



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

**STATUS REPORT No. 16 ON CROATIA'S PROGRESS IN MEETING
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GENERAL BACKGROUND

Government of Croatia Maintains its Overall Commitment to Fulfill its OSCE Mandate Obligations, but Pace of Reforms has Slowed

During the reporting period of December 2004-July 2005, the Government of Prime Minister Sanader continued to express a firm commitment to resolve OSCE mandate related issues in the larger context of Euro-Atlantic integration (EU-NATO), but proceeded at a slower pace in meeting the objectives contained within the Mission's mandate.

Several developments have affected the capacity of the Government to gather the necessary political and administrative resources to make progress on mandate-related issues. Two rounds of elections, one in January for the President and one in May for local and regional self-government units throughout the country, occupied considerable time and energy and had the normal effect of slowing or delaying government actions in several areas.

The 16 March decision of the EU Council of Ministers to postpone the start of membership negotiations with Croatia gave rise to some sense of resignation and disappointment amongst Government and political party leaders. Almost a decade after the end of the 1991-1995 conflict, the Gotovina case has sharpened the rift between nationalist and pro-European forces and symbolizes the underlying non-resolved debate about the conduct of the war. However, through the dismissal of some nationalist and anti-European officials within HDZ and the State administration, Prime Minister Sanader renewed efforts to transform the ruling HDZ, which was in power during the 1990s, into a modern European centre-right party.

Although the cooperation between the Government and the Independent Democratic Serb Party (SDSS), based on the *Cooperation Agreement* concluded with the ruling HDZ in December 2003, remains in force, the SDSS and other minor parliamentary parties supporting the minority cabinet of Prime Minister Sanader frequently called into question their support for the Government, often putting the Government on the defensive. In the local elections, SDSS confirmed its position as the main political representative of the Croatian Serb community and became a stronger political force in many return areas, but was disappointed that local chapters of the governing HDZ did not choose to coalesce with the SDSS in forming city and regional governments.

As a result, the pace of reforms, which had slowed after the 2004 summer recess, does not seem to have regained its former momentum. However, some of the positive signals given last year, in particular the symbolic ones, were confirmed. The visit by Prime Minister Sanader in spring 2004 to Serb returnee villages, in a heavily war affected area of the Dalmatian hinterland, was followed by his attendance in January 2005, together with Parliament Speaker Seks, at an Orthodox Christmas reception in Zagreb. In a visit to the Mission on 7 June, the first ever visit of a Prime Minister to the Mission, Prime Minister Sanader acknowledged some delays in the reform process but nevertheless maintained the overall commitment of the Government to resolving the mandate related issues.

Sporadic nationalist outbursts with the display of World War II Ustasha (gathering in December in Zadar) or Chetnik symbols (during a celebration of the Orthodox Christmas in January in Vukovar) were quickly condemned by the HDZ and SDSS but, despite pledges, no progress has been recorded on the drafting of legislation to prohibit public support for fascist or totalitarian regimes. In the aftermath of the local elections, various inter-ethnic incidents,

as well as ethnically based declarations made by local politicians, illustrated the continuing sensitivity of relations between the Croatian and Croatian Serb communities.

Regional Cooperation is Developing

The most significant steps toward achieving the objectives contained in the Mission mandate has been progress made in regional cooperation and reconciliation, one of the main themes in President Mesic's January inaugural address.

The Trilateral Conference (Croatia, Bosnia and Herzegovina, Serbia and Montenegro) on Refugee Return held in Sarajevo on 31 January has set the stage for a coordinated approach to resolve most refugee issues by 2006. It was the first ministerial-level agreement in a regional format since the 1995 Dayton Peace Accords. In compliance with the Trilateral Declaration, the three countries committed themselves to developing national plans to address refugee issues in their respective countries. The Croatian national plan (*Road map*) was officially presented to the international community on 6 July.

Croatia has also taken encouraging steps toward regional inter-state judicial cooperation on war crime trials, with the support of the OSCE Missions in the region. From 7 until 9 June, the Mission hosted a Trilateral Ministerial Conference and an expert-level meeting on this issue on Brijuni Island.

Bilateral relations with neighbours, in particular with Serbia and Montenegro, are improving but remain sensitive. President Mesic showed his commitment to good neighbourly relations with Serbia and Montenegro, as well as with Bosnia and Herzegovina, by attending the Tenth Igman Initiative regional conference in Belgrade on 27 June. On 6 July, he started a three-day visit to Belgrade, after postponing the visit in May in protest of a pro-Chetnik rally in Serbia and Montenegro, which was attended by the Serbian Foreign Minister. A number of outstanding issues are currently being discussed by the two countries (border agreements, succession issues, missing persons etc). In March, a bilateral Agreement on the Protection of National Minorities, signed on 15 November 2004 by Prime Minister Sanader during the first ever visit to Belgrade by a Croatian Prime Minister, was ratified by the Croatian Parliament.

