



**OFFICE OF THE COMMISSIONER
FOR HUMAN RIGHTS**

**BUREAU DU COMMISSAIRE
AUX DROITS DE L'HOMME**



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 4 May 2005

CommDH(2005)3
Original : French

REPORT BY

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ON HIS VISIT TO THE REPUBLIC OF CROATIA

14 – 16 JUNE 2004

**for the attention of the Committee of Ministers
and the Parliamentary Assembly**

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Introduction

In accordance with Article 3 e) of Resolution (99) 50 of the Committee of Ministers concerning the Commissioner for Human Rights of the Council of Europe, I accepted the invitation of the Minister for Foreign Affairs of the Republic of Croatia, Mr Miomir Žužul, to make an official visit from 14 to 16 June 2004 and went to Croatia accompanied by staff members of my Office, Mr John Dalhuisen and Mr Julien Attuil. I should like to preface this report by thanking the Minister for Foreign Affairs for his department's efforts and arrangements to ensure the successful organisation of the visit. Ms Dubravka Šimonović deserves a special mention for the indispensable support which she provided to make the visit go according to plan. Lastly, I would express my gratitude for the completely open-minded and co-operative spirit of all the Croatian authorities whom I met in connection with my visit.

During the visit, I was thus able to speak with Mr Stjepan Mesić, President of the Republic of Croatia, Mr Ivo Sanader, Prime Minister, Mr Miomir Žužul, Minister for Foreign Affairs, Mr Marijan Mlinarić, Minister of the Interior, Ms Vesna Škare-Ožbolt, Minister of Justice, Mr Ivan Gruić, Assistant-Minister for Missing and Detained Persons and Mr Lovre Pejković, Assistant-Minister for Displaced, Returnees and Refugees and Head of the Office for Displaced Persons, Returnees and Refugees. I also met various members of the judiciary, namely the Presidents of the Constitutional Court, Supreme Court and Zagreb Municipal Court, the State Prosecutor and the President and members of the Croatian Bar Association. In addition, I had talks with the Chairman of the parliamentary Committee on Human Rights and Rights of National Minorities, the President of the Council for National Minorities, the Head of the Government Office for National Minorities, the Ombudsman and the Head of the Government Office for Human Rights. I exchanged views with the Representative of the Office of the United Nations High Commissioner for Refugees (hereinafter "UNHCR") in Croatia and members of her staff, the Head of the OSCE mission in Croatia, and representatives of civil society and NGOs. I visited the Lepoglava prison, and an elementary school and a Roma community at Čakovec. Lastly, thanks to the invaluable assistance of the UNHCR, a member of my Office travelled to Knin and its vicinity to assess the problems relating to the return of displaced persons and refugees.

General observations

1. After a difficult progression towards independence followed by a period of democratic reconstruction, Croatia is currently going through a phase of burgeoning institutional as well as economic development. A significant war effort has not prevented Croatia from successfully righting its economy in the space of less than 10 years to attain a standard of development equal, if not superior, to that of several European Union member states. After independence, Croatia at first adopted a semi-presidential system of government which was subsequently amended in April 2001 in order to establish a single-chamber parliamentary regime.
2. Croatia has been a member of the Council of Europe since November 1996, and one year later ratified the European Convention on Human Rights (hereinafter "ECHR"). In the matter of treaty obligations concerning the protection of human rights, it has ratified all Protocols to the ECHR including Protocols Nos. 12 and 13, the Framework

Convention for the Protection of National Minorities, the European Charter for Regional or Minority Languages, and the Social Charter and the Additional Protocol thereto providing for a system of collective complaints. Less than ten years on, Croatia has thus signed and ratified virtually all the Council of Europe's legal instruments relating to the protection of human rights.

3. As regards observance of the principles laid down by the ECHR, Croatia recently embarked on a radical reform by assigning jurisdiction in certain cases of human rights violations to the Constitutional Court. As its President explained to me, appeal to the Constitutional Court now forms an effective domestic remedy, particularly from a length-of-proceedings standpoint, which must be exhausted by applicants in order to comply with the rule of exhaustion of domestic remedies before they petition the European Court of Human Rights. Although certain difficulties remain, this screening device prevents applications on issues covered by established case-law from coming before the European Court with undue frequency. However, to ensure total screening, the Constitutional Court should be made competent to entertain appeals concerning all provisions of the ECHR and its protocols.
4. Croatia also has non-judicial bodies responsible for furthering fundamental rights. Besides the Ombudsman, with whom I spoke, a Children's Ombudsman and an Ombudsman for Gender Equality were instituted in 2003. Besides, there are various government commissions dealing with such issues as human rights and the protection of minorities. The existence of machinery of this kind signifies the Croatian authorities' determination to make fuller provision for fundamental rights. None the less this multiplication of institutions should not be accompanied by a reduction in their respective budgets. I found evidence that the Ombudsman was short of resources, borne out by the cutting of his budget by almost 11% in 2004.
5. Despite Croatia's visible efforts to reaffirm its undertaking to respect human rights, the situation of certain categories of persons remains disturbing, as does the operation of the judicial system. The first difficulty lies in the unsatisfactory functioning of justice which hampers much of the country's activity by its sluggishness and complexity. The return of refugees and displaced persons, especially members of the Serb minority, to their home towns is to my mind the second major challenge to be met by Croatia. In order to heal the wounds of the earlier conflict and rebuild an open, multi-ethnic Croatia, the fate of persons still posted as missing should also be elucidated. Finally the situation of the Roma should be improved, particularly as regards education and access to employment, and further improvements should be undertaken in the policy areas of prison affairs and asylum.

