

# **Report of the OSCE Mission to the Republic of Croatia on Croatia's progress in meeting international commitments since January 1998 20 May 1998**

## **Introduction**

1. On 29 January 1998, the OSCE Mission to Croatia presented the Government with a 'non-paper' specifying the issues on which the Mission would focus. In order to provide assistance and expertise to Croatia, the Mission is paying particular attention to Croatia's compliance with its general responsibilities and commitments under international law, and its obligations in the peace process. At the end of April, the Government responded with its own 'non-paper', detailing its action on the 27 points listed in the Mission's non-paper of January. (Hereinafter, the Government's non-paper is summarised under the heading: 'The Government's position' which in some chapters includes additional points. The Government non-paper is attached as Annex B.)

2. This analysis is not a litmus test, but the Mission's **assessment of progress in a difficult environment**. The Mission is fully aware that Croatia – in contrast to other so called countries in transition – is confronted with a complicated legacy of problems from the socialist past, material consequences of the war, the reintegration of the former Serb-controlled territories, and the task of reconciliation. The Government has set itself the goal of integration into European and Euro-Atlantic institutions, above all membership in the EU and NATO. This priority was recently underlined by the appointment of a Minister for European Integration. These goals set the standard for a political assessment. The international community welcomes the Government's objective. It has become clear that Croatia's progress along its chosen path depends upon the progress in fulfilling its responsibilities, commitments and obligations. This report does not address Croatia's compliance with its specific obligations to Bosnia and Herzegovina under the Dayton Peace Agreement.<sup>1</sup>

3. **The Mission's analysis of developments between mid January and mid May 1998 leads to the following conclusions:** Many positive steps have been promised, some of these steps have been announced, but few have been implemented. Regrettably, in some areas no steps have been made at all. As a consequence, the course of post-war normalisation has been delayed: democratic reforms in legislation, the judiciary and the media are still at a very early stage. This delay has had a clear and negative impact on reconciliation.

4. The 27 points (see Annex A) are referred to in the following presentation as Reference points. They are summed up in the following **eight chapters** addressing the main areas of the monitoring activity of the Mission:

- I. Displaced persons and refugees
- II. Housing
- III. Human rights and rights of minorities, administration of justice and local democracy
- IV. Freedom of media
- V. Elections
- VI. Amnesty and reconciliation
- VII. De-mining

---

<sup>1</sup> General Framework Agreement for Peace in Bosnia and Herzegovina, 14 December 1995.

## VIII. Integration of the Danube Region

### I. Displaced persons and refugees

#### Reference points

- h) Implementation of the agreed mechanisms for the two-way return in a non-discriminatory manner;*
- i) Providing for the rights and assistance for persons of organised return, as well as for spontaneous returnees who should be granted the status of returnees in a timely and equitable manner;*
- j) Facilitating mechanisms for return, including providing citizenship papers, for refugees previously residing in Croatia;*
- p) Resolution of all citizenship cases pending in the Administrative Court, bearing in mind the principle of avoiding statelessness;*

#### The Government's position

5. The Government's position is that the two-way return of displaced persons, above all into and out of the Danube Region, is proceeding effectively. This return process complies with the Joint Working Group's Operational Procedures of Return<sup>2</sup> (henceforth: 'JWG Operational Procedures of Return'), and is supported by a number of additional actions for the smooth functioning of these procedures. The Government indicates that the overall return has seen substantial progress and identifies the difficult economic situation in the target areas for return to be the main obstacle for the process. On 27 April 1998, the Government defined the rules of the return procedures for refugees ('Procedures for the individual return of persons who have abandoned Croatia': henceforth 'Procedures'). On 14 May 1998, it issued "for the full and correct implementation" of these procedures, the 'Mandatory instructions for acquiring documents'<sup>3</sup> (henceforth: 'Instructions').

#### Assessment

6. The break-up of the Socialist Federative Republic of Yugoslavia resulted in a **substantial movement of population** within, into and out of the Republic of Croatia. The initial stages of the war resulted in the displacement of some 80,000 people of mainly Croat nationality from the Danube Region to other parts of Croatia. Between 1991 and summer 1995, as many as 200,000 Croatian citizens of Serb nationality left the country. During the 1995 military operations some 190,000 people (primarily Croatian citizens of Serb nationality) left, mainly for the Federal Republic of Yugoslavia and the Republika Srpska in Bosnia and Herzegovina. Approximately 30,000 persons of this group moved to the Danube Region. According to figures from the European Community Monitor Mission (henceforth: ECMM), some 180,000 people fled to Croatia from Bosnia and Herzegovina during the period 1991–95, either seeking refuge or transiting to other destinations. About 140,000 of these persons are still residing in Croatia.

---

<sup>2</sup> The Agreement of the Joint Working Group on the Operational Procedures of Return, signed by UNTAES, UNHCR and the Government on 23 April 1997, establishes a mechanism to register and process all requests for return into and out of the Danube Region (the area consisting of Eastern Slavonia, Baranja and Western Srijem); disseminate information on the return process; ensure proper operations; develop further mechanisms to address returnee issues, as necessary; and respond to issues arising from the return process which cannot be solved at lower levels.

<sup>3</sup> The title of the document is: "Mandatory Instructions for Acquiring Documents Required for Implementation of the 'Individual Return Procedure for Persons who Left the Republic of Croatia'".

7. The **basic principle** for the return process is the unconditional right of everyone – displaced persons as well as refugees – to unobstructed return to their home of origin. This principle is formulated in the Dayton Peace Agreement as the individual’s right to return freely, and in the Erdut Agreement<sup>4</sup> as the right of individuals to return or to remain in the Danube Region. Recently, certain Croatian media have incorrectly portrayed the international community’s attention to these principles as an international demand for ‘overnight mass’ return into Croatia.

