



**Report of the OSCE Mission to the Republic of Croatia
on Croatia's progress in meeting
international commitments since January 1999**

-- 18 May 1999 --

Executive Summary

The Progress Report of 26 January 1999, covering the period since September 1998, concluded that there was "a general stagnation in the process of Croatia's fulfilment of its international commitments". This report concludes that the general stagnation continued, whereas in some key areas the situation has deteriorated. Progress in other areas does not affect this general conclusion. The Mission attributes this negative development to the lack of political will of the Croatian authorities to take appropriate action.

There has been no improvement in the overall conditions for **Return**. The sole area of progress is in the provision of documents to allow refugees to return. The slow pace of returns is in part due to the Government's failure to remove the main obstacles to return; in particular, problems with the repossession of property, the elimination of discriminatory legislation and the provision of equal access to reconstruction assistance. Double standards, applied on the basis of ethnicity, are apparent at all levels of the return process. No progress has been made on return to Bosnia and Herzegovina, partly due to the lack of action by the Croatian Government.

Application of the 1996 **Amnesty Law** has not improved. The issuance of new war crimes indictments without appropriate co-operation with **ICTY** has increased feelings of insecurity within the ethnic Serb community. The failure of the **Programme on the Establishment of Trust** must be attributed to a lack of political will at all levels of authority.

In the **Danube Region**, the local police force generally continues to carry out its duties in a professional manner. It is encouraging to note that the local police are beginning to adopt a professional approach when dealing with incidents involving different ethnicities. However, confronted with recent security incidents in blatant cases of intimidation, the initial response of the police was inadequate. As to the fulfilment of UNTAES agreements the Government has largely met its obligations concerning employment in the public sector and the deferment of military service for persons from the former UNTAES area. However, the Danube Region Sub-Commission for Missing Persons has not been formed as required by the relevant UNTAES agreement.

In the **Legal Area**, the Government has ratified additional international human rights instruments. However, it has made scarcely any progress in meeting its obligations to adopt and amend laws to bring the country's legislation into compliance with applicable international standards. Problems noted in the January 1999 Progress Report with regard to the rule of law as well as the independence and impartiality of the judiciary remain. The administration of justice continues to be hindered by a huge backlog of cases and a large number of judicial vacancies. Limited progress has been noted in the implementation of the Convalidation law.

Croatia's performance in upholding democratic standards regarding **Freedom of the Media and the Electoral Process** has not improved since January 1999. State television (HRT) remains open to political direction, and news and current affairs programming continues often to be distorted and misleading. Financial and legal pressure on the print media remains. Intensified public and parliamentary debate on electoral reform has not yet produced results.

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Introduction

1. This is the fourth of the Mission's progress reports issued at four-month intervals.¹ The purpose of these reports is to assess the Government's progress in fulfilling its international obligations and commitments in areas outlined in the Mission's mandate. The main emphasis of the Report is to assess momentum during the reporting period, not to assess the current state of affairs.

2. The critical assessment of the previous report was moderated by the Government's new promises to implement specific commitments. These promises have not been kept. The very limited general progress measured in real implementation of Government policy on the ground, is as modest in this period as in the previous one. Furthermore, the continued lack of action to implement core elements of the Return Programme (restitution of property and abolition of discriminatory legislation) becomes more serious as time goes by, which destroys the hopes of those wishing to return.

3. However, time itself - independent of Government action - has a healing effect. There is a natural process of normalisation and re-establishment of trust, supported by commendable initiatives of individuals, communities, Non-Governmental Organisations (hereafter NGOs) and institutions. Moreover, in the last two years there has been steady improvement in the overall security situation in the country.

¹ The previous Progress Reports were issued on 20 May 1998, 8 September 1998 and 26 January 1999.

4. Progress, or lack thereof, is also reflected by the quality of co-operation between the Mission and various authorities. The Mission commends good co-operation with the Ministry of Foreign Affairs and the Ministry of Interior. The same is true for the Office for Displaced Persons and Refugees (ODPR). Commendable results have been achieved in contacts with the Ministry of Health, the Ministry of Defence and to some extent with the Ministry of Labour and Social Welfare. Access to the Ministry of Justice and the management of state-owned radio and television is good. Conversely, continuous contacts with the Ministry for Development and Reconstruction and the Deputy Prime Minister and Minister for European Integration have not led to any progress.

5. The Government has a unilateral obligation to fulfil its commitments and obligations under international law. This obligation exists independent of any external response to that fulfilment. From the international perspective, the fulfilment of commitments and obligations by the Government in the primary fields of democratisation and return have been established as prerequisites for Croatia's further integration into European and Euro-Atlantic institutions.

6. The events in Federal Republic of Yugoslavia (hereafter FRY) since the beginning of NATO air strikes on 24 March 1999 have substantially influenced the regional and domestic environment and have exacerbated already existing economic problems in Croatia. The Government has assumed a co-operative stance towards NATO and has expressed its hope that this attitude will accelerate Croatia's further steps towards European and Euro-Atlantic institutions. This hope is accompanied by expectation of increased international material support. These issues are beyond the scope of the Mission's work. The Mission focuses in this Report merely on areas outlined in its mandate. However, it reiterates the recommendation from its previous Progress Report for a more active international engagement involving intensified dialogue and increased material support. The Mission sees the need for enhanced international contributions in favour of the normalisation and democratisation process, independent from the issue of Croatia's further integration into European and Euro-Atlantic institutions.

Post Conflict Normalisation

I. Return

7. **Introduction:** There has been no improvement in the return process since January 1999. The main impediment remains the non-functioning Government Commission on Return (hereafter the Government Commission) which is charged with managing the implementation of the Return Programme.

8. In the January 1999 Progress Report, the Mission outlined progress made during 1998 by the Government of Croatia in promoting the return process. This included the adoption of “The Programme for Return and Accommodation of Expelled Persons, Refugees and Displaced Persons”² (hereafter the Return Programme) and “The Continuing Programme for Reconstruction of the War-Affected Areas” (hereafter the Reconstruction Programme). With regard to the Return Programme, the Mission concluded in its January 1999 report that after four months of implementation the Programme had “fallen short of reasonable expectations”. The Report noted that a number of obstacles remained to the full and satisfactory implementation of the Programme.

9. The main concern does not rest with the administrative mechanisms for return but with the lack of political will on the part of the Government to ensure adequate living conditions for returnees through the repossession of property by rightful owners, the elimination of discriminatory legislation and the equal provision of reconstruction assistance. Furthermore, double standards are applied on the basis of ethnicity at all levels of the process. For those who want to return, these difficult conditions negatively affect their belief that they will be able to build a stable future in Croatia.

10. **Refugee Return Statistics**³: ODPH figures state that approximately 32,000 refugees have returned from BiH and FRY since 1995. Of these some 12,000 have returned since the adoption of the Return Programme. Approximately 3,000 have returned with the assistance of ODPH and UNHCR, the remainder deciding to make their own arrangements to return. Thus organised procedures for return appear to have little impact on the overall return process. Out of 21,000 persons who have requested to return since the adoption of the Programme, in addition to those who have already returned 4,000 are cleared to return immediately, 7,000 are awaiting a decision by the Government and nearly 5,000 people cannot return either because their status is unclear or because they have no address to which to return (their house is either occupied or destroyed). UNHCR estimates that up to 300,000 refugees from Croatia remain in FRY (more than 250,000) and BiH (30,000).

11. **Displaced Person Return Statistics:** Return of ethnic Croats to the Danube Region has increased significantly with ODPH reporting more than 35,000 returning ethnic Croats from other parts of Croatia⁴. Return of ethnic Serbs from the Danube Region to the rest of Croatia has stopped, with 3,000 displaced persons remaining in the region. Many of these people are unable to return due to a lack of reconstruction assistance or because their house is occupied or because they have been denied occupancy rights. Others, both displaced from other parts of Croatia and those who lived in the Danube

² According to international usage, ‘displaced persons’ are those who have been displaced within the borders of their own country. ‘Refugees’ are persons displaced outside the borders of their country.

³ For detailed statistics see Annex – Table 1: Return of Refugees to Croatia from Countries of Asylum and Table 2 – Return to and From and Departures from the Danube Region.

⁴ Monitoring information suggests that the number of people who have actually returned and remained in the region is lower.