I. The administration of justice

6. The Croatian judicial system is currently beset with serious operating problems. For a variety of reasons, Croatian courts have a backlog of over 1.2 million pending cases¹ in addition to the two million cases dealt with annually. So there are at present more than three million cases before the country's courts. All governmental and judicial authorities are aware of the problem.
7. Quite obviously, this congestion has led to a lengthening of procedural delays as its concomitant. Nor is it uncommon for proceedings to extend beyond a reasonable time, as the European Court of Human Rights has found moreover.² This state of affairs is far from satisfactory. It is therefore necessary to find out the reasons for this accumulation of cases and, on a wider plane, to assess the capacity of the judicial system as organised at present to solve these problems.
8. The first explanation for the congestion is linked to the extra burden of administrative work demanded of magistrates who in fact devote the bulk of their working time to non-judicial tasks. Realising the problem in this connection, the government informed me of its decision to substantially increase the number of court legal assistants in order to reduce the workload assigned to judges.³ Moreover, an amendment to the law on the courts has broadened the scope of these assistants' competence, enabling them for instance to assess evidence, establish facts or conduct specified procedures. This staff increase has been favourably received by magistrates and should give them more time to discharge their judicial office.
9. The clogging of the judicial apparatus also arises from the extent of the courts' jurisdiction, as they have land registry or property conveyance functions in their remit. According to information provided by the President of the Supreme Court, between 50 and 60% of cases pending before the principal courts of the land – Zagreb and Split – relate to property conveyance or registration. Given Croatia's economic expansion and the population's tendency to become home-owners, these duties should fall to sworn legal specialists in that particular field so that the judge need only be called upon to intervene in the event of contestation by the parties. The Minister of Justice told me that a scheme to that effect was in preparation.
10. The Government further intends to carry out a number of reforms supplementing those mentioned above; the President of the Supreme Court has been vested with power, subject to the approval of the Court's full bench, to transfer cases to other courts from any court which has accumulated a sizeable backlog. The President recently availed himself of this power to transfer more than 16,000 cases on labour law matters that were pending before the Zagreb Municipal Court to other municipal courts. This measure, backed by computerisation, will make it feasible in the short term to spread the case-load of the courts more evenly and improve their efficiency. Nevertheless, these measures demonstrate how unequally the courts and judges are distributed between

¹ For 2003: 1 184 641 civil and 53 543 criminal cases.

² See for example the case *Rajak v. Croatia*, 28 June 2001 – 25 years of judicial process – or *Cerin v. Croatia*, 15 November 2001 – 17 years.

³ The Ministry of Justice intends to recruit 100 court legal assistants for 2004, Newsletter No.1, Ministry of Justice of Croatia, 15 May 2004.

regions, as well as illustrating the fact that backlogging of cases affects all fields of law and not only property law matters. This kind of reform should be undertaken bearing in mind that this improved administration of justice must not be achieved to the disadvantage of the persons before the courts. Finally, this reform should allow the congestion to be cleared – particularly Zagreb and Split courts – and to better distribute judicial resources and staff regionally and according to legal fields.

11. The efforts undertaken recently, in particular the substantial raising of the Justice Ministry's budget⁴, deserve full support. However, I find that, if Croatia is to clear the congestion of the courts within the next three years as intimated to me by the Minister, the following difficulties should also be taken into account.
12. There is, firstly, a problem over the enforcement of judicial rulings. For example, the President of the Supreme Court pointed out to me that every year some 200,000 debt payment orders were not fully enforced, for want of effective attachment of assets. Recently the European Court ruled on the execution of a judgment concerning questions of ownership and held that a lapse of four years between the delivery and the execution of the judicial decision – on an eviction – was contrary to Article 6 of the ECHR.⁵ While these cases are not complete illustrations of a system, they still demonstrate that, owing to lack of enforceability, judicial rulings are not fully complied with in Croatia. The authorities should therefore look into this problem as a matter of urgency to make it possible for the justice system to deliver prompt decisions that are obeyed.
13. Secondly, I perceived that the slow pace of justice was also due to the courts' jurisdictional powers at appeal. Croatia, like other countries in the region⁶, has a legal system in which the higher courts – courts of appeal and Supreme Court alike – can refer the cases to the first instance court without a determination of the merits. In this way, an applicant bringing a complaint before the Supreme Court can have his case referred to the municipal court whose decision will not necessarily be final and may be the subject of a further appeal. In itself, this situation might not present difficulties if the courts were not already overloaded or if the higher courts availed themselves more frequently of their power to decide without referral. The situation gives all the more cause for concern in that it affects both civil and criminal proceedings. The Code of Criminal Procedure was extensively revised in June 2002 without the referral system being altered. Now that the Code of Civil Procedure is undergoing revision, the government authorities could use this opportunity to regulate more stringently the possibilities for referral of cases by the higher courts to the lower courts.

⁴ The 2004 budget of the Ministry of Justice showed an increase of more than 10% over 2003.

⁵ European Court of Human Rights, judgement *Pibernik v. Croatia*, 4 March 2004.

⁶ See for example the report on my visit to Slovenia, CommDH(2003)11, paragraph 49.

A. Free legal aid

14. Article 27 of the Croatian Constitution requires the Bar Association to provide all litigants with “*legal aid in accordance with the law*”. Article 29 specifies that in criminal proceedings defendants can conduct their defence personally or through a lawyer of their choice and in the event of insufficient means are provided with free counsel according to the stipulations of the law. References to free legal aid are included among others in Article 21 of the Law on Legal Profession or Article 65 of the new Criminal Procedure Code. Although Croatian legislation lays down the conditions of access to courts, it leaves the Bar Association with the responsibility of organising and delivering free legal aid. However, the lawyers’ code of ethics is what determines the criteria and the arrangements for award of legal aid as financed by the State.
15. According to information received from the Ministry of Justice, the Bar Association’s internal rules provide that access to legal aid should be strictly confined to Croatian citizens, so that foreigners are excluded. This provision is of a discriminatory character and infringes Article 26 of the Constitution and the European Convention on Human Rights. It should be abolished speedily because, I am bound to recall, legal aid must enable nationals, aliens and stateless persons alike to apply to the courts in defence of their rights and interests, notably in complex litigation such as criminal trial or the procedure for granting asylum. Currently, asylum seekers are provided with free legal counselling and representation by an NGO, the Croatian Law Centre, implementing partner of the UNHCR in this respect. Other NGOs also offer free legal aid but without receiving financial support of the State.
16. In practice, approximately 800 cases per year – out of 1,200/1,300 applications received – benefit from free legal assistance of the Bar Association; a figure which, by comparison with the million and a half applications brought before the courts each year, point to evident malfunctioning of the award machinery. One of the reasons for the limited number of grants of aid lies in the difficulty of applying for it given the Bar Association’s lack of representation in some regions of Croatia. I would further recall that free legal aid must be made readily accessible, and that is meant to include the most disadvantaged persons, to guarantee respect for equality of arms during judicial proceedings.