8. The Government’s ‘**Procedures**’ of 27 April 1998 for refugees imposed stringent restrictions on the right of return. In reaction to strong international criticism, on 14 May 1998 the Government supplemented these Procedures with the ‘**Instructions**’ which amended the Procedures and eliminated their substantive shortcomings. However, the Procedures remain valid for all ‘issues which are not specifically dealt with’ in the Instructions – thus leaving elements which had been criticised (such as the qualification of refugees as “persons who have voluntarily abandoned the Republic”).

9. The Government has promised to apply these “Instructions” immediately and to inform the public accordingly – also in the countries of refuge. The ‘Instructions’ specify clear timeframes of two to three months for the issuance of travel documents. In sum, the Mission considers the adoption of the ‘Instructions’ as a positive step for defining the rules of refugee return. However, success cannot be judged before these principles have been implemented on the ground. This implementation does not depend on, but should be assisted by a **comprehensive plan for return of refugees**, which the Government has committed itself to produce very soon.<sup>5</sup>

10. Of the above mentioned 140,000 **Bosnian Croats** who found refuge in Croatia, about half have taken citizenship and are no longer refugees. The Government’s responsibility under the Dayton Peace Agreement is actively to facilitate the return to Bosnia and Herzegovina of those who wish to do so, regardless of their status. At present, there is little active support by the Government for those Bosnian Croats who wish to return; indeed, there are indications that such returns are discouraged at local level. Many Bosnian Croats are living in property belonging to citizens of Serb nationality.

11. Regarding the **organised return of displaced persons** within Croatia, the Mission’s overall assessment is that the **JWG Operational Procedures for Return** have not worked satisfactorily. In general, only the easy cases, such as family reunification or return into empty houses, have been resolved through these procedures. After the Agreement on these procedures was signed in April 1997, about 20,000 displaced persons of Serb nationality registered for return to other parts of Croatia. When the applications were revalidated in the beginning of 1998, only some 11,000 remained in the Region. Only about 2500 displaced persons of Serb nationality have returned from the region to other parts of Croatia through these procedures. It is not clear where the remaining 6500 original applicants have gone. On the other hand, of approximately 82,000 displaced persons of Croat nationality who had registered for return to the Danube Region, only about 15,000 have returned.

---

<sup>4</sup> The Erdut Agreement is the usual name for the Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium, signed on 12 November 1995. On the basis of this agreement to reintegrate peacefully the Danube Region into the Republic of Croatia, the UN Security Council established the UN Transitional Administration for Eastern Slavonia (UNTAES). The mandate of UNTAES lasted two years, until 15 January 1998.

<sup>5</sup> On 15 May 1998, the heads of the UNHCR and OSCE Mission asked the Ministry of Foreign Affairs to permit the OSCE Mission to participate in the governmental working group established to elaborate the comprehensive plan for return of refugees. The participation of the OSCE Mission was not foreseen by the Government’s announcement following the 14 May 1998 Mandatory Instructions.

12. Hence these **operational procedures produced a very limited result**, primarily because of obstacles generated at different levels of the administration. This creates a bottleneck which has driven displaced persons either to take matters into their own hands by returning spontaneously, or to give up hope of returning. The Mission has on several occasions stressed that **spontaneous returnees** – former displaced persons or refugees – should be entitled to the same status and rights as those who return in an organised way. In fact, spontaneous returns are discouraged by local administrative procedures that are arbitrary and opaque. A pattern of administrative deterrence continues despite official declarations that ‘returnee’ status is equally available to spontaneous returnees.

13. The Mission’s position is that **return should be facilitated by organised activities** for which UNHCR plays an important role. Spontaneous movements must be allowed and supported on the basis of the freedom of movement and the principle of everyone’s right freely to return to the home of origin.

14. **There are multiple obstacles to the all-way return process:**

- i) **Housing:** A substantial proportion of displaced persons and refugees lived before the war in so-called socially owned property. There are no established procedures for these people to recover their previous tenancy rights (see paragraph 20 *infra*). Throughout the war-affected areas, damaged housing stock obstructs the return process. In some areas, however, the main obstacle to progress is the ‘temporary’ occupation of properties by displaced persons, refugees or settlers (i.e. Croats from elsewhere in the former Yugoslavia who have acquired citizenship in Croatia). The presence of large numbers of Bosnian Croats, who fled the war in their country, is a major factor in the return context (see paragraph 10). The mechanisms for the restitution of property to its owner are largely ineffectual (see chapter II *infra*). In other places, habitable housing stock stands empty because would-be returnees are prevented from returning for other reasons, including those addressed in the following sub-paragraphs.
- ii) **Documents:** So far, Croatian refugees have found it virtually impossible to return to the country, due to the lack of facilities abroad where the requisite citizenship papers may be obtained. In the case of displaced persons, a ‘green card’ is required to gain access to the benefits of returnee status.<sup>6</sup> Spontaneous returnees face major bureaucratic impediments in obtaining these cards. Those displaced persons seeking to return through the JWG Operational Procedures of Return (see paragraph 20 *infra*) require a ‘confirmation for return’,<sup>7</sup> which is only obtainable through a lengthy bureaucratic process that often results in the applicant opting for spontaneous return or departure from Croatia. Furthermore, the Government has denied visas to some Croatian refugees holding passports from other countries of former Yugoslavia whilst issuing visas to other persons from the same country. In some cases, it has also refused to issue visas to citizens of Bosnia and Herzegovina living in the Republika Srpska, whilst waiving visa requirements for such citizens living in the Federation of Bosnia and Herzegovina.
- iii) **Amnesty:** Concerns over the application of the Amnesty Law remain a serious deterrent to return (see chapter VI *infra*).