The general atmosphere of Croatian-Slovenian relations has improved. On 10 June, Croatian and Slovene Government officials met on Brijuni Island to sign a joint declaration on the prevention of border incidents.

REFUGEE RETURN

At least 300,000 Croatian Serbs had been involuntarily displaced as a result of the 1991-1995 armed conflict. Almost a decade after the end of the war, about 117,000 Croatian Serbs have been registered by the Croatian authorities as having returned to and within Croatia. However, the sustainability of return continues to remain limited.

Sarajevo Ministerial Declaration on Regional Returns

The Trilateral Ministerial Conference on refugee return held in Sarajevo on 31 January has set the stage for a ***coordinated regional approach*** to resolve the remaining refugee issues, mainly related to return or local integration, by the end of 2006. The process, which is facilitated by the international community (OSCE, UNHCR, and European Commission), is based on the assumption that only a political agreement of the three Governments can be

effective in removing the refugee issue from the political agenda. The Declaration signed by the ministers responsible for refugee related matters in the three countries foresaw by end of April the adoption of **Road Maps** with concrete benchmarks to be fulfilled at the national level, as well as the development of a regional matrix.

The Mission and its international partners assisted the Croatian Government in drafting a list of tasks for the **national Road Map** to be fulfilled by end of 2006. The Government has completed its detailed Road map, which was officially presented to the International Community (IC) on 6 July. The Government is going to request a Ministerial meeting of the three Governments to take place before the end of July. With the presentation of the Road map, the process has regained a dynamic which had decreased since the adoption of the Declaration.

Guide for Returnees to Croatia

In December 2004 and June 2005, the Mission issued a **Guide for Returnees to Croatia**, which was very much appreciated by the target group, NGOs and the responsible Government bodies in the neighbouring countries. In total, 50,000 copies of the brochure, which was prepared in consultation with the Croatian Government, are being distributed in Serbia and Montenegro, Bosnia and Herzegovina, and Croatia with the assistance of the UNHCR, NGOs, the authorities and OSCE missions.

Access to Housing

Former holders of occupancy/tenancy rights (OTR) who lived in socially owned flats are the largest remaining refugee and IDP (internally displaced person) category lacking access to housing. Remedies adopted by the Parliament and Government since 2000 for this refugee category are still largely unimplemented. Property repossession and reconstruction are relatively more advanced, although several deficiencies undermine their impact on sustainable return and contradict rule of law principles.

Access to Housing for Former Occupancy/Tenancy Rights (OTR) Holders

Up to 30,000 Croatian Serb households, who used to live in former socially owned apartments, lost their rights as **specialty protected tenants** and physical access to their homes, in the course of and after the armed conflict. This is the largest remaining refugee and IDP category still without a housing option in practice.

Two housing schemes were adopted by the Croatian Parliament in 2000/2002 and by the Government in 2003 for the benefit of former OTR holders who used to reside inside and outside the areas directly affected by the war. The programmes differ in regard to their legal basis, geographical scope and application procedure as well as in the housing options available to applicants.

An agreement with the International Community (IC) to provide housing for a first group of eligible former OTR holders in the **urban areas** of Croatia, well before the 30 June 2005 application deadline, has not been met. So far, none of the approximately 2,600 households who applied have received an apartment. The practical provision of housing for individuals who lost their home 12 or 13 years ago certainly would reinforce the credibility of the Government's housing scheme and encourage potential beneficiaries to file applications. Upon the urging of the IC partners, the Government decided on 30 June to extend the **application deadline** which was expiring on the same day. The extended application period

will now expire on 30 September. The Government reiterated its commitment to start to physically provide housing to a first symbolic group of applicants before its expiration.

Similarly, in the *mostly rural areas* directly affected by the war, the so-called Areas of Special State Concern (ASSC), only a very limited number of former OTR holders, who in 1995 *ex lege* lost their acquired rights and physical access to their former OTR apartments, were provided with an adequate housing option.

In December 2004, the Grand Chamber of the *European Court of Human Rights* agreed to reconsider the original ECHR ruling (July 2004) in the OTR termination case of *Blecic v. Croatia*.