B. Trial of war criminals

17. Since it was elected, the new government has furthered Croatia’s relations with the International Criminal Tribunal for the former Yugoslavia (ICTY). Apart from the six Bosnian Croats⁷ charged with war crimes who voluntarily went to The Hague in April 2004, Croatia recently strengthened its co-operation with the Tribunal, particularly by facilitating its access to certain official documents and rendering assistance to get the victims to testify. This indispensable co-operation is due to be intensified shortly, as the Tribunal’s wishes to transfer responsibility for the trial of certain criminals to Croatian

⁷ These 6 persons had all obtained Croatian citizenship in the past and were lawfully resident in Croatia.

justice. This possibility ought to be encouraged but will also lay Croatia under an obligation to provide full guarantees of witness protection and impartiality of the national courts in determining such sensitive cases. In addition, the Croatian authorities are obliged to carry out the arrest of all war criminals within their jurisdiction and bring them to justice.

18. At the national level, the State Prosecutor recently proceeded with the review of all war crimes cases still open before the justice system in order to certify that accusations were not wrongfully brought against certain persons or that the acts held against them had not meanwhile been pardoned. In so doing, a large number of discharges were being pronounced chiefly in respect of persons of Serbian origin, thereby aiding the return of refugees. This work is of crucial importance for guaranteeing the construction of a stable society founded on trust and respect towards the judiciary.

II. Conditions of detention in the Lepoglava prison

19. In view of the findings made by the CPT⁸ and the decisions of the European Court of Human Rights⁹, I decided to visit the Lepoglava prison to assess the situation in this centre accused in the past of non-compliance with Council of Europe minimum standards.
20. The prison, the largest and oldest in Croatia, contained 630 male prisoners at the time of my visit. The prison receives persons sentenced to terms of over 5 years' "strict imprisonment" and reoffenders. Prisoners' sentences average 8.5 years in length.¹⁰ A renovation programme was implemented between 1995 and 2003, and I was able to ascertain that all wings of the prison had indeed been modernised. Living conditions appeared satisfactory and, according to the inmates, bore no comparison to those obtaining prior to the renovation. However, the general problem of crowding in prisons in Croatia also affects the Lepoglava prison, as its director acknowledged furthermore. The cells which I was able to inspect were occupied by as many as three or four persons whereas in my opinion they should accommodate two prisoners at the most.
21. Concerning the activities available to prisoners, there are ten training programmes ranging from computer studies to carpentry. Despite their diversity, these programmes are followed by only 52 persons at the time of my visit, i.e. less than 10% of the prison population. Some are also allowed to work inside the establishment. The prison also offers the possibility of undergoing compulsory school education at primary and secondary level. Croatia does not have a distance teaching system that would enable long-sentence prisoners especially to carry on courses of higher education. Its provision should be envisaged for the Croatian population as a whole, thereby enabling prisoners to benefit as well.

⁸ Report on the CPT's visit to Croatia, 20–30 September 1998, CPT/Inf(2001)4.

⁹ Admissibility decision regarding article 3 of the ECHR in cases *Benzan v. Croatia*, friendly settlement, 8 November 2002 (no. 62912/00) and *Cenbauer v. Croatia*, admissibility decision 5 February 2004.

¹⁰ A single prisoner there is serving the longest sentence permissible under Croatian law, viz. 40 years.

22. The solitary confinement cells which I had the opportunity to examine were in good general repair. The system prescribes an initial partial isolation – during which concession such as exercise periods are made to prisoners – for a term of three months which can be renewed once by court order, and complete isolation not to exceed 21 days. The treatment given to prisoners in solitary confinement seemed to me to strike a proper balance between restrictions and respect for the prisoner.
23. The prison also has 46 inmates convicted of war crimes, held in a separate wing. A high proportion of these prisoners, because of their nationality or ethnic affiliation, meet with difficulties in obtaining regular visits from their families and relations who live far from the prison or even abroad.¹¹ If permissible having regard to the jurisdictional guarantees, I invite the authorities to agree to their serving their sentences close to their families or in their countries of origin.
24. Finally, I learned from my discussions with the prison’s supervisory staff that Croatia had no comprehensive arrangements for accommodating young offenders over 18 years of age. It was explained to me in my dialogue with the authorities that the prison in Glina is intended for the first time young adult offenders, and it provides educational and recreational programmes appropriate for their needs. However, I understand that young recidivists are detained in “regular” prisons. As I see it, particular attention should be given to this category of prisoners. As they are often at odds with society, their spell in prison should serve initially for re-learning how to live with others, and might subsequently be turned to account for finishing an interrupted school career or for acquiring occupational skills. But it is necessary above all to avert a situation where hardened criminals become “instructors” for these young people in search of their bearings, given that prisons serve all too often as universities of crime. The setting up of separated detention facilities for all young adult offenders would allow them to be shielded from all nefarious influences and better develop programmes suited to their needs.