<sup>6</sup> Returnee status is formally conferred by the Government’s Office for Displaced persons and Refugees (ODPR). Without this status, individuals are not entitled to social benefits – including a monthly payment to each confirmed returnee.

<sup>7</sup> The grant of a confirmation for return depends on the fulfillment of certain conditions, for example, the availability of housing, or a desire for family reunion. Under the Joint Working Group Operational Procedures of Return, a displaced person who obtains a letter of confirmation from the Government’s Office for Displaced Persons and Refugees (ODPR) is considered to be an ‘organised’ returnee, even though the person makes individual arrangements for return.

- iv) **Economy:** The war-affected areas of Croatia suffer very high rates of unemployment, in some places up to 95 per cent. The hardship is exacerbated for some by the lack of recognition of employment recorded in the former Serb controlled territories (1991-95). Further, the Mission notes a general bias towards filling available jobs with citizens of Croat nationality. Serb returnees thus have little prospect of finding jobs. Uncertainty over recognition of entitlements to pensions and other social rights acquired during 1991-95 in the former Serb controlled territories further discourages returns.
- v) **Security:** A pervasive sense of insecurity in many war-affected areas is a major discouragement to return and a stimulus to further departures of citizens. Serb displaced persons in the Danube Region and Serb returnees to other parts of Croatia are exposed to a wide range of offences, from harassment and intimidation to arson. Incidents are often triggered by the impatience of Croat returnees to reoccupy their houses (which are ‘temporarily’ occupied by displaced persons of Serb nationality). While the police are effective in tackling criminal offences, their response to incidents of harassment and intimidation has proven variable. This leads to the paradox that the level of criminality is lower in the Danube Region than elsewhere, yet it is precisely here (where Serbs form a majority of the population) that the sense of insecurity is highest. This has accelerated the departure of displaced persons, and discouraged others who want to return. It should be noted that the overall improvement in security is more the result of police effectiveness than of political and social reconciliation.
- vi) **Political and social climate:** The public climate of intolerance and resentment has not much improved. Many political leaders resort to the language of collective accusation, for example stigmatising ‘Serbs’ or ‘Muslims’, but also ‘the international community’ as the sources of Croatia’s problems. The most influential news media reflect this intolerance and resentment; they still evoke the emotions of wartime (see chapter IV *infra*) and pay little attention to the Government’s Programme on Establishment of Trust<sup>8</sup> (see chapter VI *infra*). Zagreb Archbishop Monsignor Josip Bozanic’s statements have strongly supported the values of reconciliation and civil society. In his Easter message, he warned that “a feeling of distrust towards foreign institutions and efforts is beginning to grow in the public, without openly analysing the causes and reasons of those situations. Such a public can lead the nation into a state of illness.” Not surprisingly, these attitudes are often echoed by authorities at local level, where they prejudice the treatment of displaced persons and returnees.

## II. Housing

### Reference points

- b) Revision of the laws on property, status of displaced persons and refugees, lease of flats, tenancy rights and areas of special state concern in consistency with the principle of non-discrimination and Croatian international commitments, as highlighted in previous demarches of the international community;*
- k) Establishment of an effective, comprehensive and expeditious procedure for individuals to exercise their rights for recovering property and resolution of problems stemming from the loss of tenancy rights;*

---

<sup>8</sup> On 2 October 1997, the Government adopted the Programme on Establishment of Trust, Accelerated Return and Normalisation of Living Conditions in the War-affected Regions of the Republic of Croatia.

- l) Ensuring that evictions do not take place unless they are non-discriminatory and carried out through formal procedures, providing appropriate alternative accommodation, with the appropriate involvement of law enforcement agencies;*
- m) Providing public availability of the decisions of the Housing Commissions and of their data on the status of individual properties in timely manner;*
- n) Ensuring that measures of the public institutions, including those of the Land Bank, in compensation for the loss of real estate are non-discriminatory.*
- o) Ensuring non-discrimination regarding reconstruction assistance and loans, and access to them for new applicants;*

## **The Government's position**

15. The Progress Report cites the annulment of certain provisions of the 1995 Law on Temporary Take-Over and Administration of Specified Property (LTTO) and the Draft Law on the Repeal of the LTTO and the Law on the Lease of Apartments. The Report mentions the Programme for Providing Care for the Users of Property under Temporary Administration in terms of a response to the legal problems of protecting owners' and tenants' rights associated with the JWG Agreement on Operational Procedures (see chapter I supra). The Government's forthcoming comprehensive plan for the return of refugees will, the Progress Report argues, provide the basis to resolve property and tenancy rights. Evictions will be resolved by the provision of adequate alternative accommodation. Stating that the decisions on disputed house-ownership cases are available from the Housing Commissions in the Danube Region, the Progress Report explains the role of the Land Bank<sup>9</sup> and also states that there is no discrimination in providing assistance to reconstruct war-damaged property.

## **Assessment**

16. The **resolution of property issues** is crucial if the return process and trust establishment are to advance. As the Government's Progress Report states, the Constitutional Court has annulled certain provisions of the **LTTO** and reinstated the owners' right to dispose freely of their property. While welcoming the Government's assurance that no further abandoned property shall be assigned by Housing Commissions<sup>10</sup> for temporary take-over use without prior agreement of the owner, the Mission notes that this undertaking has been little publicised. Hence assignments still occur at local level. The Mission appreciates Government officials' recent requests to the Mission to inform them of such new assignments. One such case has been referred to the Government.

17. The Mission also remarks the lack of progress both in **abolishing or revising the remaining property laws** which have discriminatory effects, and in establishing effective mechanisms to accelerate restitution and compensation.