Region before the conflict, have departed from Croatia to FRY. UNHCR estimates that some 47,000 people have departed. Recent figures are not available due to the situation

12. Discriminatory Laws: The Government has still not eliminated discriminatory legal provisions related to the return process. In June 1998, it publicly committed itself to do so within 3 months. On 1 October 1998, international representatives reminded the Government of this unfulfilled obligation. On 21 October, the Government agreed to the establishment of a joint Government/international experts group which made recommendations for changes to three laws identified as being of particular concern. These were (i) the Law on the Status of Expelled Persons and Refugees⁵, (ii) the Law on Areas of Special State Concern and (iii) the Law on Reconstruction. In preparation for the December 1998 Conference on Reconstruction and Development, the Government once again committed itself to amending these laws, but has failed to do so. This renders the “non-discriminatory Reconstruction Programme” actually discriminatory on the basis of pre-existing legislation.⁶

13. The Return Process: While the organised return mechanism works well, persons returning outside this process are not treated in the same manner as those who return in UNHCR/ ODPR assisted convoys. Systems established between the Office for Displaced Persons and Refugees (ODPR)⁷ and the United Nations High Commissioner for Refugees (UNHCR) for the return of refugees work well. ODPR committed itself to clear 500 applications for return per week. At present, ODPR is processing an average of 450 such applications per week. Further, it is working closely with UNHCR on receiving return convoys from the FRY and BiH. However, the Return Programme obliges the Government to provide returnee-related status and benefits to all returnees regardless of the way in which they choose to return. The overwhelming majority of returnees come back in a self-assisted manner (i.e. not in an organised convoy). These returnees experience delays in receiving entitlements. The Mission’s analysis of ODPR is that, with regard to the return process, it works well but there is room for improvement with regard to timely provision of returnee benefits.

14. Deferred Cases: Of particular concern is the backlog of cases which have been deferred because the applicants are unable to provide confirmation of a place to stay upon their return (usually because their houses are occupied or destroyed). The Government has subscribed in its Programmes and Procedures to the principle that all refugees have the right to return and yet does not actively encourage the return of persons who cannot make arrangements for accommodation upon their return.

15. Return of refugees from FRY and BiH: The current situations prevailing in FRY and BiH have a negative effect on the return process. In this reporting period, the issuance of travel documents by Croatian embassies and consular services to potential refugees has generally been good. The Consulate in Banja Luka (Republika Srpska, BiH) has, however, failed to operate effectively. Since the recently changed situation in FRY, the issuance of such travel documents has ceased.

⁵ The Law on Expelled Persons and Refugees (1993) uses definitions that discriminate against ‘displaced persons’ (usually ethnic Serbs) and in favour of persons defined as ‘expelled persons’ (usually ethnic Croats). ‘Displaced persons’ continue to be denied their rights as Croatian citizens in, amongst others, the fields of repossession of property, reconstruction assistance and financial assistance.

⁶ For example, in a case from Požega, the Ministry of Reconstruction and Development in January 1999 confirmed a decision refusing reconstruction assistance to an individual whose property had been destroyed in October 1991 on the grounds that “the area has not been occupied” during the war. Such a decision contradicts the provision of the Reconstruction Programme dictating that reconstruction assistance is available for all properties damaged or destroyed prior to 15 January 1998.

⁷ Note that the generic translation of ODPR is ‘Office for Displaced Persons and Refugees’. In fact a correct translation from Croatian to English is ‘Office for Expelled Persons and Refugees’. See footnote 5 for explanation.

16. Returns to BiH: The return process to BiH does not function.⁸ While there is obstruction to return in BiH, especially in Republika Srpska, the lack of progress is also in part due to the lack of political will on the part of the Government of Croatia. The Mission appreciates the efforts of the Government to facilitate the establishment of the Commission for Real Property Claims (CRPC)⁹ in Croatia in April 1999, in accordance with the Return Programme.

17. Repossession of Property – Return Programme Procedures:¹⁰ These Procedures are extremely complicated. Monitoring of the Housing Commissions shows that the mechanism for the repossession of property, which forms the basis of the Return Programme, does not work. The implementation of this element of the Return Programme is hindered by the following factors:

- conflicting jurisdiction between the Return Programme and the court system despite repeated clarifications by Government officials;
- failure of the Government Commission on Return to co-ordinate all elements of Government activity provided for in the Return Programme;
- failure on the part of most of the Housing Commissions to fulfil their task. Those Commissions that have made efforts to resolve cases have not been given the necessary support from other governmental institutions;
- non-implementation of the Procedures for the Return Programme, including lack of respect for deadlines established by the Programme;
- lack of political will on the part of local and central Government to prioritise alternative accommodation¹¹ for use by persons affected by the Return Programme;
- inaction on the issue of illegal and multiple occupancy of property.

18. These problems are further elaborated under the following headings:

⁸ According to UNHCR, none of the approximately 13,000 applications for return to BiH submitted up to 14 months ago has been resolved.

⁹ CRPC was established under Annex 7 of The General Framework Agreement for Peace (Dayton Agreement).

¹⁰ According to the Instructions for the Implementation of the Return Programme issued by the Government, the applicant for repossession of property completes form PP1, "Claim for the repossession of property". Within 5 days, the Housing Commission informs the applicant in writing of the status of his or her property using form PP2, "Confirmation on the manner of use and category of damage of a housing facility that the owner has abandoned". On the basis of submission of sufficient proof of ownership, the Housing Commission issues form PP3, "Decision on the annulment of the decision to the user who will be provided with alternative accommodation". This decision indicates a deadline for vacating the property and the provision of alternative accommodation for the temporary user, for which the Housing Commission issues forms PP4, "Information on the provision of alternative accommodation for the user of the property, which is to be returned in the possession of the owner" and PP6, "Decision on the annulment of decision to the user for whom alternative accommodation is provided". In the absence of available alternative accommodation locally, the Housing Commission submits a Form PP9, "Information on incapacity of providing alternative accommodation for the user of the property, which is to be returned in the possession of the owner" to the Government Commission on Return (GCR) and the ODPR within 5 days of the issuance of the PP3 form. This form requests the Government Commission to provide priority accommodation for the temporary user of the property. The Agency for Transactions in Specified Real Estate (APN) and the ODPR decide upon such cases "according to priority" and directly inform the owner, the temporary user, the Housing Commission and the Government Commission for Return. In cases where the temporary occupant refuses to vacate the property within 15 days of being issued the PP4/PP6 forms, the Housing Commission files a suit with the municipal court requesting the eviction of the temporary user. This action is to be undertaken within 7 days of the deadline indicated in the PP4 to vacate the property. The Court will rule on the case under a "shortened procedure and its decision shall be immediately enforced". Any appeal by the temporary user will not suspend the execution of the court order with regard to repossession of the property by the rightful owner.

¹¹ Alternative accommodation refers to a "state owned" house or flat, provided for persons ('temporary occupants') who have temporarily occupied the homes of others and who are required to vacate the property due to a claim for repossession of that property by the owner.

- **The Legal Status of the Return Programme:** Courts are selective in applying either the law or the Return Programme in the resolution of property repossession cases, favouring ethnic Croats over ethnic Serbs. The Courts have jurisdiction to determine property matters. The Return Programme authorises Housing Commissions to take eviction cases to the courts under accelerated procedures. However, there is no legal basis, under the 1977 Law on Civil Procedure, for the application of such accelerated procedures for cases brought to the Courts by Housing Commissions. Some Courts have decided to accelerate hearings for restitution of property, particularly for ethnic Croats, while others have not, particularly for ethnic Serbs. The selective interpretation and application of double standards by the courts effectively means that some occupants (usually ethnic Croats) are currently able to remain indefinitely in the homes of those wishing to return to them, while others (usually ethnic Serbs) can be evicted on the basis of the use of accelerated procedures and are seldom provided with alternative accommodation.¹² In addition, the Programme and its ancillary instructions are inconsistent with one another, hindering the implementation of the Programme.¹³

- **The Government Commission on Return:** Due to the inactivity of the Government Commission, there is neither systematic co-ordination of the work of the Housing Commissions nor accountability by the Housing Commissions to a higher authority.¹⁴ Frustrations with the Commission are becoming apparent at the local level.¹⁵ Housing Commissions are unable to resolve property repossession cases due to lack of action by the Government Commission in co-ordinating the activities of the various bodies involved.¹⁶ The Government Commission on Return does not meet its obligation of managing the Return Programme. The Mission has conveyed its concerns on the inaction of the Government Commission to the Prime Minister, Deputy Prime Ministers, the Office of the President and other high officials. Nevertheless, the Commission continues to fail to function. UNHCR, as co-chair of the Return Co-ordination Committee (RCC), has expressed similar concerns on this matter. The President of the Commission¹⁷ has promised on more than one occasion that he would take action. For example, at the RCC meeting in January 1999, he gave a commitment to:

- undertake activities in line with the stipulations of the Return Programme;
- call regular meetings of the Government Commission on Return;
- hold public sessions of the Commission;

¹² For example, the Return Programme is not applied by the Municipal Court in Vukovar. Since January 1999, this court has issued at least 12 decisions stating that the owners (usually ethnic Croats) are not obliged by any valid Croatian provision to wait until the temporary occupants (usually ethnic Serbs) receive alternative accommodation, as foreseen in the Programme.