III. Situation of the Roma community

25. According to the latest census taken in Croatia, 9,500 persons have been recorded as belonging to the Roma community. However, estimates place Croatia’s actual Roma population figure at somewhere between 30,000 and 40,000¹², with 5,000 in the Međimurje region alone. Roma thus form the country’s second largest minority next to Serbs.
26. The Preamble to the Croatian Constitution recognises the existence of “*autochthonous national minorities*” as components of the Republic of Croatia and sets out a non-exhaustive list of ten minorities with no mention of the Roma, however. They are of course not altogether excluded from the Preamble, which contains a general reference (“*and the others*”) following the list. It should be noted in addition that the laws and the national statistics categorise the Roma as a fully recognised minority. Although in practice this means that their rights are not reduced, it is regrettable that they have not been granted more conspicuous recognition at the constitutional level, particularly considering the number of Roma living in Croatia and having regard to this minority’s history within its territory.

¹¹ Principally in Bosnia and Herzegovina and Serbia and Montenegro.

¹² National programme for Roma, October 2003.

27. In spite of non-discrimination on a legal plane, the treatment meted out to the Roma minority still raises anxieties since this population continues to undergo social and economic discrimination. It should nevertheless be observed that efforts have been undertaken in institutional matters especially, the Government having set up a National Council of Roma chaired by the Deputy Prime Minister. Locally, and around Međimurje in particular, most districts have had water and electricity connected and are served by school transport.
28. Moreover, I had the opportunity to visit a Roma neighbourhood of Čakovec where the municipal services¹³ were delivered to the population. Residents complained, however, that it was impossible for them to have the construction of their homes registered. In fact most houses in the neighbourhood were built on public land without permission and are therefore considered illegal by the municipal authority. Still, there is a certain *de facto* acceptance of the situation owing to the provision of municipal services. Besides, I was able to see for myself that the town mayor and the representatives of the community had excellent mutual relations. Consideration might therefore be given to granting retroactive legalisation of these constructions, thereby allowing recognition of the householders' property rights and facilitating their relations with the public authorities.
29. The law on minorities setting up the local and national councils for minorities has been of great help to the Roma community. Some of these bodies have become valued go-betweens with the municipalities and thus facilitators of dialogue and urgent action on the ground. Croatia has also adopted a National Programme for Roma in order to improve their living conditions and aid their inclusion in society. Although many difficulties have been pinpointed and solutions proposed thanks to the programme, its implementation seems to have a limited impact due to a lack of financial support from the state. For the year 2004, a mere 10% of the 20 million Kunas needed have been allocated to the programme.

A. Segregation in schools

30. The year 2002 saw the worsening of problems around the town of Čakovec which applied a practice of separating Roma and non-Roma pupils in schools. An atmosphere of intolerance took hold; non-Roma parents went so far as to stage a demonstration in front of a school at the start of the 2002/2003 school year, denying entry to the Roma children.¹⁴ Under strong national and international pressure, the authorities recognised that these practices existed and undertook to review this question.
31. When I visited Čakovec, I had the opportunity to visit a primary school with a mixed enrolment. I hasten to thank the head and the staff of this school for their reception. My discussions with them satisfied me that the situation had substantially improved thanks to the commitment of all concerned. Certain difficulties still lingered, however. The Međimurje region has a high proportion of Roma and schools have a large enrolment of

¹³ Water, electricity, road works, refuse collection and school pickup service.

¹⁴ 2003 annual report of the Croatian Helsinki Committee for Human Rights.

Roma pupils who make up as much as 80% of certain age bands. But these figures cannot justify any segregation whatsoever between children, who must be equally treated. I sincerely hope there will be no recurrence of the events which took place in the past, and it is imperative to guarantee that the social and ethnic mix is maintained for the sake of having Roma and non-Roma children educated together in the same classes.

32. Difficulties over Roma pupils' Croatian language proficiency were also reported to me. I would stress the importance of putting all pupils through the same syllabus and the same teaching process in one class. Nonetheless, the knowledge gap problem is not to be evaded. As a remedy to it, it could be useful to set up at national level pre-school classes for children whose mother tongue is not Croatian. That way, they will acquire a sufficient grounding in the Croatian language to be able to keep up with the primary school courses later, while at the same time familiarising themselves with the school institution. In the second place, it rests with the parents to ensure the sound learning of the language and their children's regular attendance for the entire school course.

B. Violence

33. In discussions with the NGOs, violence against Roma by non State agents was reported. While the Croatian authorities are certainly not to blame for these acts, they incur their responsibility for putting down such acts of violence. These, however, are evidently not investigated or prosecuted often enough. Moreover, to combat this violence effectively – and in more general terms to give Roma a place in society – a campaign against anti-Roma discrimination should be implemented. Finally, the designation of racial violence as an offence in the Penal Code¹⁵ should be envisaged so as to strengthen the relevant legal provisions and deliver an unequivocal message to potential perpetrators of such acts.

C. Access to employment

34. During my visit, I was able to attend a seminar on access to employment for Roma in Croatia. While it is hard to obtain accurate statistics on the unemployment rate in the Roma population, it can be ascertained from cross-checking of data that the rate is considerable as borne out by the 21,000 Roma in receipt of welfare support. It can be estimated that over 80% of Roma families have no steady income at home and that virtually all the women are jobless. The chief obstacles to integration of Roma into the labour market are a below-average educational standard, prejudice on the part of employers regarding their abilities, and a certain form of marginalisation as a result of poverty and other people's rejective attitude. Once again, allocating more substantial funds would make it possible to develop programmes and various types of assistance for creation of enterprises and recruitment of Roma in enterprises or administrative departments, or to devise specific training programmes.

¹⁵ For the time being, only Article 174 of the Penal Code defines an offence relating to violation of "human rights recognised by the international community".