Reconstruction of Destroyed Residential Properties

Since 2003, after most ethnic Croats had been provided with Government *reconstruction assistance*, Croatian Serb applicants constitute the large majority of beneficiaries. The six-month temporary extension of the application deadline from March to September 2004 attracted an additional 16,000 applications, mainly from Croatian Serbs displaced in neighbouring countries.

On the administrative side, the Government intends to complete the processing of the more than 8,000 remaining reconstruction claims within the first trimester of 2006 and to resolve the more than 10,000 pending appeals against first instance negative decisions by the end of 2006.

The Mission observes an increasing number of questionable *negative eligibility decisions* and has encouraged the Government to address an apparent misreading of the law contributing to this trend.

Property Repossession

As of 1 June, only 724 private residential properties belonging to Croatian Serbs remain occupied out of a total of about 19,500 which had been allocated for temporary use before and after 1995, mainly to Bosnian Croats and Croatian settlers.

Although the pace of repossession has declined during the winter, the Government should achieve its completion by the *end of 2005*, provided that the construction of *alternative housing* for temporary users takes place, at the envisaged pace. Two thirds of the remaining occupied properties are located in Dalmatia and more than half are concentrated in three municipalities: Knin, Benkovac and Obrovac. A few dozen or so cases referred to the judiciary might remain outstanding after 2005.

Although properties are formally reposessed by owners, several problems continue to impede the possibility of sustainable return and show lack of respect for rule of law principles. In particular, the Government in November 2004 announced to the IC partners measures aiming at *compensating owners of looted/devastated properties*, as well as addressing the problem of claims against owners filed by occupants for *investments*. In early July, the Government announced that such measures have been already drafted and will be soon adopted by the Government.

Reintegration Issues and Access to Basic Infrastructure

In addition to housing problems, other factors represent disincentives to minority refugee return. Lack of jobs and economic opportunities, including discrimination against minority members in return areas, represent a major impediment for sustainability of return. Appropriate administrative adjustments are still required to redress the persistent denial of recognition of *working years* (for pension benefits) in the former Serb controlled areas, a practice which is contrary to the Law on Convalidation of 1998. Administrative measures are also needed to address the difficulties that mostly displaced Croatian Serbs, who lost the status of permanent residence for foreigners after leaving the country during the armed conflict, still face to ultimately acquire Croatian citizenship.

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 announced in early July that it will increase its efforts, both operational and financial, in the re-electrification of a progressive number of minority return villages that used to be connected to the electrical grid before the war.

JUDICIAL REFORM and the RULE OF LAW

General Judicial Reform

Technical reforms to facilitate public access to and improve efficiency of the judiciary continue. The public, nonetheless, still views the judiciary as one of the least responsive of State institutions. In its efforts to implement reforms, the Ministry of Justice must counter significant opposition from vested interests that benefit from non-transparent and inefficient judicial institutions. Without a reform perspective equally shared by practitioners as well as the public, consolidation of reforms will be difficult for any reform-minded Minister.

Of announced reform measures, developments are most notable in the enhancement of training capacity at the Judicial Academy, proposals for legislative amendments and modernized land registries. Other announced reforms remain largely unimplemented. The Government intends to adopt a Strategy for judicial reform in July.

Other key reforms have not yet been included in the judicial reform plan. Measures to relieve judges of time-consuming non-judicial duties such as conducting elections have not been adopted. No reform measures have yet been undertaken to address deficiencies that prevent the *Administrative Court* from providing full fair trial guarantees. Croatia has no system to provide *free legal aid* to the general public in *civil cases* other than that provided by members of the Croatian Bar Association as part of their *pro bono* obligation, although a programme for Roma has recently been initiated. A Ministry of Justice working group is currently drafting a law to establish a free legal aid system for civil and administrative cases.

Constitutional Court: Fair Trial and Effective Remedy

Widespread judicial delays, including in the highest courts, continue to preoccupy Croatia's human rights institutions and have also been highlighted by the ECHR in the first half of 2005. The Constitutional Court (CC) continues to serve as the primary supervisor of *delayed judicial proceedings*. The number of such complaints has grown to the extent that it threatens the CC's ability to serve as an effective domestic remedy, prompting the CC to propose that

Parliament adopt several reforms. In response to the large number of complaints received regarding judicial delays, the Ombudsman proposed that Parliament expand his jurisdiction to include supervision of certain aspects of the work of the judiciary.

The CC increasingly fills its role as an effective domestic remedy. However, questions remain as to whether there are gaps in the CC's jurisdiction that prevent it from reaching *all human rights questions*.