18. Both the LTTO and the 1995 Law on Lease of Apartments in Liberated Areas are incompatible with the principle of non-discrimination and with Croatia's international commitments. While the Government has recently announced that these laws would be repealed, and has introduced a draft bill to that effect in Parliament, legal procedures to deal with the legacy of these laws have yet to be announced. In particular, clear and expeditious procedures for the **restitution of occupied property** are awaited. Nor do the JWG Operational Procedures of Return, to which the Government bill refers, contain such remedies.

---

<sup>9</sup> The Agency for Mediation in Specified Real Estate Transactions, usually known as the Land Bank, was established to facilitate the buying and selling of property of persons who do not want to return home.

<sup>10</sup> Housing Commissions are bodies established by the LTTO in the 'liberated areas' following their reintegration in 1995. These bodies are empowered to assign the temporary use of 'abandoned property'.

19. The **Housing Commissions**, which administer the LTTO, do not function in a transparent way and frequently refuse to divulge their decisions to those seeking to recover their property. The courts are slow to issue decisions to restore properties to their owners, and where such decisions have been taken, they have frequently remained unimplemented.

20. The Mission welcomes the Government's willingness to work closely with the international community in elaborating a comprehensive plan for the return of refugees (see chapter I supra), and also the express intention to provide "permanent accommodation of persons who had tenancy rights".<sup>11</sup> However, the Progress Report does not address international concern over the problems posed to the return process by the **existing property laws**. In this regard, the Mission observes that an important property right in Croatia used to be a 'tenancy right' in socially-owned property. This provided the holders with a high level of control over the use of the property, and a secure right for them and their families. As noted above, there are no established procedures for people who lost their tenancy rights either to recover them or to be compensated for their loss. Judicial bodies applying the European Convention on Human Rights have found the right to socially-owned property to be a protected right. Therefore, measures of restitution and compensation must include solutions for these individuals.

21. The Progress Report's comments on **evictions** do not fully address the problem in the Danube Region. Double standards appear to exist, with courts issuing decisions on evictions and police enforcing such decisions to the benefit of citizens of Croat nationality. Reports by the ECMM have repeatedly observed a disregard by the local police of clear instructions from the Ministry of Interior on how to react to reports of illegal evictions. Thus the problem remains.

22. The **Law on Reconstruction** categorises applicants for reconstruction funds in a discriminatory way, de facto favouring Croats and excluding Serbs. The Law's definition of property "damaged in the war" excludes properties damaged or destroyed during (or after) the Croatian military operations to reintegrate Serb-controlled territories in 1995. It is striking that the Progress Report makes no comment on this legal discrimination.

### **III. Human rights and rights of minorities, administration of justice, and local democracy**

#### **Reference points**

*c) Revision of the suspended provisions of the 1991 Constitutional Law on Human Rights and Rights of National or Ethnic Minorities, in keeping with the commitments made by the Croatian Government in the Letter of 13 January 1997, including guarantees for the proper functioning of the Joint Council of Municipalities;*

*e) Revision of the Law on Associations, the Law on Foundations and the draft Law on Humanitarian Organisations to ensure conformity with the European Convention on Human Rights (Articles 11 and 14);*

*f) Promotion of legislative reform incorporating international expertise, in particular on the amendments to the Constitution, amendments to the act on the High Council of Justice, the Penal Code and the Penal Procedure Code, legislation on nationalities, police and media;*

*g) Promoting independence, efficiency and impartiality of the Justice System;*

---

<sup>11</sup> The Government's Progress Report, point k).

- t) *Proper implementation of the 1997 Convalidation Law (Art. 3), in particular validation of marriage, birth and death certificates, contracts and recognition of employment;*  
 y) *Promoting development of local democracy.*

## **The Government's position**

23. In its Progress Report, the Government states that it has ratified most Council of Europe human rights instruments and has used Council expertise both in revising domestic law and in preparing new legislation in a number of areas. The Report also states that the rights of minorities are guaranteed, *inter alia*, by the 1991 Constitutional Law on Human Rights and Rights of National and Ethnic Communities or Minorities (hereafter 1991 Constitutional Law), while noting that some provisions of that Law are currently suspended pending the fulfilment of certain conditions. The Government reports that the prohibition against political party membership for judges guarantees judicial impartiality. It notes that the court system is over-burdened by the large number of pending cases. It further recognises that rules exist whereby cases considered to be most urgent are resolved in the shortest period of time. The Government also notes that it recently issued a decree implementing the 1997 Law on Convalidation, which stipulates the formal recognition of legal documents issued in Serb-controlled areas between 1991 and 1995.

## **Assessment**

24. The Mission welcomes Croatia's **adherence to the key human rights instruments** of the Council of Europe, which set the highest international standards. However the Government has lodged reservations and declarations which restrict the protection afforded under two of these instruments.<sup>12</sup> Council of Europe experts have recommended several amendments to bring the Constitution more closely into line with the European Convention on Human Rights. The OSCE Mission supports these recommendations.

25. In late September 1995, in the context of reintegrating the former Serb-controlled territories, Parliament suspended many provisions of the **1991 Constitutional Law on Minorities**.<sup>13</sup> The suspended provisions concern primarily the political representation of minorities at local level. The Government announced that these suspensions would remain until a new census had been carried out. Despite international criticism, the Government has taken no action to revise the suspended provisions. The Government has established a commission to examine the issue. However, Croatia has not followed the recommendations of the Venice Commission on how to proceed.<sup>14</sup>

---

<sup>12</sup> First, on ratifying the European Convention on Human Rights, Croatia lodged a reservation under Article 6 stating that: "Proceedings in which the Administrative Court decides on the legality of individual acts of administrative authorities are held in closed session." While it is formally acceptable, this reservation restricts the transparency of a wide range of court proceedings. Second, on ratifying the Minority Languages Charter, Croatia lodged a reservation, likewise formally acceptable, that the objectives and principles of the Charter would not apply to non-territorial languages. The compatibility of such a broad reservation with Croatia's obligations under international law is questionable. Croatia also lodged a declaration that certain minority language rights might only be exercised in accordance with by-laws passed by "local self-government units". The effect of this declaration is unclear, given the suspension of a number of legal provisions under which these local self-government units are established.