IV. Asylum seekers

35. For the time being, Croatia is not confronted with a large number of asylum seekers. In the period between 2000 and 2003, 204 applications were registered, of which none of them was recognised as refugee by the Ministry of Interior.
36. According to the applicable law at the time of my visit, asylum applications were treated by the Ministry of the Interior, in accordance with the opinion provided by the Ministry of Labour and Social Affairs. Applicants rejected at first instance could consequently initiate a law-suit before the Administrative Court. The new Asylum Law which was adopted in June 2003 and came into force in July 2004 modified the procedure. From now on, the Minister of Interior has exclusive competence in processing applications and appeals are brought before the Republic of Croatia's Governmental Commission for the Asylum Seekers and Refugees Appeal Procedures. Administrative Court remains competent for the judicial review of cases rejected by the Commission. This law determines also that "the asylum applicants whose application is under consideration would be accommodated in a reception centre for asylum seekers".¹⁶ As the Croatian authorities themselves recognised before international organs¹⁷, conditions of reception offered to asylum applicants were not in conformity with international standards until recently. Thus, I can only hope that the new procedure, combined with the opening of a new reception centre, will guarantee the rights of these persons asking for protection.

V. Return of refugees and displaced persons

37. During the conflicts that took place at the time of ex-Yugoslavia's fragmentation at the beginning of 1990, the new countries in the region faced with vast movements of population fleeing the war and its atrocities. Henceforth, Croatia found itself in a situation where it had to assure the return of displaced persons and refugees but equally where it wished to allow those welcomed during the conflict to stay in its territory. Thus, 120,000 refugees of Croat origin obtained Croatian nationality and are no longer considered as refugees. Henceforth, there are no more than 4,000 refugees in Croatia.¹⁸ These cases are mainly persons unable to return to their country for humanitarian reasons (age, illness, etc.) and who, not being of Croatian origin, could not obtain citizenship of a country. Bearing in mind the small number of these cases, a permanent solution could be considered with the aim of abolishing their refugee status while allowing them, at the same time, to remain permanently in Croatia.
38. According to UNHCR, as of 1 May 2004, 124,752 persons have returned to Croatia, 9,280 of which returned in 2003. However, UNHCR surveys in field indicate that a significant part of these returns were not sustainable due to different reasons such as economic reintegration or resolution of housing problems. A total of some 200,000 refugees remain outside Croatia, mainly in Serbia and Montenegro and in Bosnia and Herzegovina. The majority of these persons live in private accommodations in Serbia and Montenegro and in Bosnia and Herzegovina, a small number of them still live in collective centres. Despite the establishment of financial help and social protection for a

¹⁶ Article 22 of the Asylum law

¹⁷ See the report on discussions before the CAT of United Nations, 14 of May 2004, CAT/C/SR.601, point 8.

¹⁸ 3,600 refugees from Bosnia and Herzegovina and 400 from Serbia and Montenegro, at the time of my visit.

period of 6 months upon their return, a great number of refugees remain reluctant to return due to difficulties related to access to housing. In addition, there are fears due to the changes in their place of origin, of discrimination or of being indicted of war crimes.¹⁹ Here one cannot neglect the impact of the time – between 8 and 12 years – spent by the refugees and displaced persons without being able to go back to their place of origin. During this period of time they created a life elsewhere, integrated in a new community and now found themselves faced with a dilemma: return to Croatia or continue with their “new life” abroad. However, these difficulties fade progressively as the decrease of the average age returnees proved it. With the aim of shifting away from this difficult period, it is up to the Croatian authorities to put in place, as soon as possible, a complete programme to resolve the housing issue thus permitting the return of those who wish to return.

A. Reconstruction

39. Considering the expanse, the nature and the length of the conflict in Croatia, much housing was damaged or destroyed between 1991 and 1995. A considerable effort has been invested not only by the State but also by the whole Croat population in order to heal the wounds and reconstruct the country. It is estimated that over 120,000 individual accommodations have been repaired or reconstructed in the period between the end of hostilities and 2003. Consequently, there is only a proportionally limited number of dwelling to be rebuilt. However, these belong to the weakest and to members of minorities, principally Serb, who did not benefit from national solidarity until then.²⁰
40. That is why the new Government intends to put emphasis on the reconstruction of the housing of minorities, notably of Serbs, whose access to reconstruction aid was limited in the past.²¹ The reconstruction of destroyed housing is essentially a financial issue in so far as the related legislative framework already exists, notably through the Reconstruction Act and modification in July 2002 of the law on Areas of Special State Concern. According to the law, persons who suffered damage to their property are invited to submit a request to the administration. Within a variable timeframe – ranging from a few months to several years – the reconstruction materials or a compensatory amount are allocated to the claimant in line with a pre-established scale, taking into account the damages of the housing unit. The existence of such an aid system should be welcomed as it is necessary for the resettling of displaced populations. Yet, it would be useful if this aid could be distributed in an equitable way, in order for the damage evaluation to reflect the real state of housing and above all that it is distributed in a reasonable period of time. In fact, a great part of the impact of this aid is lost if it is allocated too late and if the claimant has already reconstructed his/her house using private means, sometimes by taking a bank loan.

¹⁹ On this issue see *supra*, the segment relating to war crime proceedings.

²⁰ See Human Rights Watch, *Broken Promises: Impediments to Refugee Return in Croatia*, Vol. 15, No. 6(D), September 2003, P. 44.

²¹ Since 2003, according to the Ministry of the Sea, Tourism, Transport and Development, 70% of recipients are former refugees belonging to minorities.

41. The Government has launched a programme with the ambition of reconstructing 8,000 estates in 2003-2004. The willingness of governmental authorities, and primarily of the Prime Minister, to successfully bring the process of reconstruction to an end cannot be doubted. Moreover, in order to accelerate this reconstruction, the Development Bank of the Council of Europe has given financial support to Croatia for the construction of new homes. For the time being, there are more than 10,000 claims that have not yet been satisfied. In addition, until September 2004 new claims were introduced after the re-opening of the procedure by the Croatian authorities. From a general point of view, I wish to express my support for this programme and for the considerable financial efforts invested by the Croatian authorities in the aim of allowing every individual, irrespective of his/her origin, whose housing was destroyed or damaged, to benefit from necessary means in order to find again a decent place to live in and lead a normal life.