Ombudsman and State Administration

The Parliament in late November 2004 appointed a former judge of the Constitutional Court as the *new Ombudsman*. In February 2005, he submitted a constitutional challenge to a Government decree that essentially allows wiretapping by the security services without court approval. The Ombudsman's 2004 *Annual Report* observed that most complaints to his office were related to property repossession, occupancy/tenancy rights, housing care, protection of the rights of Roma, and social welfare. Noting excessive delays in proceedings before administrative bodies and the Administrative Court, the Ombudsman proposed several reforms.

The Parliament adopted the Ombudsman's Annual Report in early June, obliging the Government to *ensure a budget adequate* to address remedial measures proposed by the Ombudsman and support the institution's effective functioning, including sufficient resources for *field visits*, which are currently sponsored by a Mission project funded by Norway.

Rights of National Minorities and Women

Croatia's legal framework concerning protection of national minorities is good. However, implementation in key areas has lagged. Minorities have increasingly sought to use political coalition agreements with the current Government, rather than legal guarantees, to access basic rights.

Under-representation of national minorities in the judiciary and State administration continues. During a visit in February, the High Commissioner on National Minorities (HCNM) explored ways in which he might assist the Government in the development of measures to increase minority representation in State bodies, in particular as related to the *National Plan for Combating All Forms of Discrimination* that is currently under development.

The HCNM also expressed concern over the *physical separation of pupils* along ethnic lines in some schools in Eastern Slavonia. He emphasized the need to integrate national minority students, while ensuring their right to *minority language education*. The Ministry of Education has announced measures to redress the situation, but they have not been implemented. The HCNM also offered assistance in the development of a *history curriculum*. In a meeting with the Mission in May, the Deputy Minister of Education presented a draft of the history "supplement" covering the period from the Homeland War to the present. The "supplement" should be ready for use in the schools during the forthcoming academic year.

The Ombudsman and the Council of Europe (CoE) Commissioner for Human Rights recently noted that implementation of the *National Programme for Roma* has been limited and emphasised the need to provide pre-school education for Roma children. The CoE

Commissioner also called on the authorities to budget sufficient funds for implementation of the Programme, take measures to prevent acts of violence against Roma, and provide better access to the labour market.

The UN Committee on *Elimination of Discrimination against Women* in January welcomed Croatia's readiness to strengthen national mechanisms for gender equality. The Committee, however, raised a number of concerns, including the persistence of sex-stereotyping in curricula and textbooks, high incidence of domestic violence, gender-based employment discrimination, marginalized position of Roma women and under-representation of women in executive bodies of local authorities. The 2004 annual report of the Ombudsman for Gender Equality similarly noted that most complaints related to domestic violence, trafficking, and employment discrimination. The Ombudsman expressed dissatisfaction with the lack of implementation by State bodies of the Law on Gender Equality.

Cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY) and the ICTY Completion Strategy

The Government has stepped up efforts to demonstrate *full cooperation* with the ICTY following strong signals that its previous efforts to locate and transfer fugitive indictee Ante Gotovina had been insufficient. After the EU's decision to delay negotiations, the Government in late April presented an "Action Plan" of measures intended to locate Gotovina. Contrasting the Government's current efforts to those during the first part of 2005, the ICTY Chief Prosecutor in mid-June expressed confidence that diligent implementation of the plan should lead to Gotovina. She concluded that several more months were needed, however, to assess whether Croatia was doing its utmost. The ICTY President similarly identified the continuing failure to surrender Gotovina as a last "stumbling block" to full cooperation.

Further steps were taken toward the transfer of ICTY cases to Croatia as part of the *ICTY's completion strategy*. As of early July, the Chief Prosecutor's request to transfer the indictment against Mirko Norac and Rahim Ademi remained pending before the Trial Chamber. In late June, the Court granted the Chief Prosecutor's request to withdraw her proposal to transfer the indictment against the so-called "Vukovar Three" either to Croatia or Serbia and Montenegro, concluding that "the interests of justice appear to be better met by this trial being conducted before this Tribunal." In addition, the Croatian State Attorney has been working closely with the ICTY Prosecutor to prepare a framework for the transfer of unindicted ICTY cases.

Developments in the ICTY proceeding against Ivan Cermak and Mladan Markac generated considerable domestic criticism and were a factor in the recent election campaign. In May, high-ranking officials, including the President and the Prime Minister as well as representatives of the opposition, while emphasizing the need for individual criminal responsibility, condemned a proposed revised indictment as criminalizing the Homeland War through its definition of "*joint criminal enterprise*." These reactions suggest that prosecution of members of the armed forces before the national courts will continue to take place in a politically charged atmosphere.