<sup>13</sup> The following provisions of the 1991 Law have been suspended in their entirety: Articles 13, 18 (paras.1 and 5), 21-58, 60 and 61. Portions of the following provisions have also been suspended: Articles 15 (paras. 1, 3 and 4), 18(4), 20(2) and 21. The application of the "provisions of special laws adopted on the basis of the provisions of the Constitutional Law" has also been suspended.

<sup>14</sup> The European Commission for Democracy through Law, commonly referred to as the Venice Commission, operates under the auspices of the Council of Europe. It provides expert advice and assistance on legal reform to emerging European democracies. Compliance with the recommendations of the Venice Commission is a pre-condition for entry into the Council of Europe.



26. **Adoption of new legislation** on foundations and humanitarian organisations has been delayed pending expertise from the Council of Europe. Discussions with the Council are ongoing. The current legislation makes difficulties for the proper functioning of non-governmental organisations.

27. **Shortcomings in the administration of justice** are fully admitted by the Government. Available information suggests that between 800,000 and 1,000,000 cases may be pending before administrative or judicial bodies. The priority rules referred to by the Government are not public knowledge. The delay in resolving cases infringes the human right to a fair hearing within a reasonable time. A particular problem with access to justice exists in the Danube Region, where residents of Croat nationality are exempted from paying certain court fees while those of Serb nationality are not, due to a tendentious legal distinction between *displaced persons* [prognanici] and *persons who moved* [raseljena lica].

28. As to the **independence and impartiality of the judiciary**, the prohibition against judges' membership in political parties is a positive step but not sufficient to free the judiciary from the ruling party's decisive influence. Judicial bodies are not able to review fully some decisions taken by executive authorities. There are also shortcomings in the enforcement of court decisions by the executive.

29. The **validation of documents** issued in the Serb-controlled territories between 1991 and 1995 is particularly important for the protection of pensions and other social rights, and hence for the integration of returnees. In early April, the Government decreed the implementation of the 1997 Law on Convalidation.<sup>15</sup> At the time of writing, it is too early to make a comprehensive assessment of the actual implementation. However, there are indications that local authorities continue to postpone validation by referring to the necessity of final instructions from the Ministries. Also clearly lacking is a public information campaign to clarify the terms of validation.

30. As for the Government's legal consultations with the international community, there is continuing co-operation with the Council of Europe and intensified contact with the Mission.

## IV. Freedom of media

### Reference points

*z) Establishment of an environment for free and independent print and electronic media;*

### The Government's position

31. The Government prepared a Draft Law on Changes and Amendments to the Law on Croatian Radio-Television (HRT), and a tender for a private state-wide television concession. Licences were provided to four radio stations in the Danube Region since the end of the UNTAES mandate, and television programmes for Serbs are broadcast in the Danube Region.

### Assessment

---

<sup>15</sup> The Decrees of April 1998 are as follows: (i) the Implementation of the Law on Validation in Subjects of a Judicial Nature; (ii) the Implementation of the Law on Validation of Acts Issued in Subjects of an Administrative Nature; and (iii) the Implementation of the Law on Validation for the Administrative Fields of Labour, Employment, Pension and Disability Insurance, Children's Allowances, Social Welfare and the Protection of Military and Civilian Invalids of War.

32. The information in the Progress Report on the media is correct but far from complete. The four radio stations in the Danube Region have been able to obtain temporary licences, valid until the end of this year, and TV Dunav is supplying programmes to the state television network. These are commendable developments. Also positive was the Government's acceptance of a visit – at the Mission's initiative – by experts on electronic media from the Council of Europe. Parliament subsequently debated draft amendments of the Law on HRT. Since it incorporates some of the **recommendations by the Council of Europe** experts, this draft could, if it passes into law, help to orient HRT towards public service norms. However, it will not remove concerns over the public accountability or professional and political autonomy of Croatia's largest and most influential media organisation.

33. The **privatisation of HRT's third television channel** will, if it is conducted with full transparency and without favouritism, be welcome. Yet, this step will not in itself resolve the concerns about HRT. Moreover, the procedure of awarding concessions is opaque and open to political manipulation; and HRT's near monopoly of broadcast advertising revenue, plus its ownership of the transmission network, both suggest that a private broadcaster on the third channel would be vulnerable to political pressures.

34. In sum, current developments in the broadcasting sector will not suffice to attenuate the ruling party's control. This control continues to be evinced across broad swathes of the media, above all in the news and other current affairs programming of HRT, some of whose senior officials have been elected to ranking positions in the party. The evening television news is watched by around half of the adult population; in terms of influence it is Croatia's **most important news product**, and it continues to serve as a vehicle for the views of the party.

35. The Mission welcomes improvements to specific programmes of HRT.<sup>16</sup> Despite these improvements, no concerted effort has been made by HRT or by other media under the Government's or ruling party's influence to advance the goals of the Government Programme on Establishment of Trust. Generally antagonistic to the principle of the right to return, these media have done very little to encourage a "general climate of tolerance and security" or "the establishment of trust between all citizens".

36. In other parts of the media landscape beyond the control of the ruling party, there are **signs of improvement**. The 'Forum 21' group of journalists continues to lobby for reform of HRT and media legislation; its efforts contributed to the preparation draft amendments of the Law on HRT. The appearance of a privately-owned daily newspaper, *Jutarnji list*, has improved the coverage of key issues.