B. Restitution of occupied private property

42. Following the displacement of the population as a consequence of the conflicts, a great number of accommodation belonging to members of Serb community were occupied, with or without legal authorisation, by Croat displaced persons or refugees mostly from Bosnia and Herzegovina. In accordance with the Law on Temporary Take-Over and Administration over Specified Properties adopted in 1995, municipal Housing Commissions could declare the house unoccupied. As a result of this law, all Croat citizens – members of the Serb minority did not benefit from this law due to ethnic division of the country during the conflict – who submitted a claim could be allocated new housing. Thus, 18,500 housing units were granted to Croat displaced persons or to refugees coming from neighbouring countries.
43. Even though the law of 1995 was abolished, the decisions taken by municipal Commissions were not declared void and the occupiers were allowed to stay in the allocated residencies until an alternative solution was found for them. In this way, the authorities gave priority to the right of occupancy before the right of ownership. This system of restitution avoids placing temporary occupants in a difficult situation but consequently strongly slows down the return of Serb owners.
44. I was surprised to find out that even though temporary occupants possess sufficient resources to rent or construct another accommodation, they can only be evicted once an alternative accommodation has been offered. According to the law, legal occupation should end once the occupant has been offered with alternative solution or if he/she owns a property in the territory of former Yugoslavia. This legal provision often generates unacceptable situations where temporary occupant occupies an accommodation not necessarily needed while the owner and his family are forced to live with friends or relatives or in a shelter due to their lack of means.
45. It should however be pointed out that practically none of the eviction procedures is implemented on grounds of possession of property abroad. This is due to the lack of co-ordination between Croatia and the States concerned, notably Bosnia and Herzegovina. According to the information provided by NGOs, the relevant administrative agency refuses evidence that owners could bring concerning the occupant's ownership of property abroad – testimonies, written statements of neighbours, etc. – accepting only official documents. Furthermore, this administration does not take the necessary steps to obtain such official documents. The Serb owners are consequently forced to wait for an

alternative accommodation to be offered to the occupant even though the latter possesses accommodation abroad. In my exchanges with the Government, I was informed that Croatia, as a state respecting the rule of law, will only recognise official documents. I was informed that Croatian diplomats might intervene to examine the veracity of other circumstantial evidence. Official documents are obviously the best means of proving title to foreign property; however one ought not to exclude other conclusive proofs or to verify information offered by interested parties.

46. As already mentioned, the law stipulates that occupant loses his/her title of occupation when he/she refuses alternative accommodation. It seems that the implementation of this provision by local administrations meets difficulties. Thus, I was informed of cases where an occupant had refused accommodation because it was not located in the same municipality or because the alternative accommodation offered was too small. I was also informed of a case where two refusals of alternative accommodation and a decision of the Ombudsman were not sufficient for the owners to repossess their property.
47. Beyond “legally” occupied properties, several thousand of properties left vacant by Serbs were consequently occupied without administrative authorisation. In these cases, occupants should have been evicted without being offered an alternative accommodation. If problems have existed in the past – illegal occupants did not leave accommodation until being offered another – it seems that the situation has improved.
48. After 31 December 2002, financial compensation for occupancy of private accommodation in Areas of Special State Concern was offered to owners. The principle of this compensation mechanism is laudable but in practice it remains only partially implemented²² and the amount allocated to owners on these grounds represents less than half of what an owner could obtain by renting his property.
49. The new Government has committed itself to resolving illegal occupied properties cases before 30 June 2004 and legal occupancies before the end 2004. According to information received, it seems that these time-limits will be globally respected. As of 1 July 2004, there were only a very small number of unresolved cases of illegal occupations remaining.²³ If, on one hand, I can only wish that these few cases be resolved as soon as possible in order to permit the owners to enjoy fully their right to property. In July 2004 there were approximately 2,000 non-repossessed properties occupied “legally”. It could be estimated that majority of these cases will be settled within the time limits even though difficulties could subsist in certain cities – notably Knin, Karlovac, Vojnic or Benkovac – due to weak offers of alternative housing.

²² According to the OSCE Mission in Croatia around 1,000 out of 3,900 owners eligible for aid, have received compensation from the State (monthly payment or a payment at the time of restitution).

²³ According to the OSCE Mission in Croatia, there were only 55 non-resolved cases after 30 June 2004, *Background Report on the Return of Illegally Occupied Residential Properties*, 30 July 2004.

50. In order to achieve these objectives, the authorities established on 12 March 2004 a Commission for Expellees, Refugees and the Return of Property with the aim of coordinating the work of different administrations and allowing swift restitution of properties. Apart from attributing alternative housing to temporary occupants, this Commission established creative solutions. Thus owners can sell their occupied accommodation to the Agency for Real Estate Transaction²⁴, sometimes at prices above market level or can conclude lease contracts with the occupant through the mediation of Caritas. Consequently, restitution of properties does not imply the return of all owners. However, they have the possibility to regain possession of their properties by deciding to rent it, to sell it or to occupy it. In this way, Croatian authorities have thus accomplished important advancements in terms of problem resolution.
51. In the light of the discussions I had with members of the Government and after a detailed examination of different laws and programmes in the field of property restitution, I can conclude that there is a real willingness in Croatia to rapidly resolve this sensitive problem. It seems, however, that there is a certain amount of reluctance remaining at local level thus slowing down the return of Serb populations willing to regain their properties.