In late April, the ICTY indicted the former head of the secret service and three journalists for *contempt of the Tribunal* for publishing the identity and testimony of a protected witness.

Most media recognized that the publication of the identity of a protected witness exceeded the bounds of responsible journalism, while others considered the indictments an infringement of journalistic freedom. The Croatian Journalists Association, however, opposed the imposition of sanctions. Some political candidates named the protected witness during the local election campaign, indicating that testifying as a prosecution witness in war crime cases continues to be viewed in some circles as politically suspect.

War Crime Trials in Domestic Courts and Missing Persons

The likelihood of the transfer of ICTY cases heightened attention to the conduct of war crime trials before the Croatian judiciary and added to the sense of urgency of implementing reforms and resolving open questions.

The first half of 2005 saw fewer domestic war crime proceedings contrasted to prior periods. Nonetheless, continuing trends from past years, the vast majority of defendants are tried *in absentia* and the reversal rate by the Supreme Court remains high.

Serb defendants in general have a better chance of receiving a fair trial than in the past. However, ***disparities on the basis of national origin*** remain. Serbs continue to represent the vast majority of those prosecuted, including those arrested in third countries, and no new prosecutions have been initiated against members of the Croatian armed forces in 2005. Nearly three-quarters of Serbs are tried *in absentia*. Serbs are accused for a wide range of criminal conduct while Croats are almost exclusively charged for killings. Serbs are prosecuted for genocide for acts that are not of the gravity associated with verdicts of international tribunals. While prosecutors have abandoned a significant number of cases against Serbs, some arrests based on unsubstantiated charges continue. Further efforts are needed to avoid unwarranted arrests and detention. Some crimes involving Serb victims, as well as the effort to cover-up a crime such as the killing of civilians in Paulin Dvor, remain unprosecuted.

In June, the Supreme Court president granted the first request to transfer a case to the Zagreb County Court in its capacity as one of ***four "special" courts*** granted extra-territorial jurisdiction over war crimes. The vast majority of cases continue to be tried where the crimes occurred. Only a very few were transferred despite concerns regarding conditions in some cases that significantly complicated the conduct of an impartial trial in a local court. As a result, trials continue to be conducted primarily in those areas of Croatia most heavily affected by the war where witnesses are most susceptible to intimidation and judges and prosecutors exposed to pressure, particularly in relation to cases against members of the Croatian armed forces. ***Security for witnesses*** as well as for judicial personnel needs to be improved, as well as action taken against those who exert such pressures.

The need for ***improved inter-state judicial cooperation*** between Croatia, Serbia and Montenegro and Bosnia and Herzegovina has become increasingly apparent. The types of cooperation needed if impunity is to be avoided are many and varied, pertaining to information and evidence, access to witnesses, apprehension of suspects, and ultimately in which State an accused will be prosecuted. While positive examples of cooperation continue, considerable obstacles remain to systematic cooperation.

At a first OSCE-facilitated meeting in late November 2004, judges and prosecutors identified the need for direct and institutionalized cooperation, particularly as related to obtaining

witness testimony. One concrete outcome was that the Chief State Attorney signed protocols with his counterparts in Bosnia and Herzegovina and Serbia and Montenegro in early 2005. These agreements served *inter alia* as the basis for Croatian prosecutors interviewing witnesses in Serbia and Montenegro and Bosnia and Herzegovina. However, significant delays continue in some local courts due to problems obtaining witness testimony from Serbia and Montenegro and Bosnia and Herzegovina.

The legal impasse reached in a number of cases, where one of the three states arrests its own citizen wanted by one of the others on suspicion of war crimes, demonstrates significant deficits in existing cooperation mechanisms. During a second OSCE-facilitated meeting hosted by the Mission on Brijuni Island in June, at which Ministers of Justice of all three countries participated, judges and prosecutors identified legal obstacles to the transfer of defendants who are citizens (extradition) as well as the transfer of the criminal case. The only avenue identified as open for cooperation under current legal frameworks was the sharing of criminal files and evidence through mutual legal assistance. Given the inter-linkage between domestic proceedings and the transfer of ICTY cases, the ICTY has played an increasingly constructive role in OSCE efforts to facilitate and improve inter-state cooperation.

Particularly in light of the continuing arrests in third countries of citizens of Serbia and Montenegro wanted by Croatia, the Governments of Croatia and Serbia and Montenegro should develop a mechanism for ***systematic review of war crime cases***, in particular *in absentia* convictions. The list of “substantiated” war crime cases given by the Minister of Justice to her counterpart in Serbia and Montenegro in November 2004 could serve as the basis for such a review.