¹³ Whereas the Return Programme makes no limitation on reclaiming property, the forms for implementation of the Programme limit the possibility for an individual to reclaim property unless he or she can prove that he or she was residing in that property in 1991.

¹⁴ Some Housing Commissions request documentation for proof of ownership despite instructions from the Government Commission that these are not required under the Return Programme.

¹⁵ Particular examples are provided by Lipik and Petrinja, where activity is evaluated as positive with regard to the repossession of property. In both cases, the lack of feedback by the Government Commission has become a major impediment to the implementation of the Return Programme.

¹⁶ The Chairman of the Housing Commission in Korenica resigned his post in April 1999 citing, among other factors, his frustration at the lack of action by both the local and central authorities with regard to the identification of alternative accommodation. The Petrinja Housing Commission has noted that there is no apparent co-operation between the various agencies involved with the resolution of property issues (Government Commission, Ministry of Development and Reconstruction, ODPR and APN).

¹⁷ The President of the Commission is also the Assistant Minister for Reconstruction and Development and the Co-chair of the Return Co-ordination Committee effective March 1999 at which time he replaced the Head of ODPR who was the previous co-chair.

- submit activity reports to the Return Co-ordination Committee; and
- undertake a public information campaign for the Reconstruction Programme.

The Government has failed to meet any of these commitments.

19. The Housing Commissions: Of the total of 6,000 applications for repossession of property submitted to the Housing Commissions, Government figures show that approximately 1,100 have been resolved.¹⁸ However, many of these cases appear to have been resolved through direct negotiations between the owner and the temporary occupant rather than through the use of the formalised channels established by the Return Programme. The Mission assesses that the root causes for the failure of the work of the Housing Commissions are three-fold. Firstly, there is a clear lack of political will by both central and local government to make the Housing Commissions operate in accordance with the official instructions.¹⁹ Secondly, the Government has provided insufficient financial resources to support the Housing Commission system. Thirdly, the Housing Commissions are either in conflict with or operating in parallel with the court system. Shortcomings in implementing the provisions of the Return Programme by the Housing Commissions undermine the belief of persons returning that they will ever be able to repossess their properties. The following are issues of concern:

- **Deadlines:** The deadlines for issuing confirmations on the status of property and the category of damage, for annulling the right of temporary occupancy and for making referring alternative accommodation cases to the Government Commission are ignored.²⁰
- **Alternative Accommodation:** In a large number of cases, requests for alternative accommodation are referred to the Government Commission without adequate attempts to identify and provide accommodation at the local level. In some cases, alternative accommodation is available in the municipality but is not used for the relocation of temporary occupants.²¹ The Government undertook to instruct the Housing Commissions to improve communication²² among themselves with a view to identifying alternative accommodation and resolving cases. Less than

¹⁸ On the basis of the most recent information provided to the Mission by ODP, some 6,000 applications for the repossession of property have been submitted to the Housing Commissions. Around 2,100 forms annulling the rights of the temporary occupants have been issued by the Housing Commissions and 1,700 referrals have been made to the Government Commission for provision of alternative accommodation. (ODP Report on the activities on all 146 Housing Commissions established in Croatia of 7 May 1999).

¹⁹ The Knin Housing Commission, for example, denies access to the decision making process for minority members of the Commission, who are only able to attend formal sessions of the Commission where decisions made by the three ethnic majority members outside these sessions are 'rubber-stamped'. Further, any sensitive cases are regularly deferred and its minority members are unable to access archive records relating to active cases. The Commission has, according to Mission data, resolved 6 of the more than 600 cases pending with this Housing Commission.

²⁰ The records of the Sunja Housing Commission, for example, demonstrate that some applicants who applied for repossession of property in autumn 1998 have still not received a confirmation on status of property, although it should have been issued within 5 days of application. Similarly the Knin Housing Commission has systematically failed to inform returning owners of the status of the property within the prescribed time limit of 5 days. Some applications submitted last autumn have still not received a response from the Housing Commission.

²¹ The Housing Commission in Vukovar has 669 applications which remain unresolved due to the lack of alternative accommodation. Out of 179 units of accommodation available for allocation to persons awaiting housing in Vukovar, four have been allocated for use by the Housing Commission. The remaining 175 have been allocated by the municipal authorities, outside the system established by the Return Programme.

²² This resulted in the provision of a contact list for Housing Commissions and instructions issued by the President of the Government Commission on Return on 19 February 1999 stating that "...with the aim of a more effective implementation of the Programme ...for Return...the Housing Commissions are obliged to exchange the necessary information."

half have done so.²³ Furthermore, the Government Commission has resolved almost none of the approximately 1,700 cases referred to it to date.²⁴ The Return Programme stipulates that the APN together with the ODPD should identify alternative accommodation upon request from the Government Commission. Due to the lack of publicly available documents on the operational procedures of the APN, the work of the Agency is not transparent. Outside the Danube Region, the APN generally purchases properties from owners in order to allocate them to persons already temporarily occupying them (usually Bosnian Croats).²⁵ This does not support the repossession of property by rightful owners.²⁶ Further, no deadline is provided in either the relevant laws or the Programme for the provision of alternative accommodation.

- **Illegal Occupancy:** The Return Programme states that illegal occupancy should be terminated immediately. However, the corresponding procedures are ignored. Despite a request for action by the international community on 1 October 1998, there has been no movement on this matter. The Government response of 21 October 1998²⁷ stated that the Government Commission would devise a mechanism to prevent illegal occupancy and to resolve current cases of illegal occupancy.²⁸ Without clear, precise and authoritative instructions, the Housing Commissions do not take action.²⁹ The lack of progress on this general issue greatly restricts the repossession of property.

20. Free and Informed Choice: In its non-paper of 21 October 1998 the Government, in line with the Return Programme, committed itself to provide each applicant for return with the following: (a) a copy of the form confirming ownership of the property), (b) a profile of conditions in the area of return and (c) a photograph of the property to which the applicant wishes to return. It also agreed to publish an information pamphlet in co-operation with UNHCR. Of these commitments only the last has been accomplished.

²³ OSCE/ECMM monitoring information as at 27 April 1999, based on responses by 86 out of the 146 Housing Commissions.

²⁴ Monitoring information on 55 (out of 146) Housing Commissions indicates that 9 responses have been received by Housing Commissions from the central authorities. It is not known how many of these actually resulted in the repossession of property to the owner.

²⁵ In Kostanjica, for example, APN and the Housing Commission together identify properties for which a request for repossession has been made. The APN then approaches the claimant owner with an offer to purchase the property. In cases where this is successful, APN then rents the property to the temporary occupant contrary to the intended purpose of the Return Programme.

²⁶ Although the Knin Housing Commission has more than 600 outstanding requests for repossession of property, and APN Knin has bought 62 houses in the area, there is no indication that any of these houses have been used for alternative accommodation under the Return Programme. It appears that one third of these houses have been rented to ethnic Croat families coming from BiH and FRY. Reports from officials in Tovarnik (Danube Region) indicate that the bulk of 85 APN houses have been purchased by government ministries. Out of this total, some 14 were allocated to Bosnian Croat families (all Croatian citizens) on the instruction of the President of the Government Commission for Return. A number of these families had been living in collective centres on the coast.

²⁷ Government of Croatia Non-Paper: Responses to the International Community Non-Paper on Outstanding Commitments with Regard to Implementation of the Return Programme (20 October 1998)

²⁸ This mechanism was to address, in order of priority: (i) cases of multiple occupancy (i.e. where the temporary occupant was occupying more than one property), (ii) cases of homes which are illegally occupied and for which a request for repossession of property has been made and (iii) cases of illegally occupied houses for which no claim for repossession has yet been made.

²⁹ In the case of the Osijek Housing Commission, the forms relating to illegal occupancy have not been issued ^{although} a review of the files of the Housing Commission revealed that there are cases where the temporary occupant already has a reconstructed house and, consequently, the relevant form ordering the occupant to leave the property should have been issued by the Housing Commission.

21. Provision of Reconstruction Assistance to Returnees: Very few ethnic Serbs have received reconstruction assistance. County reconstruction officials make reconstruction decisions based on the priorities defined in the Law on Reconstruction, according to which ethnic Serbs receive low priority. Furthermore, due to funding constraints Municipal and County authorities decide on neighbourhoods and individuals that will receive priority for reconstruction, an often politicised process that can result in prioritised reconstruction for ethnic Croats over ethnic Serbs.³⁰ The lack of reconstruction of Serb-owned houses discourages return. At the same time the Government is systematically reconstructing houses in BiH for persons of Croat ethnicity. More than five months after the Reconstruction Programme was adopted, the Government has still not put into place an information campaign as foreseen under the Mandatory Instructions to the Programme. Further, these Instructions have not provided clear guidance to the County level Offices for Reconstruction. The Government has further failed to publish reconstruction lists at the County Offices for reconstruction and has failed to meet its obligation in the Reconstruction Programme "... not to differentiate between persons eligible when reconstructing settlements". This renders the Programme effectively inoperative.