37. A faster evolution towards media pluralism is hindered by political pressure exerted through informal channels as well as by legal means. Private broadcasters who obtain licences are not safe from political harassment. Of special concern are several articles of the penal code which grant broad scope for public figures to prosecute journalists for insult and defamation. These articles pose a threat to the freedom of editors and journalists, and the ensuing litigation drains the financial resources of media. According to the Croatian Journalists' Association, which campaigns for reform

---

<sup>16</sup> Particular mention should be made of the positive changes introduced by HRT in March to its programme, *Hrvatski spomenar*, broadcast every evening before the news. War-time footage in this programme had previously added to the sense of insecurity in the Danube Region.

of these articles, several hundred such cases are now before the courts.<sup>17</sup> This contributes significantly to a climate which fosters self-censorship.

## V. Elections

### Reference points

*g) Implementation, well before the next elections, of the international recommendations on elections which Croatia committed itself to under paragraph 9/XIX of the Opinion No.195 (1996) of the Parliamentary Assembly of the Council of Europe<sup>18</sup>, and of the recommendation of the OSCE/ODIHR (1997);<sup>19</sup>*

### The Government's position

38. The Government states: "it is envisioned that the elections will be held by the end of 1999 or at the beginning of 2000, which decreases the urgency of the above-mentioned measures".

### Assessment

39. Elections may be called at any time; thus delays in reform cannot be justified. It is clear that fair elections cannot be held under the existing rules. The Mission assesses that no progress has been made in meeting the international recommendations from 1996 and 1997 concerning elections.

---

<sup>17</sup> The one-sided coverage by influential media during election campaigns since 1995 has been attested by the monitoring conducted by various intergovernmental and non-governmental organisations. No steps have been taken to prevent repetitions of this one-sidedness. (See chapter V infra.)

<sup>18</sup> "On 15 March 1996, the President of the Republic of Croatia and the President of the Croatian Parliament signed a document stating that, in order to fulfil the requirements for admission to the Council of Europe, Croatia was formally undertaking the following commitments: [...] 9/xix. To comply, well before the next elections, with the recommendations made by the election observers of the Council of Europe and other international organisations, in particular with regard to the special voting block for the diaspora, minority representation, voter registration lists, voter anonymity, the need to increase the independence of the state broadcasting corporation (HRT) and to undertake a census of the population as soon as possible;..."

<sup>19</sup> OSCE/ODIHR Observation Delegation to the Croatian Presidential Elections 1997, Statement of 15 June 1997: "XII. Recommendations: The OSCE/ODIHR Observation Mission offers the following recommendations: **A) Independent Media:** The Croatian authorities should consider taking immediate steps to ensure that the governing board of HRT becomes a truly depoliticized and independent body, in order to prevent future abuses of access to the state media. **B) Out of Country Voting:** The issue of whether or not ethnic Croats who permanently reside in Bosnia and Herzegovina should be afforded Croatian citizenship should be addressed. If present practice is considered out of keeping with OSCE commitments, or with the Dayton [Peace] Agreement, legislation should be introduced to bring it into line with OSCE standards. **C) Composition of Election commissions:** The Croatian Government should consider amending its electoral law to ensure clearly defined multi-party participation in election commissions at all levels. While it is recognised that political parties can place observers in the commissions, this is no substitute for full fledged multi-party commissions. **D) Disenfranchisement of Refugees:** The Croatian Government should take appropriate steps to ensure that all individuals with the right to Croatian citizenship (and franchise) are able to take advantage of that right without unnecessary impediment. **E) Election Monitoring:** The Croatian Government should take all necessary steps to ensure accreditation of non-partisan domestic monitors in future elections. **F) Campaign resources:** Croatian regulations relating to campaign financing and transparency thereof should be reviewed, in order to enable all parties to compete with each other on a basis of equal treatment as stipulated in the OSCE commitments. **G) Candidate Debates:** The major candidates in the next election should consider participating in televised debates, a practice now followed in most democracies."

## VI. Amnesty and Reconciliation

### Reference points

- r) Closure of court and administrative files for all cases covered by the 1996 Amnesty Law;*
- s) Ensuring consistency with the official declaration that there will be no new indictments for serious violations of international humanitarian law, additional to the known 25 cases, unless evidence has been established, supported by or in co-operation with ICTY;*
- ž) Full implementation of the Trust Establishment Programme at all levels, utilising to that end all channels of public information.*

### The Government's position

40. The Progress Report states that the Amnesty Law has been applied in 13,575 cases. In the case of war crimes, the facts will be supplied to the competent state attorney's offices for further action. It is the Government's general attitude that the implementation of the Trust Establishment Program is progressing.

### Assessment

41. The courts have closed a large number of cases covered by the 1996 **Amnesty Law**, but the number of potential cases is unknown. However, although more than one and a half years have passed since the enactment of the Amnesty Law, no deadline for finishing the review process has been established. Nor is it clear if the Government has informed all amnestied individuals that their cases have been closed. The Government has announced its compliance with its commitments not to issue new indictments for war crimes, beyond 25 pending cases about which the international community has been informed. However, the Government has so far not applied the amnesty to returning refugees but only to people who possess verification of citizenship. Where new indictments have been threatened, the Ministry of Justice has stepped in effectively to prevent those indictments. However, the uncertainty surrounding these cases, and the fact that the Government has failed to announce publicly that no further indictments would occur without the evidence being established in co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY), continues to undermine confidence and hinder the return process. Furthermore, there is concern that, with the commitment not to indict additional war crimes suspects and given the requirements of the Amnesty Law, individuals in the Serb community who were amnestied for acts committed during the armed conflict as far back as 1991 are being charged for the same acts, this time defined as common crimes. This situation fosters the sense of insecurity among people who might otherwise wish to return.