Transfer of Serbs convicted of war crimes in Croatia to serve their prison sentences in Serbia and Montenegro was another form of cooperation that occurred in early 2005. The review of additional requests for transfer appears to have stalled despite an inter-governmental agreement reached in late 2004.

The issue of ***missing persons*** remains a highly sensitive subject and discrepancies remain as to the total number of missing, particularly Serbs. Cooperation, including the exchange of information, should be enhanced between the neighbouring states so as to permit closure and reconciliation.

POLICE REFORM

The Ministry of Interior, supported by the Mission, continues its efforts to reform the Croatian Police. However, its human resource management system still needs to be revised in order to safeguard the police from political interference. The Ministry is currently making efforts to raise the overall standard of police education. Following a delay of six months, the training of community policing Contact Officers recommenced at the end of January 2005.

Police Reform

There have been three ***replacements of senior police officers*** since the last Status Report. Following the removal of the Head of the Crime Police Directorate within the Ministry of Interior on 18 April, Prime Minister Sanader stated that there should be more discipline within the Ministry of Interior and that there would be further replacements.

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 programme. Over 400 officers have been trained since the training session recommenced in January and it is envisaged that the number of trained officers will reach 700 by March 2006.

The *human resource management system* within the Ministry of Interior still needs to be revised to safeguard the police from political interference. The Mission continues to emphasize the importance of insulating the police from any such interference by encouraging the development of a fully transparent human resource management system. A follow-up human resource management workshop¹, with participants from Police Administrations, took place in June 2005. The Mission and German police experts facilitated the workshop, which included all heads of Police Administrations from Croatia. The Ministry has applied for assistance under a PHARE project, “Strengthening the Human Resource Management, Education and Training System of the MoI.”

National minorities and women are still under represented in the Croatian Police; the Ministry has still to produce a clear strategy to address this issue.

The ongoing reform of *police education* is currently focusing on bringing it into line with the Bologna Declaration on the European Space for Higher Education².

International Cooperation

The Mission continues to advise the *Croatian border police* on the implementation of its “Border Police Development Strategy 2004-2007.” Croatia is due to host an OSCE/OSCCP³ workshop to deal with cross-border cooperation for countries in the region in September 2005.

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 IOM and relevant Croatian Ministries. A report on all such activities is maintained and regularly updated by the Mission.

Police Operational Issues

According to official statistics, there are relatively few *ethnically motivated incidents* reported by the police in Croatia. However, there is no legal definition of such an incident, which means that there is a potential for under-reporting. There is also inadequate legislation to deal with such an incident when it is reported.

¹ The first workshop took place in 2004 and the participants were all from the Ministry of Interior.

² The Bologna Declaration is a pledge by 29 countries to reform the structures of their higher education systems in a convergent way.

³ OSCE South-Eastern Europe Cross-border Co-operation program

ELECTORAL REFORM

The conduct of the presidential election and local elections were satisfactorily assessed by domestic monitoring institutions. However, some persistent deficiencies in the procedures highlighted the need for a comprehensive electoral reform effort. The Croatian authorities committed themselves to such a process after the local elections.

Presidential Elections

The overall assessment made by the State Election Commission (SEC), Croatia's official election supervisory body, about the conduct of the January 2005 presidential election (the first national election since independence not to be monitored by the international community), was that they were free and fair. Croatia's leading election monitoring NGO, "GONG", added that they were held in a "tolerant and democratic atmosphere."

However, during the presidential campaign, GONG and the media also highlighted a number of *persistent problems*, such as the lack of regulation of campaign financing, the poor management of voters' lists and the problem of fair access to media.

Out-of-country voting. Additional polling stations were opened in Serbia and Montenegro by the Croatian authorities to enable Croatian Serb refugees residing there to vote, and in Bosnia and Herzegovina, to permit voting by Croatian citizens resident in that country. Voting in Serbia and Montenegro passed without incident, but in Herzegovina (Bosnia and Herzegovina) alleged irregularities in the management of voters' lists, and double voting, were reported in the first round.

Local Elections

The SEC and GONG delivered a positive assessment about the conduct of the May local elections, similar to the one for the presidential elections. The Mission noted that about 3,000 Croatian Serbs from the neighbouring countries came by bus to take part to the vote virtually without incident. In anticipation of the elections, the Mission supported GONG in its nationwide information campaign and encouraged, through a series of roundtables, extensive ***registration and participation of minorities*** in the return areas.