22. International Contributions for Reconstruction Hampered: The inactivity of the Ministry of Reconstruction and Development hampers the work of some international organisations. In March 1999 the German NGO Arbeiter-Samariter Bund agreed with Petrinja Municipality to reconstruct one predominantly ethnic Serb village and one predominantly ethnic Croat village. So far county reconstruction offices have failed to issue any reconstruction decisions for the predominantly ethnic Serb village, whereas 48 individuals of the predominantly ethnic Croat village have received such decisions. Such obstruction generally relates to the provision of assistance in areas where ethnic Serbs were traditionally the majority.³¹

II. Amnesty, the International Criminal Tribunal for the Former Yugoslavia (ICTY) and Trust Establishment

23. Amnesty: The situation surrounding the 1996 Law on General Amnesty has deteriorated since the January 1999 Progress Report, with ambiguities and uncertainties regarding its application remaining. Despite the Mission's concerns, expressed in all previous Progress Reports, the Government has not produced information since March 1998 on the closure of amnesty cases.³² The lack of transparency in

³⁰ In the priority areas of Mitnica (Vukovar), for example, the majority of damaged or destroyed Croat houses have been reconstructed whereas very few ethnic Serbs in the neighbourhood have received reconstruction assistance. Also in the Danube Region, reconstruction has not commenced in the predominantly ethnic Serb village of Karadzicevo, although the majority of residents applied for reconstruction assistance in 1997. In the ethnically mixed village of Klobucak in the Sisak municipality, the only house that has been reconstructed is owned by an ethnic Croat, despite the fact that almost all owners of destroyed houses in the village have applied for reconstruction assistance. In contrast, nearby ethnic Croat-majority villages are almost completely reconstructed.

³¹ No such obstruction has been noted with regard to the signing of a provision of funding by the International Organisation for Migration (IOM) for infrastructure in support of a housing project in Kistanje, with the aim of allowing ethnic Serb to repossess their property. It should be noted, however, that this project supports another project funded by the relevant Ministry, the central aim of which is to settle ethnic Croat immigrants and refugees from Kosovo (some arriving in Croatia prior to the 1991-1995 war). Of interest is that the terms of the agreement between IOM and the relevant Ministry appear to have been violated by the Government.

³² The Ministry of Justice notified the Mission in a letter dated 18 March 1998 of the closure of 13,575 cases. The Ministry pointed out that this was "not the final list of persons to whom the Law on General Amnesty was applied. Namely, the law is still being enforced and the competent courts and the State Prosecutor's office continue to consider all the processed cases of criminal acts for which the amnesty is possible and handing down of new rulings on the suspension of criminal procedure through the implementation of the Law on General Amnesty can be expected".

the implementation of the Law has strengthened feelings of insecurity in the ethnic Serb community, above all in the Danube Region.

24. Indictments for war crimes: For the purposes of trust-establishment and the integration of the Danube Region, the Government informed UNTAES in 1997 of a list of 25 persons against whom war crimes indictments remained.³³ It further agreed that no new indictments would be issued in the absence of credible new evidence. Since mid-January 1999 and for the first time since the expiration of the UNTAES mandate on 15 January 1998, the judiciary in the Danube Region has issued new collective and individual indictments for war crimes against a total of 91 persons. None of these persons appear on the Government's list of 25. The Government did not notify ICTY upon what "new credible evidence" these indictments are based. In issuing these indictments, the Government did not adhere to the key principles it had accepted for dealing with war crimes indictments.³⁴

25. International Criminal Tribunal for the former Yugoslavia: There has been no notable progress in Croatia's co-operation with ICTY since the January 1999 Progress Report.³⁵ Although the authorities have, as recently as February 1999, acknowledged their obligation to respond to requests from ICTY, they have thus far failed to respond to such a request with respect to an indictment against 23 persons from the village of Dalj in the Danube Region.³⁶ In addition, the authorities have not reached a final decision on ICTY's January 1999 request for the extradition of Mladen Naletilic (Tuta) and Vinko Martinovic (Stela) who have been indicted by ICTY in connection with alleged war crimes committed in BiH. On 5 March 1999, Parliament adopted a resolution confirming the Government's commitment to co-operate with ICTY. At the same time, the resolution criticised the Tribunal, stating its 'inefficiency and partiality'. Parliament also questioned the jurisdiction of the Tribunal over alleged war crimes committed during the military operations "Flash" and "Storm" that were carried out in May and August 1995 to re-assert authority over the then Serb-controlled areas in central and southern Croatia.

26. Establishment of Trust: There has been no progress in the implementation of the Government's Programme on Establishment of Trust³⁷ since the January 1999 Progress Report. There has been a lack

³³ There were a number of lists of alleged war criminals circulating in the UNTAES Region. One of them appeared in late 1996 and listed 1,100 war crimes suspects. Shortly afterwards, the Government disavowed that list and issued a list of 811 names. This number was subsequently reduced to 150. Ultimately, the Government informed UNTAES of a final list of 25 persons.

³⁴ On 19 February 1999, representatives of the Article 11 Commission (Article 11 of the Erdut Agreement stipulates that the implementation of the agreement will be supervised by a commission of ambassadors based in Zagreb), reaffirmed their unified understanding of these principles to the President's Office. According to these principles, war crimes prosecutions, other than in the cases of the 25 individuals identified by the authorities to UNTAES in 1997, would not be initiated in the absence of credible new evidence. In the event that new evidence emerged, the authorities would inform ICTY of the facts of the case prior to the issuance of an indictment. At the February 1999 meeting, the President's Chief of Staff disputed whether the Government is obliged to consult with ICTY in advance of indictments being issued, while acknowledging that the Government has an obligation to respond to requests for information from ICTY. However, this position contradicts the commitment undertaken in the Government's 1997 Programme on Establishment of Trust, which stipulates that the Ministry of Justice "shall in turn notify the International Criminal Tribunal for the former SFRY on these proceedings".

³⁵ In April 1999, the CoE Parliamentary Assembly Resolution 1185 (1999) noted: "...that the Croatian authorities have failed to honour fully their commitment to 'co-operate with, and actively assist, the Prosecutor of the [ICTY]': the latter has been complaining about obstructions and interference with investigations and prosecutions and about undue delays on the part of Croatian authorities in complying with requests and executing court orders".

³⁶ The Ministry of Justice failed to keep its promise to the Article 11 Commission, made on 17 March 1999, that the Commission would be informed of the new evidence against the 23 persons from the village of Dalj.

³⁷ "Programme of the Government of the Republic of Croatia on Establishment of Trust, Accelerated Return and Normalisation of Living conditions in the War-affected areas of the Republic of Croatia", of 2 October 1997.

of political will to fulfil the commitments laid out in the Programme. Overall, the Programme's organisational structures have either not been established or do not function as envisioned. The National Committee on Establishment of Trust acts as an independent body without systemic links or contacts with the Local and County Committees answerable to it. In practice, the work of the National Committee has been limited to the initiatives of the Chairwoman of the National Committee, who is also the Deputy Chief of Staff of the President and a Vice President of the ruling party. The National Committee intervenes on an ad hoc basis exclusively in the Danube Region. Although local and County Trust Establishment Committees have been established, for example, in most areas of the Danube Region, they convene rarely, if at all, while others elsewhere in the war-affected areas do not fulfil their role in the communities that they are intended to serve. In the area of Zadar in southern Croatia, local officials decline even to establish Committees in their municipalities. They claim that it is too early to attempt "reconciliation" with ethnic Serbs. Any progress that may have taken place in the field of reconciliation can be attributed to the passage of time and individual initiatives rather than to governmental initiatives.

III. Integration of the Danube Region

27. **UN Transitional Administration for Eastern Slavonia (hereafter UNTAES)** ³⁸ **Agreements:** The reintegration of the Danube Region was supported by 32 agreements signed by the Government during the UNTAES period. These agreements constitute Government commitments. They were concluded in order to facilitate the reintegration of Eastern Slavonia into the constitutional and legal order of Croatia, and to guarantee the social, political and employment rights of the persons living there. Some agreements entrench the principle of ethnic proportionality in employment in the public sector (e.g. the police, judiciary, civil administration, education and health), while others apply the same principle to political representation. Some provisions in the agreements either have a restricted purpose (e.g. to transfer assets and personnel to a given institution) or a temporal limitation.