C. Tenancy / occupancy rights

52. Before the conflict, several thousand of Serbs lived in socially-owned or public company-owned apartments. The right to use these apartments was quasi similar to full property right but excluded the possibility of selling this right and with the possibility for the State to end the lease in limited cases. This category of housing represented more than 70% of housing units in former Yugoslavian cities.
53. During and just after the conflict, the authorities in charge at the time cancelled several thousand of leases granted to Serbs through judicial decisions brought in the absence of the tenant in the majority of cases. In order to terminate these contracts, the State or the State-own companies submitted requests to courts calling for the application of Article 99 of the Law on Housing, which provides for an ending of the renting contract in cases of an unjustified absence of the occupant for more than six months.
54. Afterwards, apartments were re-allocated to Croat refugees and displaced persons. Obviously, such procedures aimed to limit, as much as possible, the return of Serbs who had fled during the conflict. Moreover, a great number of Croats could regain possession of their apartments upon their return even in cases where it had been occupied by another person while members of the Serb minority were not able to do the same. Despite courts action submitted by previous occupants who claimed abusive interpretation of the law or possibility of defending their interests – which they could not do during the first procedure due to their absence—courts have refused to rule on these requests.²⁵ Finally, Serbs who fled Croatia following the operations “Storm” and “Flash” lost their rights in accordance with one legislative provision, seeing themselves deprived of any possibility of court action to challenge their contract’s termination.²⁶

²⁴ A state agency in charge of buying alternative accommodation for the temporary occupants.

²⁵ Norwegian Refugee Council, *Triumph of Form over Substance ? Judicial Termination of Occupancy Rights in the Republic of Croatia and attempted Legal Remedies*, 18 May 2002.

²⁶ Law on Renting of Apartments in Liberated Areas in Croatia, no. 73/1995, 27 September 1995.

55. The system of socially-owned property was terminated on 5 November 1996, giving way to a new system of renting, with tenants enjoying the possibility of purchasing their accommodation off the state at prices lower than the market value²⁷. Once again, people of Croat origin have found themselves *de facto* privileged in comparison with those of Serb origin who left the country and lost their tenancy rights.²⁸
56. Consequently, the present Government again inherited a situation where, either through decisions of courts or through laws, a number of individuals, and notably a large part of the Serb community, sees the possibility of returning to their cities of origin hindered by housing problems. Recently, the European Court of Human Rights found, for the time being, no violation of an applicant rights who challenged the allocation to another person of an apartment left unoccupied during the conflict.²⁹ Beyond the facts relating to an applicant who was neither a refugee nor a displaced person³⁰, this decision does not take away the historic and political responsibility of Croatia in terms of solving housing problem within its territory. Furthermore, if Croatia considers that former tenants have lost their rights on apartments they occupied; it is its duty to find alternative solutions in order to allow refugees and displaced persons to return to their municipality of origin. Former occupants of housing in collective property are in fact the most important category of refugees whose housing problems have not yet been resolved.
57. In June 2003 the Government launched a programme for persons who lost their tenancy right in zones controlled by Croat forces during the conflict, i.e. outside the Areas of Special State Concern. For the time being, the programme is in the phase of registering applications and will end on 30 June 2005. The Government is committed to providing accommodation before the end of 2006 to all persons having lost their tenancy right.
58. In my opinion, it is absolutely necessary to permit every person willing to return to their city of origin with the opportunity of doing so. The following suggestions could be taken into consideration by the Government in order to facilitate returns: allowing former occupants of a house that has not been bought in the meantime, to buy it according to similar conditions to the ones offered in 1996 or to grant them status of protected lessee;³¹ if the accommodation is uninhabitable, to provide the former occupant with reconstruction materials and permit him/her to benefit from possibilities previously mentioned; if the accommodation has been acquired by a successive occupant, to provide another accommodation to the former occupant in the same municipality. I feel such measures would help resolving a great number of difficulties, limit the cost of the programme and facilitate the return in their country of the living forces that used to constitute a large part of the pre-war urban population.

²⁷ This possibility was already offered in 1991 with the Law on Purchase of Tenancy Rights Apartments.

²⁸ Human Rights Watch, *Broken promises: impediments to Refugee Return in Croatia*, September 2003.

²⁹ ECHR case *Blečić v. Croatia*, decision of 29 July 2004 (not final at the time of drafting of this report).

³⁰ See para. 49 of the *Blečić* decision.

³¹ A status similar to the one offered to occupants in "liberated zones" in 1995.

D. Vandalism and other obstacles to reintegration into society

59. To the difficulties met by owners in recovering the use of their property should be added those coming from the condition in which properties are repossessed. Indeed, in a certain number of cases, properties are returned in uninhabitable conditions by occupants who take the furniture with them and sometime even removes fixtures and fittings - such as toilets, electric wires, windows and doors. This practice, which was common at first returns of refugees, still persists. In absence of official statistics, it is difficult to estimate the extent of these lootings. According to the OSCE, around 20% of cases monitored by its mission in the field were subject to this type of vandalism³² which consequently slows down of the return of the owner and his family. Victims of these acts, who are mostly of Serb origin, can make a request for repair materials, but are not given priority with regards to houses destroyed during the conflict or to needs in new construction. Therefore construction support is given to them after a long delay - often after more than a year. Sometimes local Ministry officials even discouraged them to make such a request. During the visit, we visited houses looted in 2003 – doors, windows, heating systems, bathrooms as well as electricity equipments were pulled out or removed – and the Serb owners were still waiting to receive requested reconstruction materials.
60. The action undertaken to stop these acts, which represent criminal offences of theft and damaging of other people's properties does not seem to be very fruitful. No information campaign was made by the Office for Displaced Persons, Returnees and Refugees (ODPR) to inform occupants that looting the accommodation they occupy could lead to the lost of their right to alternative accommodation and could ultimately lead to financial sanctions. In cases of vandalism, an expert records the damage, the ODPR then transmits a documented case to the Prosecutor's office concerning the acts committed. During my discussions with the Head of the ODPR, he showed me some case files concerning acts of vandalism which were transferred to the public prosecutor's office. Yet, due to the work load of tribunals and priority not being given to these cases, it seems that court actions are rarely initiated. In the few cases where action was undertaken, owners were sometimes requested to prove that damages were committed by the occupant or that he/she owned the stolen objects.
61. Besides vandalism, owners sometimes find themselves facing compensation requests for investments made by occupants. There are recent examples of justice decisions condemning the owner to compensate the temporary user, even in case of illegal use, for the "investments" made during the occupancy. I was also informed of court decisions where the owner was condemned to a pay large amount to the occupant of his house even though he did not consent for the use of his property or for the work undertaken. Certainly, occupants may have undertaken work in the habitation from which the owner may benefits. However, the compensation practice seems worrying to me if we consider, on the one hand, that authorisation to use the property was given by the State