The local elections were the first to fully and simultaneously incorporate the election of ***minority representatives*** according to the 2002 Constitutional Law on the Rights of National Minorities (CLNM), which guarantees proportional representation in the local assemblies, when the share of a given minority in the population is above 5 percent (in the case of counties) or 15 percent (in the case of municipalities and cities). However, an important question regarding how "***proportional representation***" is to be determined remains unclear, and may have affected heavily on the number of minority representatives seated in local councils and administrations. In its 10 June session, the National Council of National Minorities asked the Government to establish who should be held accountable for the apparent failure to apply correctly the provision of the Constitutional Law pertaining to the update of minority quotas.

Amid dissatisfaction over the intense bargaining that characterized the more-than-one-month period of ***formation of coalitions***, the Government has announced changes to the electoral law that would enable the direct election of county prefects, mayors and heads of municipalities. This latest initiative illustrates that the electoral system is still not fully

stabilized.

Electoral Reform

A series of recommendations by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) concur with observations of domestic actors such as the State Election Commission (SEC) and GONG, to define the *main areas requiring reform of electoral legislation*: the lack of a permanent body to administer the elections; the management of voters' lists according to a state-of-the art registration system; the lack of a clear framework for out-of-country voting; the insufficient regulation of campaign funding; the fair access to media and the domestic monitoring of elections.

The Mission continues to advocate a *comprehensive reform effort*, as opposed to piecemeal changes to various laws. Changes should be based on a broad consensus among political and civil society actors, through an open and transparent process. The Mission has welcomed the commitment by the Croatian authorities to engage in such process after the local elections.

FREEDOM OF THE MEDIA

Media Legislation

During the reporting period, no action was taken on *the reform of media legislation*. However, during a debate over media legislation in Parliament in January, the Government declared its intention to draft an entirely new Law on Croatian Radio-Television (HRT).

The current *Law on Croatian Radio-Television* (HRT), which was adopted in February 2003, does not fully take into account OSCE/CoE/EC recommendations to enhance the role of the HRT Programme Council, the supervisory body of the public service broadcaster. The Mission continues to stress the need to shield the oversight body from political interference and has received assurances that the new draft law would involve a stronger role for civil society.

The Government has not yet submitted amendments to the *Law on Electronic Media* for expert review. The main issue of concern in the current Law remains the independence and appointment of the regulatory body, the Council for Electronic Media, and the definition of its powers.

The Mission has learned that, in accordance with the 2005 National Programme for EU Accession, the Government plans to forward amendments to the Law on Electronic Media and a new Law on Croatian Radio and Television to the Parliament in the second semester of 2005.

The Mission has repeatedly expressed its concern over continuing court decisions to convict reporters *for libel*, (even though most of these sentences were suspended) despite changes to the criminal code in 2004. The amendments to the criminal code allow for a more liberal regime, whereby 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.

The OSCE deems however that the current law has a "chilling effect" on the work of the media and advocates the full decriminalization of libel, or at least to start by removing incarceration as punishment for these offences. Since October 2004, five journalists have received suspended prison sentences for libel.

Media Freedom

The debate on how to reconcile the work of the *secret services* with an effective protection of fundamental human rights and *journalistic freedom* has been in the spotlight during most of the reporting period.

Although the Croatian Journalists' Association expressed its satisfaction at the conclusions of Parliamentary Committees who investigated in March cases where the Counter Intelligence Agency (POA) had allegedly violated the human rights of journalists, some media commentators concluded that the investigations did not result in any concrete proposal for a change of the rulebook of POA or the Law on Security Services.

Local Media

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.

CIVIL SOCIETY

The reporting period was marked by difficulties at the central level between the NGO sector and the official institutions. There remains a disparity in terms of "civil society culture" between the urban and rural areas.

National-level Civil Society Institutions in Croatia

Although national-level civil society structures⁴, largely inherited from the previous Government, were designed to create an unprecedented form of collaboration between the Government and NGOs, the relations between the civil society sector and official institutions appear not to have transpired into a fully-fledged partnership.

On 17 March 2005, the *ad hoc* Civil Society Forum – composed of a dozen NGOs – objected to the work of the National Foundation for the Development of the Civil Society in an *Opinion* to the Government, the Parliament and the international community. After inviting NGOs to a meeting on the issue, the Foundation responded with a request to the Government

⁴ In October 1998, the *Government Office for Associations* was founded with the aim of establishing a national programme of transparent financial support for civil society organisations from State budget funds. A *Council for the Development of the Civil Society* was established as a governmental advisory body in March 2002 (having a mixed composition of members partly from ministries and civil society), focusing on the development of a civil society framework. In October 2003, the *National Foundation for the Development of Civil Society* was founded, with the aim of further activating the civil society scene, drawing on a decentralised modus operandi involving a wider spectrum of stakeholders.

to set up a second instance body for complaints and an independent expert review of Foundation procedures.