28. The following are key areas in which the Government has dealt with its commitments to varying degrees during and after the UNTAES:

- Managers of **public sector institutions** have largely fulfilled the terms of the relevant UNTAES agreements.³⁹ Based on a Mission survey of 12 public employers including Croatian Roads, INA Petrol and Osijek County Court, the majority of persons employed on permanent contracts under these agreements remain employed. The Ministry of Health has gone beyond his formal obligations to support the spirit of reintegration. The Ministry made an effort to allow ethnic Serb employees on temporary contracts to return to their pre-war places of work, mostly outside the region, on the expiry of their contracts.

³⁸ The UN Transitional Administration was created by UN Security Council Resolution 1037 of 15 January 1996 upon the request of the signatory parties to the Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium of 12 November 1995 (hereafter Erdut Agreement). The purpose of the Agreement was the reintroduction, via the mechanism of a transitional administration, of the jurisdiction of the Government of Croatia into a Region then, de facto, controlled by the authorities of the so-called Serb Krajina Republic (RSK). The UNTAES mandate expired on 15 January 1998.

³⁹ An Affidavit of 16 December 1996 addressing the Rights of the Employees of the Public Enterprises and Institutions served as a basis for all relevant UNTAES agreements. The Affidavit in particular envisaged that "... the Government of Croatia in accordance with the regulations of the Republic of Croatia guarantees to the current employees continuation of employment in their present position". It further stated that "all employees who fulfil work requirements for their present positions are guaranteed continuation of work in those positions and are guaranteed all the rights of employment prescribed by law, subordinate legislation and collective work contracts".

- The Government has honoured its commitment concerning **the deferment of military service for persons from the UNTAES area of the Danube Region**.⁴⁰ The exemption relates only to military service and not to the procedures of registration of personal details, medical check-ups or other procedures normally undergone prior to military service. There is no evidence that any young male permanently resident in the region has been required to perform military service in breach of the undertaking.
- **“Klein Municipalities”**⁴¹ and **Transitional Municipalities**⁴²: The Government has fulfilled its commitment to preserve the municipal status of Markusica, Sodalovci, Jagodnjak and Negoslavci⁴³. However, these municipalities face serious fiscal problems. Consistent with the agreement with UNTAES, the two transitional municipalities of Mirkovci and Tenja were incorporated into Vinkovci and Osijek respectively. However, the appropriate integration of the local bodies of authority, institutions and former municipal employees has not taken place. In particular, Mirkovci is not represented by a single councillor in the Vinkovci City Council.
- **Joint Council of Municipalities (JCM)**: The Government has essentially complied with its obligations to support the establishment of the JCM.⁴⁴ The Government also fulfilled its obligation to co-finance the JCM. However, there has been a notable lack of consultation between the Government and the JCM about the filling of senior governmental posts reserved for ethnic Serbs, both at ministry and county levels.⁴⁵ The Serb Assistant Minister of Interior position has remained vacant since January 1999. In contravention of the Government’s obligation, a new Deputy Prefect was appointed in Osijek-Baranja County, thereby disregarding the JCM’s prerogative to nominate candidates for this position. Finally, the regular four-monthly meetings with the President or the President’s Chief of Staff as called for in the “Letter of Intent” have not taken place.
- As reported in the January 1999 Progress Report, **the Danube Sub-commission for Missing Persons**⁴⁶ has not been formed as required by the relevant UNTAES agreement.
- The Government has failed to implement effectively **The Agreement of the Joint Working Group on the Operational Procedures for Return** aimed at establishing mechanisms for ‘return’ into and out of the Croatian Danube Region.⁴⁷ The main reason for this failure is that the implementation of the Agreement is inhibited by discriminatory laws.

⁴⁰ "Letter from the Government of the Republic of Croatia on the completion of the peaceful reintegration of the Region under the Transitional Administration, Republic of Croatia" of 13 January 1997 (hereafter "Letter of Intent").

⁴¹ The four so-called "Klein Municipalities" with ethnic Serb majority populations were created in 1997 by a decision of the UN Transitional Administrator for Eastern Slavonia, J.P. Klein, in agreement with the Government.

⁴² Through an exchange of letters, the Government agreed with UNTAES to create two transitional municipalities of Mirkovci and Tenja for the elections that took place in the UNTAES Region in April 1997. In a letter of 4 March 1997, the Government acknowledged that "in some time after elections ... these municipalities will become local committees (mjesni odbori) of the municipalities of Vinkovci and Osijek respectively".

⁴³ Parliament passed the Law on the Areas of Counties, Towns and Municipalities in the Republic of Croatia, which established a municipal status for Markusica, Sodalovci, Jagodnjak and Negoslavci.

⁴⁴ Erdut Agreement, para 12; "Letter of Intent" para 4; document on "Joint Council of Municipalities Organisation, status, composition, competence and financing" of 23 May 1997 published in the Official Gazette 137 of 20 October 1998.

⁴⁵ "Letter of Intent" paras. 4 and 7; document on "Joint Council of Municipalities Organisation, status, composition, competence and financing" of 23 May 1997.

⁴⁶ Agreement concluded between the Government of the Republic of Croatia and UNTAES concerning the functioning of the Sub-commission for Detained and Missing Persons for the Croatian Danubian Region" of 12 January 1998.

⁴⁷ Agreement reached on 23 April 1997 between the Government, UNHCR and UNTAES.

29. Performance of the Local Police Force: As a general assessment it can be stated that the local police force continues to carry out its duties in a satisfactory manner. Co-operation between police officers of different ethnicities is generally good. It is encouraging to note that the local police are beginning to adopt a professional approach when dealing with incidents involving individuals of different ethnicities. To reinforce the commitment to non discriminatory policing a number of police officers have either been dismissed, suspended or disciplined for unprofessional or indiscriminate behaviour. Since the January 1999 Progress Report improvement has been noted in local police investigations and the execution of search warrants.⁴⁸

30. Police Response to Ethnically Motivated Incidents: The initial response of local police when faced with blatant cases of intimidation has been at times inadequate and unprofessional. Of particular concern has been increased tension in some villages attributed to ethnic Croat returnees holding demonstrations demanding accountability for those persons missing since the war. This has led to an increase in ethnically motivated incidents in the municipality of Tompojevci. Since 7 May 1999, prayer meetings and protests have taken place in Berak, Tompojevci municipality, outside the homes of ethnic Serb inhabitants whom the protestors believe to have information relating to local missing persons. Several demonstrations have turned violent, resulting in some ethnic Serb families taking refuge elsewhere.

31. Co-operation with the Local Police Force: The local police have been open to advice from the Mission and consequently the follow up to the Berak incidents has been satisfactory; five protestors have been charged with physical assault. There are concerns that these protests, if not addressed by political, community and police leaders, may spread to Vukovar and other areas and thus affect the overall security situation in the Danube Region.

32. Ethnic Composition of the Local Police Force: The Memorandum of Understanding of 1997 on the restructuring of the Transitional Police Force established the ethnic composition of the local police.⁴⁹ The structure and composition of the local police force remains almost the same as previously reported. However, since the January 1999 Progress Report the agreed ethnic balance at senior level has not been maintained, in that three Station Commanders of Serb ethnicity have been suspended or dismissed. The Mission has received assurances from the Minister of the Interior that, in the event that these are not reinstated, the obligation to fill these vacancies with commanders of Serb ethnicity will be met.

33. Weapons Amnesty: It is a positive step that the Government has extended the weapons amnesty until 1 June 1999. However, the public generally has not availed itself of this amnesty. Only a small number of weapons and munitions have been directly surrendered by individuals. Instead, weapons and munitions have often been abandoned in open places, affecting public security.

⁴⁸ The local police force was involved in investigations into the illegal possession and supply of explosives and ammunition, and other serious crimes in the Region. These investigations were conducted and search warrants executed in a professional and unbiased manner, and resulted in the arrest of 18 suspects. Three of the suspects were serving police officers (two of Croat ethnicity and one of Serb ethnicity).

⁴⁹ In a memorandum agreed between UNTAES and the Ministry of Interior (effective in July 1997), the Ministry confirmed para. 4 of the "Letter of Intent" which stated that, "... proportional Serb representation, including at senior positions, in the Croatian Police in the area now constituting the Region under the Transitional Administration is guaranteed, regardless of what administrative divisions may be introduced in the future."

Human Rights and Democratisation

IV. Human Rights, Rights of Minorities and the Rule of Law

34. International Human Rights Instruments: Since January 1999, Croatia has ratified the European Agreement Relating to Persons Participating in Proceedings of the European Court of Human Rights. The Government has also signed the European Social Charter and its Protocols and is currently engaged in bringing its domestic legislation into conformity with these instruments with a view to early ratification in accordance with its obligations on entry into the Council of Europe in 1996. Furthermore, the Government has also signed the European Convention on the Exercise of Children's Rights. The Mission welcomes these developments.