³² OSCE Mission in Croatia, *Background report on the Return of Illegally Occupied Residential Properties*, 30 July 2004.

without the consent of the owner and that, on the other hand, the occupancy was given free of charge. Therefore one can consider the possibility for the Parliament to adopt legislation on this subject with the aim of avoiding a situation where owners have to bear the full responsibility of a situation which they have neither created nor consented to.

62. During my visit, my attention was drawn to the fact that some commercial premises and agricultural land belonging to owners of Serb origin continue to be used illegally by Croat occupants. Although the 1995 law concerning the temporary use and administration of certain properties authorised such practices, its repeal in 1998 legally put an end to these authorisations. However, owners willing to recover their properties have to initiate expensive and time-consuming judicial proceedings. The establishment of a fast and extra-judiciary procedure could be foreseen in order to allow owners to recover as quickly as possible full enjoyment of their properties.

VI. Missing persons

63. The issue of missing persons, inherited once again from the conflict, remains a highly sensitive subject for Croatia. Since the end of the conflict, 18,000 missing persons were registered of which more than 12,000 persons were found alive in different detention centres or other places. In order to resolve the totality of these cases, Croatia has established a National Commission on Missing Persons and has provided it with the necessary means in order to fulfil a work of quality, recognised by NGOs as well as international organisations. At the time of my visit, the Commission estimated that there were 1,207 non resolved cases to which a further 800 missing cases were to be added resulting from operations “Storm” and “Flash” of 1995 that had not yet been included. According to the figures given to me, a significant number of cases that remain unsolved have an international dimension and their results depend on Croatia but equally on the collaboration of neighbouring States.
64. It is up to the Commission to give families of missing persons the possibility to mourn their beloved and to guarantee their “right to know”. My discussions with the country’s highest officials have shown that they are committed to swiftly resolve these cases. In order to clear up cases where foreign authorities have information concerning missing persons or their relatives, co-operation is essential. It seems, however, that the exchange of information with authorities of the neighbouring States meets certain obstacles. After an interruption of a year and a half, discussions with Serbo-Montenegrin authorities were re-established last May. The same discussions with Bosnia and Herzegovina and the International Commission on Missing Persons – an international body set up in the context of the Dayton Agreements to assist with the identification of missing persons – seem to generate more difficulties. I therefore call on all concerned to collaborate further in order to resolve these painful questions, to allow the families to mourn their relatives and to guarantee a better reconciliation within the Croat society and across the region.

Final comments and recommendations

65. It is obvious that Croatia has made considerable progress in the field of respect for fundamental rights in the past ten years. The present Government is also determined to go further in this field and to improve the situation of all inhabitants of Croatia without ethnic distinction. In order to endorse their strong determination and to help Croatia in the pursuit of its objectives, the Commissioner, in accordance with Article 8 of Resolution (99) 50, recommends the following:

- 1) assign the necessary funds to each institution in charge of ensuring respect for Human Rights, the Ombudsman in the first instance, so that they can fully accomplish their functions;
- 2) reduce the number of pending cases before the tribunals notably by ensuring a better repartition of judges and funds per jurisdiction, by continuing to increase the means assigned to justice, by ensuring the execution of justice decisions and by inciting the higher courts decide on cases instead of transferring them to lower courts;
- 3) reform as soon as possible legislation in the field of free legal aid by ensuring that it is of benefit, without discrimination, to Croats and to foreigners alike, assuring that a sufficient budget is assigned to it and that the assignment procedure is accessible and equitable in the whole territory;
- 4) establish a system of correspondence courses, notably for the attention of prisoners, and create specific structures for young adults in prison so as to keep them away from the older detainees;
- 5) provide for the separate detention of all young adult offenders in order to protect them from detrimental influence and develop programmes adapted to their needs;
- 6) assign the necessary funds for the implementation of the National Programme for Roma, repress all acts of violence committed against them, notably through the creation of a racial violence offence, and provide them with better access to the labour market;
- 7) take measures in order to avoid the creation of segregation between the Roma and non-Roma children in schools and constitute, at national level, Croat language pre-school classes for Roma children;
- 8) ensure that reconstruction aid is rapidly assigned according to the realistic needs of each claimant and that the aid attribution criteria do not create *de facto* ethnic discrimination;

- 9) allow, as quickly as possible, owners whose property is occupied, with or without authorisation, to be able to fully enjoy their goods as they wish by evicting without delay the occupant if the owner wants to use his/her property or assuring that the selling or rental prices is in accordance with the market value;
- 10) adopt measures regarding restitution of housing formerly socially owned and permit the return of refugees and of displaced persons to their town of origin by giving, when possible, priority to pre-war tenants or otherwise offering a similar solution;
- 11) prevent all acts of vandalism against returned properties and charge all those acts that have been / could be committed, both at criminal level and by administrative sanctions;
- 12) protect owners of housing previously occupied from compensation courts action initiated by temporary occupants so they do not bear alone total responsibility for a situation that they did not create or consent to;
- 13) allow owners of commercial premises of occupied agricultural land to enjoy their property as soon as possible.