Only marginal efforts have been undertaken by the incumbent Government to develop and implement *the civil society framework* that emerged under the former Government. The position of Head of the Government Office for Associations was left vacant for most of 2004 and was filled only recently (partly under pressure from the EC) at the end of that year. Although the Council for Civil Society Development met very seldom throughout 2004, it is encouraging that the body has convened more regularly this year and is devising a 'strategy for civil society development'.

During this period, no action was taken to implement a number of essential draft documents pertaining to the *regulatory framework of civil society*, e.g. Croatia's National Programme of Action for Youth (2003), the Draft Act on Volunteerism (2002), the Draft Strategy for Civil Society Development (2003) and the draft Code of Good Practices, Standards and Measures for the realization of financial support to NGO programmes (2002). Another important document that would encourage philanthropy and financial sustainability of public benefit organizations is the Draft Law on Foundations (2004). In June, representatives of the international community met with the Government Office for Associations, the National Foundation for Civil Society Development and the Central State Administration. Assurances were given that some of the legislation would be adopted in the autumn.

The relationship between major NGOs and the Government deteriorated following the Government's decision in May 2004 to lift the *value-added tax (V.A.T.) exemption* on foreign donations for associations and non-profit organizations. The position of the Ministry of Finance is that changes of tax regulations do not affect only NGOs dealing with human rights, but also apply to all associations and non-profit organizations. However, this is still a matter of dispute between some leading NGOs and the Government. The Ambassadors of the EU member states in Zagreb voiced concern in a letter sent to the Government in mid-2004 about *ad hoc* tax arrangements for some individual projects or designated NGOs.

Good Governance Projects and Initiatives

The Mission supported and funded, in coordination with government institutions, good *governance projects* at the grass-roots level across the country. In the Gospić area, the first project of its kind is underway to train local self-government representatives in cooperation with line ministries. In the Sisak area, training of municipal councillors is aimed at increasing the efficiency of local self-government units working in multi-ethnic communities. In the Osijek and Vukovar area, war-affected municipalities directly contribute with co-funding and planning of concrete civic activities. In Sibenik, on-the-job training of town authorities is helping them become more effective service providers.

The establishment of *Charters on Co-operation* between local self-government units and the NGO sector were initiated and signed in Osijek, Osijek-Baranja County, Vukovar-Srijem County, Rijeka and Slatina. This is a positive development and an important step forward in establishing the role of NGOs and civic organizations in the process of determining public interests and formulating community policies. The city of Split completed the process of drafting such a Charter with civil society organisations in March, and is awaiting the approval of the city council. The Mission has encouraged similar projects and initiatives in other parts of the country.

CONCLUSION

As the present report shows, Croatia has made considerable efforts to fulfill its international commitments with the support of the OSCE Mission since it opened the office in Zagreb in 1996. The 1996 Decision of the OSCE Permanent Council, as amended by its 1997 Decision, authorized the Mission to pursue a mandate focused on the six main fields addressed in the present report. Therefore, the Mission was mandated to provide expertise and assistance in the areas where Croatia was presented with democratic deficits, and was tasked to facilitate post-war recovery and reconciliation just after the 1991-1995 conflict, which left severe and deep marks in Croatian society.

The overall conclusion emerging from this status report is that Croatia has made significant progress in three areas, whereas additional important efforts are required in the other three. The development of democratic institutions and civil society, the enhancement of media freedoms and the progressive democratization of the Police have reached an advanced stage. The Mission considers that the pending tasks underlined in the report in these areas could be successfully carried out in approximately one year.

The resolution of outstanding issues in **the other three areas is both more complex and sensitive, requires more consistent efforts and needs more time.** These are issues related to **refugee return** and the **provision of housing**, the **rule of law** including the reform of the judiciary, conduct of war crimes trials, both domestic and transferred from the ICTY, and further implementation of constitutionally-guaranteed **minority rights**, and the **reform of the electoral framework**. **Prime Minister Sanader** and the Government have committed to carry out **important steps forward including the adoption of an electoral law after the summer recess** as well as the implementation of a **“Road Map”** comprising a series of tasks **to resolve all refugee issues by the end of 2006. On 6 July, the Government presented the draft “Road Map”** to the Heads of Mission of the UNHCR, European Commission Delegation and the OSCE in Croatia as well as the American Ambassador in Zagreb.