35. Adherence to the 1951 Convention Relating to the Status of Refugees: The January 1999 Progress Report noted that a working group had been established to prepare legislation for the implementation of the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. Steps taken by the Government in April 1999 with regard to asylum procedures for refugees from FRY are positive. However, Croatia still needs to develop its asylum law and related refugee status determination procedures in order to meet its obligations under the Convention and Protocol.

36. Amendments to the Constitution: Previous Progress Reports noted that the Government should make certain amendments to the Constitution to bring its provisions into conformity with applicable international standards, particularly those that currently limit the enjoyment of certain rights to citizens rather than to individuals.⁵⁰ No progress has been made in this area.

37. Conformity of Croatian Legislation with International Standards: The Government has recognised that a number of laws still required amendment in order to bring them into conformity with the European Convention on Human Rights (ECHR).⁵¹ The Government has still not revised the 1991 Constitutional Law on Human Rights and Freedoms and on Rights of Ethnic and National Communities or Minorities⁵² and the Law on Local Government and Self-Government.⁵³

⁵⁰ In 1997 and 1998, experts of the Council of Europe recommended a number of amendments to the Croatian Constitution to bring it into conformity with the European Convention on Human Rights. As noted in previous Progress Reports, Constitutional Articles 27 (legal aid), 42 (peaceful assembly and public protest) and 46 (right of petition) should be amended to clarify that their protection extends to all individuals within Croatia and not just to all citizens of the country. Article 43 should be amended to clarify that the right to non-political association should also be guaranteed to all individuals and not only citizens. Article 32(3) should be amended to guarantee the unlimited right of all citizens to enter the country. Article 39 should be amended to modify the language stating that "any form of intolerance shall be prohibited and punishable" to reflect the international standards on freedom of thought and belief and freedom of expression.

⁵¹ See the Government's 'Second Report by the Working Group for the Review of the Compatibility of Croatian Legislation with the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols', December 1998, (hereafter Compatibility Report). The Government established a working group to prepare within six months draft laws on Associations and on Humanitarian Organisations. The Government also recognised in this report that certain laws should be amended to ensure full judicial review of matters that are currently handled through the more limited administrative system.

⁵² As noted in the January Progress Report, the passage of such a law was a precondition for Croatia's international recognition as an independent state in January 1992. In late September 1995, shortly after the Government reasserted its authority over most of the formerly Serb-controlled territories, Parliament suspended many provisions of this law. The suspended provisions provided in particular for the protection of political representation and social and cultural rights of minorities, and applied above all to the ethnic Serb minority. On entry into the Council of Europe in 1996, the Government agreed promptly to revise this law.

38. Separation of Powers: Recently, there have been developments that could undermine the principle of the separation of powers,⁵⁴ particularly the independence of the judiciary, from executive and legislative authority. The Government continues to fail to address issues relating to respect for the rule of law and the administration of justice. In some instances, the Government has shown a lack of understanding of the principles involved, in particular the separation of powers. On 4 February 1999, the Deputy Prime Minister and Minister for European Integration presented a paper to a high-level OSCE, CoE and UN delegation reflecting the view that the shortcomings in the judicial system could be effectively remedied through the strengthening of the executive branch of the Government.⁵⁵

39. Independence and Impartiality of the Judiciary: Since the January 1999 Progress Report, the independence and impartiality of the judiciary continues to be undermined. No revisions have been made to the Law on the High Judicial Council.⁵⁶ The Parliament has again acted to affect the outcome of judicial proceedings prior to their completion.⁵⁷ The executive authorities continue not to enforce judicial decisions,⁵⁸ particularly in regard to evictions.

40. The Constitutional Court: Although, the Constitutional Court has come to a number of positive decisions⁵⁹, the Government has shown no progress in implementing them. The effectiveness of the Constitutional Court as a remedy for violations of the rights of individuals remains limited.

41. Administrative Law and Practice: Problems remain unresolved with administrative law and practice since the January 1999 Progress Report.⁶⁰

⁵³ In April 1999, the CoE Parliamentary Assembly called on the Croatian authorities to revise both these laws “by the end of October 1999 at the latest”.

⁵⁴ As Parliamentary elections approach, the activation of the Presidential Council risks increasing the informal powers located in the Presidential Office, thus undermining the Constitutional position of the Government and the elected Parliament. The Presidential Council was formally established on 15 March 1999 by a Decision of the President. It encompasses a “Committee for Strategic Decisions” and nine working committees covering issues including national security, foreign policy, the economy, and social policy.

⁵⁵ In December 1998 the Parliament adopted “binding conclusions” stating that “the Government is to prepare a well-elaborated system of measures aimed at limiting the courts’ authority” in part with the “aim to diminish the scope of the legal mechanism”. She also stated that “the Government is to strengthen the control function of the Ministry of Justice with regard to the administration of justice bodies”.

⁵⁶ CoE Parliamentary Assembly Resolution 1185 (1999) called on the Croatian authorities “to address shortcomings in the administration of justice in order to ensure respect for the rule of law and to adopt amendments to the Law on the High Judicial Council by the end of April 1999 at the latest”. This deadline has not been met.

⁵⁷ For example, in March 1999, the Croatian Parliament issued an “authentic interpretation of Article 14 of the Law on the Status of Expelled Persons and Refugees” stating *inter alia* that no one with expellee or refugee status would be obliged to pay rent or other compensation to individuals whose property they were occupying. By doing so, the Parliament in effect interfered with ongoing judicial proceedings.

⁵⁸ CoE Parliamentary Assembly Resolution 1185 (April 1999) noted the persistence of the problem of non-enforcement of court decisions. In Vinkovci, an individual received a court decision for repossession of his house on 4 March 1994. After more than five years and seven unsuccessful eviction attempts the person has not yet been able to enter his property.

⁵⁹ On 21 April 1999, the Constitutional Court issued a decision confirming the principle that if an individual dispossessed of property could not have that property returned, he or she would be entitled to compensation. The Court also declared as unconstitutional a provision in a property law that limited the right to compensation for expropriated property to citizens. It gave the Parliament one year to amend the relevant law.

⁶⁰ The Law on Administrative Procedure provides that administrative authorities should give reasons for their decisions. However, when an individual is appealing a negative decision, which does not contain reasons the Administrative Court returns the case to the administrative authorities to issue a new decision providing reasons. The individual is thus relegated to a worse position – the procedure starts from the beginning, the new case logically going to the end of the list and the

- No steps have been taken to ensure the availability of a full judicial review of decisions taken by administrative authorities.⁶¹ Such a review would give an individual the right to appeal to a court, not only on the procedural aspects of an administrative decision, but also on the substance of that decision.
- The problems indicated above are exacerbated by the lack of transparency of proceedings, due to the legal prohibition against public hearings in the Administrative Court.⁶²

42. Functioning of Courts: Since the January 1999 Progress Report, there has been no progress in the functioning of the courts. A large number of judicial vacancies remain. The problem of judicial vacancies is especially grave in areas where courts do not function because there are no judges.⁶³ In formerly Serb majority areas of Lika-Senj County, this problem blocks the repossession of property through the courts. There has been no judge in Donji Lapac since 1995, and none in Korenica since summer 1998. Both locations are important areas of return. In some parts of the country, municipal authorities have attempted to put into place ‘visiting judge’ arrangements, but have had their overtures rejected by the county courts whose responsibility it is to arrange for the coverage of all courts in their area. Access to court, to effective rights of appeal and to obtaining decisions within a reasonable time continue to be problematic. There is still a massive backlog of cases in the administration and the courts.⁶⁴ Rules governing priority handling of cases remain unpublicised. However, there is general tendency to quickly resolve cases benefiting ethnic Croats.⁶⁵ Individuals remain inadequately informed that cases in which they have an interest have been initiated.⁶⁶

43. The Law on Convalidation⁶⁷: There has been some progress regarding the convalidation of pension payment documents and of documents relating to recognition of working years.⁶⁸ However, the limited operational capacities of the Pension Offices, and the complexity of the formal procedures

individual having accrued legal costs at the same time. Individuals wishing to pursue their claims against the administration through currently existing mechanisms will therefore find themselves in a vicious circle.

⁶¹ The availability of such judicial review is a key aspect of fair proceedings as required under Article 6 of the European Convention on Human Rights.

⁶² The Mission has expressed concerns about this issue in all previous Progress Reports in the context of the reservation lodged by the Government of Croatia under Article 6 of the European Convention on Human Rights. The Government itself acknowledged in its “Compatibility Report” that the relevant law is not in compliance with Article 6 of the Convention and that the law should be amended to permit the withdrawal of the Government's reservation.

⁶³ CoE Parliamentary Assembly Resolution 1185 (April 1999) called on the Croatian authorities to accelerate “...procedures for filling in vacancies in the judiciary...”

⁶⁴ The Government document of 4 February stated “It is estimated that around 1 million cases are yet to be resolved by Croatian courts”.