42. On 2 October 1997, the Government adopted a Programme on Establishment of Trust.<sup>20</sup> The seven goals of this program are very ambitious. The assessment to date should therefore refer to progress, not to actual fulfilment. The goals address most of the issues dealt with in other chapters

---

<sup>20</sup> Programme on Establishment of Trust, Accelerated Return, and Normalisation of Living Conditions in the War Affected Regions of the Republic of Croatia. The goals of this programme are the following: 1) the creation of a general climate of tolerance and security; 2) the realisation of equality of all citizens with regard to the state administration; 3) the establishment of trust between all citizens of the Republic of Croatia; 4) the creation of general social, political, security and economic conditions for the normalisation of life in the war-affected regions of the Republic of Croatia; 5) the speedy, secure and organised return of all Croatian citizens to those regions of Croatia from which they were expelled or displaced; 6) the inclusion of all citizens of the Republic of Croatia in the building of democratic society within the framework of the existing democratic system; 7) the creation of a political framework for the implementation of relevant legal norms.

of this document. For the implementation of the programme a National Committee under the leadership of an active chairwoman, who is deputy Chief of Staff of the President's Office, has been established. The National committee played a constructive role with ad-hoc interventions in disputed issues **in the Danube Region**. However, the effectiveness of the sub-committees at county and municipal level of the region remains deficient; most of these committees exist in name only. Furthermore, there is little dialogue across communities and even less trust, let alone reconciliation. A general atmosphere of insecurity and lack of hope for the future within the Serb community prevail and lead to continued departures (see section I supra).

43. In the war-affected areas **outside the Danube Region**, efforts by public officials to achieve reconciliation are rare and often ineffectual. In many municipalities, local reconciliation committees have not yet been established. In many cases, the local authorities actively discourage the return of displaced persons and refugees. The government has not been very active in stopping such behaviour. Indeed statements by senior government officials have sometimes fostered an "us and them" mentality among members of the nation's Croat majority.

## VII. De-mining

### Reference points

x) *Acceleration of the establishment of the Croatian Mine Action Centre and of the introduction of legal and practical conditions for active foreign involvement in de-mining;*

### The Government's position

44. The Croatian Mine Action Centre was established by a decree of 19 February 1998. In addition, a Memorandum of Understanding was signed with the United Nations to take over from the UN Mine Action Centre. The Law on De-mining, dated 1 March 1996, is currently being amended to improve its efficiency. A loan contract was signed with the European Bank for Reconstruction and Development. Further negotiations, especially for the Danube Region, are in progress.

### Assessment

45. The Government's description of the situation is accurate. In addition, it should be mentioned that the **Croatian Mine Action Centre** has already started work. It is assumed that it will be fully operational, with three sub-centres, by the end of May and will provide improved control and co-ordination of de-mining operations. Besides improving organisation and responsibility, changes and amendments to the Law on De-mining will facilitate international involvement in de-mining. International de-mining companies can be involved already under the existing law and contracts for such participation are in preparation. The Government has welcomed any kind of foreign support, as the country is not in a position to de-mine contaminated areas, which extend to nearly a quarter of the national territory, with its own resources.

46. The OSCE Mission reiterates that the **clearance of mines is a humanitarian issue** of the first importance, and stresses the urgent need for enhanced mine-clearance efforts. It welcomes the domestic and international initiatives in this area and encourages expanded participation and financial support of the international community. It is the Mission's position – shared by other Zagreb-based international representatives – that international funding of de-mining programmes should not be limited by any political conditionality.

## VIII. Integration of the Danube Region

### Reference points

- a) *Consolidation of reconciliation, peace, security and the rule of law in the Danube Region;*
- d) *Adopting legislation recognising the four municipalities (Negoslavci, Jagodnjak, Markusica and Sodolovci) agreed upon by the Government of Croatia, and ensuring an equitable solution for the villages of Mirkovci and Tenja;*
- v) *Ensuring continued employment in the public sector of the Danube Region, and access to social welfare, in accordance with agreements with UNTAES;*
- w) *Proper implementation of the commitment of the Government on military conscription referred to in the Letter of 13 January 1997.*

### The Government's position

47. The Government confirms the complete implementation of commitments in the Erdut Agreement and the "Letter of Intent on the Completion of Peaceful Reintegration".<sup>21</sup> The Government also notes that the four municipalities of concern are to be formally incorporated and that outstanding issues related to the status of the villages of Mirkovci and Tenja remain to be resolved. The Government describes the privatisation situation in the Danube Region. As regards employment in the public sector, the Government lists a large number of cases where state enterprises have signed contracts with former employees of regional public enterprises. It stresses that social protection and pensions are operating regularly. On 5 June 1997, the Minister of Defence decided to defer military service for members of the Serb community from the Danube Region for a period of two years.

### Assessment

48. In January 1998, the Danube Region was fully and peacefully integrated into the Republic of Croatia. Nevertheless, the outflow of both displaced and long-term resident citizens of Serb nationality has not been stemmed. The ECMM estimates that more than 40 per cent of the Region's Serb community, as it was in 1996, has left the Region. According to the Joint Council of Municipalities, fully a quarter of the long-term resident citizens of Serb nationality has left. Reasons for this situation are analysed in chapter I, supra.

49. Under the terms of the Erdut Agreement, municipalities in the Danube Region containing a majority of Serbs have formed a **Joint Council of Municipalities** (JCM). This is perceived as an important forum for practically advancing reconciliation. It is positive that the Government entered consultations with representatives of the Serb community on the functioning of the JCM and the Council of the Serb Ethnic Community, and that initial funding has been disbursed to the JCM.

