work on their own strategies, programme development and internal capacity to fulfil their respective mandates.

National-level Civil Society Institutions

The reporting period was marked by controversy as the two national institutions, the state-funded National Foundation for Civil Society Development on the one hand and the Government Office for Associations on the other, worked to define their role vis-à-vis each other and the civil sector. The Mission, with the support of other international partners, continued to act as a facilitator among the different parties, and was a bridge between the central level institutions and the local level NGOs.

The Mission, through its field presence, supported the National Foundation for Civil Society Development in its ongoing efforts to regionalize its operations and decentralize financing. In war-affected areas, Mission field offices served to link local NGOs to this process. By directly contributing to the outreach of the Foundation and by increasing the Foundation's awareness about the needs in the field, the Mission helped raise the Foundation's profile in the civil sector. One very critical step, the establishment of a network of regional support centres, is yet pending in the consultation process.

The Mission welcomes the Government Office for Association's initiative in September to begin a series of presentations of the '*Draft Strategy of the Support and Promotion of Civil Society Development in the Republic of Croatia*' across the country. These presentations served to introduce local associations to their role in wider civil society but did not engage citizens' and human rights NGOs. The turnout and level of participation at the presentations varied across the country according to the NGO scene, the strongest being in Split and Osijek, where NGO forums voiced concerns about the draft outline and the process, as well as in Zagreb where NGOs raised a chorus of objections both to the Government Office's *Draft Strategy* paper and to the role and qualifications of the head of that office.

The Mission and the international partners view the present public debate as a healthy process and would like to see emerging from it a Government Office strategy representing the full spectrum of civil society organizations with equal priority between associations stemming from the Homeland War and human rights and citizens associations. This is particularly important as the Office is responsible for allocating NGO projects and programmes across the full range of civil society activities.

Legal Framework for Civil Society Development

There have been no new developments in the implementation of a legal framework for civil society after this was identified as an essential step for the sustainable work of NGOs at a June meeting of key government and international partners called by the Mission, including the EC, USAID, Government Office for Associations, Central Office for State Administration and National Foundation for Civil Society Development.

The following laws and policy documents necessary to establish the basis for an effective civil society remain pending: the Draft Law on Foundations (2004), the operational plan for implementation of the 2003 National Programme of Action for Youth (2005), the Croatian Draft Act on Volunteerism (2002) and the draft Code of Good Practices and Standards for Financial Support to NGO Programs (2002).

Moreover, the Government in 2003 committed itself to the EC, "... the proposed Code [...was] adopted by the Croatian government at its 54th session on 10 July 2003, after which [it] was forwarded to Parliament. The Parliament shall discuss and pass both legal acts in September 2003." This has not been passed. There has been no progress since declarative statements by Government officials in the summer of 2005 that some legislation would be passed by the autumn. The Mission will call its international and Government partners together again later this year to renew commitments to the pending legislation.

No progress has been noted on the issue of VAT exemption for NGOs providing citizenry services. The unresolved VAT issue and lack of a legal framework continue to impede particularly those NGOs concerned with human rights and civil society. This highlights the need to develop a tradition of advocacy and shows the limited role NGOs continue to play in influencing Government policy.

Good Governance Projects and Initiatives

The Mission continued to support and fund good governance projects across the country, however implementation in some municipalities was prevented by the inability of local governments to form following the May local elections [See Electoral Reform above]. For example the 'Agreement of cooperation between town of Split and the non-government, non-profit sector' has been awaiting the approval of the town executive authority since March. The Mission will continue to develop projects and support initiatives to disseminate charters in such areas where there is a political stumbling block or where the NGO scene is less developed, i.e. in Sisak, Karlovac, and Zadar.

Among the positive developments to be noted, in the Gospic area for the first time, local self-government representatives are being trained in cooperation with relevant ministries. Training of municipal councillors in the Sisak area aims at increasing efficiency of local-self government units in multi-ethnic communities. In Osijek and Vukovar, a project featuring strategic plans of citizen participation in decision making will be adopted by municipal councils. This has also sparked an initiative to develop a national training programme for councillors and civil servants. In Sibenik on-the-job training of town authorities, aimed to improve efficiency as service providers, led to increased cooperation with and utilization of NGO expertise.

The establishment of charters and agreements on cooperation between local self-government

units and the NGO sector is an important step forward. The Town of Dubrovnik adopted an agreement similar to those implemented by Osijek-Baranja County, the Vukovar-Srijem County and the city of Osijek at the beginning of this year. In Baranja, NGOs and municipalities jointly drafted a charter and model of transparent allocation of funds. In Sibenik and Knin the process of consultation between NGOs and local authorities has started. Positive results can be seen in Osijek, where a county council for civil society was established in October and funds allocated to NGO activities increased nearly 40 per cent in 2005 compared to the previous year.

CONCLUSION

In the last months, the Mission has clearly perceived a change of attitude of Croatian authorities who demonstrated on several occasions their willingness to consolidate their partnership with the Mission and intensify their efforts at meeting mandate objectives. Following the period of optimism upon the announcement of the 3 October EU decision to start accession talks, the attitude has strengthened further, and it is now evident that the EU decision will have effects on the completion of the Mission mandate.

In this context, the Mission will not let up its efforts to achieve progress on the mandate-related issues. The screening process being set up in the context of EU accession with the Croatian authorities to prepare for the adoption of the *acquis communautaire*, largely dedicated to administrative, economic and technical matters, will not have a direct impact on the Mission mandate as such. Although EU political criteria for accession coincide with several mandate-related issues (refugee return, reform of the judiciary, protection of rights of minorities, freedom of media) the Mission will continue, relying on its accumulated knowledge and extensive field presence, to monitor critical points and facilitate processes by which institutions and civil society will find adequate solutions. The Mission believes that, taking into consideration this background of enhanced dialogue, Croatian authorities find its presence supportive of their efforts and useful, and as a result no pressure is felt to complete the mandate before its agreed implementation.

On judicial issues, after the ICTY Chief Prosecutor stated that Croatia was fully cooperating, the upcoming challenge will be the effective transfer of war crime cases from The Hague Tribunal to the Croatian judiciary and the consolidation of the capacity of the domestic judiciary to deal with war crimes. The Mission will assume, in line with the Letter of Agreement with the ICTY, a monitoring role on the transferred cases until a longer-term solution is found.

The consolidation of the electoral framework, with the Mission's and the ODIHR's support, is expected to progress in the course of the winter and the first concrete results should be visible by spring 2006, in particular with the establishment of a permanent State Election Commission.

Regarding media, police and civil society issues, the ongoing cooperation between the Mission and Croatian authorities, and the active role of domestic NGOs and the free press, provide encouraging signs that continuing progress in these areas will reach a decisive stage in the course of 2006.

The target date of end 2006 for the completion of the refugee return issues, according to the Sarajevo Trilateral Declaration, may not be reached due to the high financial and budgetary implications of the process. Croatian authorities have recognized that fact and there is a consensus that even an assertive push for the resolution of refugee-related issues could take no less than one year and a half to complete. In any case, the dynamic approach which has been recently adopted by the responsible Minister in charge sends the best signal about the satisfactory resolution of this difficult problem.