⁶⁵ In three Vukovar property cases involving ethnic Croat claimants, decisions in their favour were taken within one month. In contrast, a similar property case involving an ethnic Serb claimant started in Zagreb in 1994 is still pending. Several applications for re-opening of court procedures held *in absentia* in Osijek Municipal Court have been pending since October 1998.

⁶⁶ An individual from Split was evicted from his flat on 11 February 1999. The court failed to notify him that the Ministry of Interior had initiated a procedure for the termination of occupancy rights in 1996. The proceedings were held *in absentia*.

⁶⁷ The purpose of this Law, and of three related Government decrees of April 1998, is to validate administrative, judicial and other individual documents issued by bodies in the formerly Serb-controlled areas. This is also to ensure the integration of individuals into the Croatian pension and social welfare system. The convalidation of documents is the only means by which many people can obtain social benefits that often represent their primary or sole source of income.

⁶⁸ According to the Ministry of Labour and Social Welfare, as of the end of April, over 80 per cent of the 7,600 applications for entitlements to old age, disability and family pensions and for labour insurance have been recognised. Since January 1999, more than 3,000 out of 23,000 applications for recognition of working years have been validated (a considerable number having been filed only in March 1999).

cause delays in the resolution of a large number of cases.⁶⁹ In a commendable effort to remedy the situation, the Ministry of Labour and Social Welfare started dispatching expert teams to assist the local offices earlier this year. On 19 March 1999, the Mission and UNHCR jointly recommended that the authorities intensify action in this field and extend the 9 April deadline for submission of certain claims. Consequently, the Ministry proposed to the Government to review the 9 April deadline. The deadline expired and the Government's decision is still awaited.

44. **The Law on Citizenship** continues to be inequitably applied, and decisions on citizenship continue to be delayed.⁷⁰ In Vukovar alone, over 800 applications for naturalisation have been pending for up to three years. Of these, over 600 have been pending in the Administrative Court for at least one year.

45. **Occupancy Rights:** Since the January 1999 Progress Report, no progress has been made in resolving the issue of occupancy rights in socially-owned property.⁷¹ In the 11 March 1999 report of the Parliamentary Assembly of the Council of Europe entitled "Honouring of obligations and commitments by Croatia", the rapporteurs "urge[d] the Government to... start consultations with experts on a solution along the lines of the recommendations made by the international organizations". The rapporteurs also encouraged the Government to change its official position "that the problem of former occupancy rights holders is a part of the communist past, for which the Government could not be held responsible". In fact, different discriminatory legal mechanisms introduced by the Government have deprived *de facto* certain groups of their rights without prior notice, hearing or a possibility to appeal.

V. Freedom of the Media

46. **Introduction:** The Mission's previous Progress Reports have pointed to Croatia's failure to fulfil the obligations undertaken by the Government to uphold democratic standards as regards freedom of the media.⁷² Croatia's performance in this area has not improved, and remains well short of Government commitments.

⁶⁹ All applications on which decisions have been made fall within the category of "easy" cases. However, in most of the cases the problem is that the individual has difficulties producing the necessary documentation. This problem is particularly acute for those seeking pensions in the agricultural sector.

⁷⁰ A person from Slunj who had lived in Croatia for almost 50 years received a negative decision on citizenship from the Ministry of Interior in April 1997. He filed an appeal with the Administrative Court in May 1997. The case is still pending before the court. The CoE Parliamentary Assembly Resolution 1185 (April 1999) called on the Croatian authorities to take the following measure: "...clear instructions must be given to officials of the Ministry of the Interior to show flexibility in applying the 1991 Citizenship Law in respect of long-term residents of Croatia who are currently stateless and attempt to obtain citizenship through naturalisation; such applications should be treated most expeditiously; reasons should be given for negative decisions and appeals against negative decisions must be considered under urgent procedure by administrative courts".

⁷¹ The issue was outlined in the September 1998 Progress Report para 29-31. According to April 1999 Government figures covering the period 1991-1998, a small number of families (19,000) lost their occupancy rights, through proceedings initiated by the Government. The number of families affected is much higher as these figures do not reflect occupancy rights lost through other means.

⁷² Relevant international conventions include the 'European Convention for the Protection of Human Rights and Fundamental Freedoms' and the 'International Covenant on Civil and Political Rights'. The Dayton Peace Agreement also contains relevant provisions, which Croatia has, as a signatory and guarantor of the Agreement, accepted as commitments. The Government has also committed itself on accession to the CoE in 1996 to introduce specific reforms, some of which are contained in Opinion no. 195 (1996) of the Parliamentary Assembly of the Council of Europe: "... to implement the recommendations of the Council of Europe experts on legislation relating to the media".

47. State Broadcaster: The legislative framework for the state broadcaster, Croatian Radio-Television (HRT), the country's most influential medium, remains unsatisfactory. The HRT Law, as amended in October 1998, fails to achieve the Government's stated objective of transforming HRT into a public service broadcaster.⁷³ Thus, HRT lacks institutional autonomy and remains open to political influence. A series of disputes over senior appointments at HRT has demonstrated the highly politicised context in which HRT operates.⁷⁴ The manoeuvrings from March to May 1999, surrounding the appointment of a new chief editor for Croatian Television (HTV) emphasised the extent to which senior appointments in HRT are matters of political significance. News and current affairs programming continues to be distorted and misleading, and in the early months of 1999 political bias became more pronounced. Government officials continue to enjoy a significantly disproportionate level of coverage. There is seldom an opportunity for opposition representatives to respond directly to statements by Government or ruling party officials. Information or news which reflect poorly on the Government or ruling party are often distorted or omitted. Opposition parties are frequently portrayed in a negative light. Commentaries by presenters are often highly tendentious and inappropriate for a public service broadcaster.⁷⁵ This situation is of particular concern in a pre-election period, and runs directly against the commitment of the Government to take steps to ensure balanced pre-election coverage on HRT. However, the expressed readiness of the director of HRT to consult on a fortnightly basis with representatives of the international community over the standards of news and current affairs programming in the pre-election period is a positive step.

48. HRT Broadcasting in BiH: HRT has yet to fulfil its commitment to legalise its broadcasting in neighbouring BiH. On 23 February 1999, an EU demarche was made to the Croatian Government. The EU stated that HRT's activities in BiH "constitute illegal and unfair business practice" and "violate international law and standards in telecommunications and broadcasting".⁷⁶

49. Private Broadcasting: There has been no progress in the Government's fulfilment of its obligation to support the development of private broadcasting.⁷⁷ The licensing procedure for private television and radio stations is problematic. However, the relevant law, the Law on Telecommunications, is under revision. The Government is obliged to follow the recommendation made by CoE experts. The competent Ministry has welcomed the consultations.

⁷³ The Government's response of 29 January 1999 to the international representatives' media non-paper (annexed to the January 1999 Progress Report) did not satisfactorily address the issues raised as regards the HRT Law. CoE Parliamentary Assembly Resolution 1185 (April 1999) noted the non-fulfilment of the Government's obligation, stating that "... with regard to freedom of the electronic media, amendments to the Law on the Croatian Radio and Television (HRT) were rushed through Parliament disregarding most of the recommendations made by Council of Europe experts".

⁷⁴ In February 1999, a Vice President of the ruling party was appointed as head of the HRT Council. In the same month, the Deputy General Manager of HRT resigned giving as his grounds as being biased reporting, interventions in programming and the removal of the presenter of a popular television farming programme who had been critical of the Government's agriculture policy.

⁷⁵ There have been repeated instances of news items unfavourable to the Government or the ruling party being cut from current-affairs programmes. For instance on 10 May, such news items were cut from the programme "Jedan plus Jedan".

⁷⁶ The EU raised a number of aspects to the issue of HRT's broadcasting in BiH. First, as in Croatia, HRT's political bias in news and current affairs coverage favours the dominant Bosnian Croat political party which is an offshoot of the ruling party in Croatia. Second, HRT has, without permission, taken over a large portion of the frequency spectrum allocated to BiH by the International Telecommunications Union. Third, while HRT has obtained the right to broadcast foreign-produced programmes in Croatia, it has not obtained the right to broadcast these programmes in BiH. HRT is thus violating the broadcasting rights of foreign film and distribution companies. This practice also constitutes unfair competition with broadcasting companies in BiH.

⁷⁷ The April CoE Parliamentary Assembly 1185 (1999) called on the Croatian authorities "...to reconsider the decision not to privatise the third channel of the HRT".