50. The Government's Progress Report does not address the question of discrimination in the sales of shares or subsequent employment in the Danube Region. The **privatisation** of companies in the Region is moving very slowly. It is not clear why public enterprises are being run down, both in

---

<sup>21</sup> The full title is, "Letter of intent by the Government of the Republic of Croatia on the completion of peaceful reintegration of the region under the transitional administration, Republic of Croatia, signed 13 January 1997 by the Deputy Prime Minister".

terms of their labour force and their capital equipment, if the Government is seeking to maximise the revenues from sale of these enterprises. The privatisation process evinces discriminatory practice. Where citizens of Serb nationality are employed, they are frequently without contracts and thus do not qualify to purchase shares as workers. The actual share allocation system favours, among others, widows of soldiers in the Croatian armed forces, former 'Defenders of Croatia', and displaced persons of Croat nationality.

51. What little **employment** does exist in the Danube Region is mainly in the public sector. It is difficult to determine the extent to which the Government has fulfilled its commitments, in accordance with agreements made with UNTAES, on proportional employment in the public sector.<sup>22</sup> However, there are instances where agreements on filling specific posts in the public sector have been disregarded.<sup>23</sup> Even for those citizens of Serb nationality who do have employment, there is little job security. Many have been temporarily laid off, rendering them ineligible either to receive unemployment benefits or to seek new work through employment offices. Companies have on occasion refused to close employment booklets, leading to the loss of pensions and other entitlements. As a result of delays in the implementation of the Law on Convalidation, many citizens of Serb nationality still do not receive pensions or other social security benefits. In a number of cases where such citizens have been able to obtain social assistance, liens have been placed on their houses.

52. By adopting the Law on the Areas of Counties, Towns and Municipalities in the Republic of Croatia, the House of Representatives of the Croatian Parliament formally and legally incorporated the four **municipalities** of Negoslavci, Jagodnjak, Markusica and Sodolovci into the Croatian legal system. On this point the Government has fulfilled its commitments. However, a final arrangement for Mirkovci and Tenja is still delayed.

53. The Decision on Deferment of Military Service of 5 June 1997, made by the Ministry of Defence, provides a durable solution concerning **conscription** in the Danube Region. The deferment covers Croatian citizens of Serb nationality who are:

- i) long-time residents of the former UNTAES region;
- ii) displaced persons from other parts of Croatia living in the former UNTAES region;
- iii) those who will come to reside in the former UNTAES region during the process of return.

Regarding citizens of Serb nationality returning from the Danube Region (i.e. the UNTAES region) to other parts of Croatia, the Ministry of Defence opines that the use of the right to alternative civilian service would answer their needs. The Mission regards this alternative as a viable compromise.

54. The **local police** force in the Danube Region, established under UNTAES, is showing a generally good professional performance (see chapter I supra). This success, however, is linked to the monitoring activity of the 180 uniformed police of the UN Police Support Group. The Mission plans to take over this task from the United Nations after 15 October 1998.

---

<sup>22</sup> Annex to the Affidavit signed by the Head of the Office of the Government of the Republic of Croatia for Transitional Administration and the Transitional Administrator of UNTAES, 14 February 1997.

<sup>23</sup> E.g., under the Agreement on the Reintegration of the Regional Health Service, a citizen of Serb nationality was named as deputy director of the Vukovar Health Centre. Notwithstanding, this person was subsequently replaced by a citizen of Croat nationality.

## Looking ahead

55. Bearing in mind the achievement of the peaceful reintegration of the Danube Region and the improvement of public security throughout the country, the Mission's analysis shows a lack of substantial progress in implementing further measures. **Such progress depends on political will.** The Mission believes that decisive action by the Government is needed above all in the following areas:

56. There is a **lack of comprehensive legislation** to tackle the legacy of communism and the consequences of the war. The Mission observes a tendency to sidestep legal reforms by means of administrative procedures and instructions of different ministries, leaving discriminatory legislation – often introduced in the context of the war – in force. The scale of this problem is not reflected in everyday political debate. Neither is there the will on the part of Government to discuss comprehensive legal reforms.

57. Together with the overburdened court system, the **whole judiciary is faced with the profound challenge of modernisation** to meet European standards. International expertise – above all from the Council of Europe – could be used to a greater extent than has been done so far.

58. In mid June, the beginning of the school holidays should make it easier for people to opt for **return**. However, the delay in creating conditions for return, as well as the lack of action to overcome the obstacles identified in this report, will continue to frustrate potential returnees or induce them to seek spontaneous solutions. These circumstances produce the risk of increased tensions and incidents. The Government has issued regulations for the return of **refugees**. The Mission welcomes these regulations, while noting that only their swift implementation will help the refugees. The organised two-way return of **displaced persons** is paralysed. At this late stage, more than a year after the Agreement, the mechanisms can only be made effective by a determined effort of the Government.

59. The Government committed itself to implement, “well before the next elections”, the international recommendations with regard to **elections**. Action is urgently needed. Under existing rules the shortcomings observed in the last elections would continue to deprive the electoral process of the possibility of being fair.

60. **Post-war reconciliation** among different nationalities and communities is a difficult and burdensome process. While no instant results should be expected, the Government has every reason to create without delay the most propitious conditions for this process to succeed. An urgent priority is reform of HRT, above all in the news programming. Without free media, reconciliation will remain hard to imagine. The overall aim of reconciliation must be the fostering of a national civic identity, shared by all citizens. As long as the word “we” in Croatian political culture includes only Croats, and as long as the members of the Serb community barely recognise themselves as Croatian citizens, reconciliation is impossible.