50. Financial Pressures on Print Media: The financial difficulties of the Tisak company, which controls some 70 per cent of the press distribution market in Croatia, have caused considerable problems for the country's print media. A financial rescue package for Tisak, involving its take-over by a banking consortium, was agreed on 24 April 1999. However, this agreement did no more than provide for the company's immediate financial needs. Tisak has retained its near-monopoly on the distribution of print media. This means that the independent media will remain vulnerable should financial problems in Tisak arise again. Furthermore, the potential remains for official interference in media affairs as the banking consortium which now owns the company is comprised of a number of state-owned banks. Thus, the development of free market conditions for print media remains hindered.⁷⁸

51. Legal pressure on Print Media: There has been no progress in resolving another crucial problem identified in all previous Progress Reports, namely the political pressure through legal actions against independent print media.⁷⁹

VI. The Electoral Process

52. Reform of Electoral Legislation: The international position concerning the electoral legislation in Croatia was set forth in a non-paper developed by the Mission in co-operation with OSCE/ODIHR and the Council of Europe. It was officially endorsed by the United States, the European Union and the Russian Federation.⁸⁰ Of major concern are the effects of the 1991 Citizenship Law which permits the state to grant citizenship to "members of the Croatian people" living abroad, based on ethnic criteria. These persons, who have neither family, birth or residency links to the country are given voting rights in Croatia by virtue of their citizenship. This practice, combined with a separate candidates' list and the allocation of 10 per cent of the seats in the Parliament for this electorate, has no precedent in other OSCE participating States. In the previous election, the majority of the ethnic Serb refugees from Croatia were disenfranchised.

53. Reiteration of Commitments: On 29 January 1999, the Government reiterated its commitment to "harmonise electoral legislation with the standards of European countries".⁸¹ In a 4 February 1999 document to international representatives⁸², the Deputy Prime Minister and Minister of European Integration reaffirmed the commitment to establish a multi-party parliamentary working group to discuss electoral reform and stated that the international community's recommendations and criticisms would be addressed.

54. Public and Parliamentary Debate: Since January 1999, there have been continuous public and parliamentary debates concerning the reform of electoral legislation. The main issue has been the representation of Croats living abroad and the separate candidates' list. In March 1999, the Deputy Speaker of the Parliament and chairman of the responsible parliamentary committee appointed an expert group which produced a document outlining principles for a new electoral law. However, the

⁷⁸ Tisak's withholding of sales revenue in late 1998 and early 1999 caused particular difficulties for the small publishers of independent weekly newspapers such as *Nacional* and *Feral Tribune* which lack the resources to withstand such financial pressure for long.

⁷⁹ According to information from the Croatian Journalists' Association, there are currently more than 900 civil or criminal cases pending against publishers or journalists.

⁸⁰ See the Elections chapter of the September 1998 Progress Report.

⁸¹ This commitment is contained in a Government paper entitled "Comments on the Non-paper of the EU Troika, OSCE and USA on the Election Process in Croatia" of 29 January 1999.

⁸² The paper was sent on the occasion of a visit of high level representatives of the OSCE, CoE and UN in February 1999.

document did not propose a solution for the issue of representation of Croats living abroad. Multi-party consultations on the document began on 15 April and were scheduled to end on 15 May 1999 but no agreement has been reached so far.

Looking Ahead

55. Elections to the Lower House of Parliament must be held by January 2000. Revision of electoral legislation to meet international standards, and securing an unbiased role for state-owned media are the two keys to create fully democratic conditions for these elections. Croatia's obligation to comply, well before the forthcoming elections, with international recommendations concerning the electoral process requires a presentation of new electoral legislation no later than 4 months in advance of an election date. Furthermore, the voter registration list including transparent rectification procedures must be presented to the public no later than 2 months in advance of a given election date. If they succeed in being "free and fair", Croatia takes a decisive step forward in integrating itself into the European community of common values.

56. In overcoming the consequences of the war, return becomes possible when conditions for life after return are established. Those wishing to return are only able to fulfil their hopes if the Government makes the repossession of property possible, eliminates discrimination in relevant legislation and its implementation, and if it offers non-discriminatory reconstruction assistance. In the Danube Region, professional performance of the local police is not sufficient to reduce tensions in mixed communities and to create confidence among ethnic Serbs. Greater commitment of all parties involved, in particular the authorities, is necessary.

57. The respect for the rule of law as well as the independence and impartiality of the judiciary remain the central task in order to strengthen civil society and promote the equality of all citizens. Further improvement in this area forms the basis for progress in the overall economic and social development of the country.

ANNEX

TABLE 1 - RETURN OF REFUGEES TO CROATIA FROM COUNTRIES OF ASYLUM⁸³*(Figures provided by UNHCR and ODPR)*

STATUS	JULY – AUGUST 1998	SEPT – DEC. 1998	JAN 1999 – APR. 1999	AS AT 30 APR. 1999
(1)	(2)	(3)	(4)	(5)
1. Clearances Received from ODPR	6,100	6,200	4,600	14,500
<i>(a) Actual returns</i>	2,700	4,700	4,100	11,500
Returned Assisted	2,000	1,200	178	3,300
Returned Unassisted	700	450	1,800	2,900
Returned with Putni List ⁸⁴	N/A	3,100	2,200	5,300
<i>(b) Accepted – Can Return Immediately</i>	2,500	1,200	1,100	3,700
2. Applications Pending ODPR Clearance	6,000	4,300	3,900	7,000
3. Deferred Cases	1000	3,400	1,600	4,900
Total Applications Submitted to ODPR	11,900	5,500	4,400	21,800

TABLE 2 – RETURN TO AND FROM AND DEPARTURES FROM THE DANUBE REGION*(Figures provided by ODPR, except where noted)*

STATUS	AS AT 31 AUGUST 1998	AS AT 31 DEC. 1998	AS AT 30 APR. 1999
(1)	(2)	(3)	(4)
<i>Persons Returned to the Danube Region from the Rest of Croatia</i>	17,000	26,100	35,300
<i>Persons Returned from the Danube Region to the Rest of Croatia</i>	21,100	27,000	27,000
<i>Displaced Persons from the Danube Region to FRY⁸⁵</i>			c.a. 29,000
<i>Displaced Persons Remaining in the Danube Region</i>	4,000	3,000	3,000
<i>Resident Ethnic Serbs from the Danube Region leaving for FRY⁸⁶</i>			c.a. 18,000

- (a) ODPR statistics (not included in the table above) show that a total of approximately 32,500 ethnic Serbs have returned to Croatia from FRY and BiH since 1995. The Return Programme accounts for some 12,000 of these returns. Of interest is the change in mode of return between the adoption of the Return Programme (26/06/98) and the end of April 1999. Numbers of persons returning in an organised manner have decreased since July 1998 while the number of people returning spontaneously and through the issuance of putni list documents has increased. Overall, the organised procedures for return appear to have had an increasingly limited impact on the number of people returning.
- (b) The Government has made significant steps in the return of ethnic Croats to the Croatian Danube Region with some 18,000 returns registered between September 1998 and April 1999. Conversely the return of ethnic Serbs from the region to the rest of Croatia has, after the return of 6,000 people between August and December 1998, stopped, despite the presence of 3,000 displaced persons remaining in the region. This may be attributable to the failure of the Operational Agreement on Return to provide durable solutions for those persons remaining in the Danube Region. The Mission has been unable to obtain figures for departures from the Croatian Danube Region to FRY due to the situation prevailing in FRY.
- (c) Not noted in this table but of importance is the lack of progress for the 13,000 ethnic Croats from Bosnia who have submitted applications for return to their homes. Obstruction in Bosnia, and in particular Republika Srpska, combined with a lack of engagement by the Croatian Government on this matter prevents the return of these people.
- (d) In summary, of the approximately 22,000 applications submitted to ODPR⁸⁷ for return to Croatia from FRY and BiH some 15,000 persons either have returned or can do so immediately. The remainder await confirmation or have been deferred. In the opinion of the Mission the relatively low numbers of persons who have returned (when considering the total estimated caseload of more than 300,000 refugees) relates in large part to the lack of comprehensive implementation of all elements of the Return Programme and, in particular, the ability of returning ethnic-Serbs to reclaim their property.

⁸³ **Table 1** - For Accepted, Deferred and Pending cases note that figures presented do not represent static information. Thus to conclude that by adding figures from columns 2, 3 and 4 the reader will arrive at the total in column 5 is erroneous.

⁸⁴ **Table 1** - Putni List = Travel Document issued by Croatian Diplomatic Missions to persons who meet the criteria established under the Procedures for Return of Persons Who have Left the Republic of Croatia (April 1998)

⁸⁵ **Table 2** - UNHCR FRY has provided estimates that some 18,000 domicile ethnic-Serbs from the Danube region have moved to FRY since the end of the war.

⁸⁶ **Table 2** - UNHCR FRY has provided estimates that some 29,000 ethnic Serbs displaced from the rest of Croatia to the Danube Region have moved to FRY.

⁸⁷ Note that persons returning with Putni List documents do not have their applications processed by the ODPR.