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COMMISSAIRE AUX DROITS DE L'HOMME



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REPORT

by Thomas Hammarberg
Commissioner for Human Rights of the Council of Europe

Following his visit to Croatia
from 6 to 9 April 2010

Issues reviewed:

Human rights of displaced persons and asylum seekers,
proceedings relating to post-war justice and human rights of Roma.

Executive summary

Commissioner Thomas Hammarberg and his delegation visited Croatia, from 6 to 9 April 2010. In the course of this visit the Commissioner held discussions with national, regional and local authorities, international and non-governmental organisations. The Commissioner held also meetings with national human rights structures and representatives of minority groups.

Drawing upon the focused nature of the Commissioner's visit, the present Report tackles the following major issues:

I. Human rights of displaced persons and asylum seekers: Long-standing human rights issues caused by the 1991-1995 war must be resolved. The Commissioner welcomes the efforts made by the Croatian authorities in this regard, underlining at the same time the fundamental right of all displaced persons to *voluntary return in safety and dignity*. Large parts of Croatia's territory, including agricultural land and forests, must be demined immediately in order for the condition of safe return to be met. Any further measures related to returns should be based on updated, reliable data on the numbers and the situation of displaced persons. The Commissioner encourages Croatia to follow up on the decisions taken at the International Conference on Durable Solutions for Refugees and IDPs which took place last March in Belgrade, and to enhance its co-operation with all relevant neighbouring countries in order to provide just and sustainable solutions to all pending issues. In this regard the Commissioner urges the authorities to ensure the full participation of the displaced persons themselves, particularly those belonging to minority groups, in the planning and management of all relevant processes.

Issues concerning lost or damaged property and the rights of displaced persons in this regard remain of concern to the Commissioner. Pending cases concerning the repossession of property should be dealt with promptly, in full compliance with the relevant case-law of the European Court of Human Rights. Particular attention should be paid to the situation of former occupancy/tenancy right (OTR) holders who either do not wish to or cannot return to Croatia to benefit from the housing care programme. Just solutions must be found for these people. This must also apply to the issue of 'convalidation' in order to validate the years worked to attain pensions by displaced persons during the war years in areas not under government control. The Commissioner also calls on the authorities to promote the integration of displaced persons by facilitating their naturalisation, if this is requested. In this regard, he recommends that Croatia ratify the European Convention on Nationality and the Council of Europe Convention on the avoidance of statelessness in relations to State succession.

As regards asylum seekers, the Commissioner welcomes the recent and ongoing efforts made by the authorities to improve refugee protection. At the same time, he notes in particular the need to provide access to free legal aid in first instance asylum procedures. The creation of a permanent refugee reception centre should remain a priority, while the detention of migrants, including asylum seekers, especially for long periods, should be avoided and should constitute the exception and not the rule. The Commissioner recommends the abolition of the practice of demanding accommodation fees by migrant detainees and the imposition of an entry ban in case of non-payment. The authorities should also pay specific attention to particularly vulnerable groups of migrants: victims of torture and other ill-treatment; victims of trafficking; and unaccompanied/separated children. Lastly, the Commissioner urges the authorities to resolve the remaining issues concerning the efficiency of justice, and specifically the excessively lengthy judicial proceedings which affect in particular displaced persons and refugees. Free legal aid should be accessible in both law and practice. The Commissioner draws the attention of the authorities to the case-law of the European Court of Human rights in this domain.

II. Proceedings relating to post-war justice: The Commissioner encourages the Croatian authorities to reinforce their efforts aimed at effectively investigating all persons involved in war atrocities, and taking action against them. In this regard, he recalls the international legal principles of accountability, justice and the rule of law. At the same time, access to justice for victims should be ensured and effective domestic remedies should be provided for them, including reparation. The existing impunity gap must be eliminated: the Commissioner welcomes the openness and determination shown by the authorities in this regard. He urges them to continue to strengthen their co-operation with the International Criminal Tribunal for the Former Yugoslavia, and their networks with the competent authorities of the relevant neighbouring countries. War-related criminal cases should be examined and followed through in domestic courts in accordance with the standards of promptness and fairness established by the European Court of Human Rights. The Commissioner remains concerned at cases of trials *in absentia*. He urges the Croatian authorities to continue reviewing these cases and to ensure effective remedies for those convicted, in compliance with the standards of the European Convention on Human Rights. Reinforcing the efficiency of specialised courts and the facilitation of witness participation in war-related trials will contribute to furthering the process of post-war justice. A significant number of persons remain missing after the war. The Commissioner encourages the authorities to continue, with the same determination, their efforts aimed at identifying missing persons and comforting their families. Finally, the Commissioner notes the particular importance of history teaching for post-conflict countries. He encourages the Croatian authorities, possibly in co-operation with the relevant neighbouring countries, to reflect more on the need to promote history teaching in a manner that enhances much-needed inter-ethnic reconciliation and social cohesion.

III. Human rights of Roma: The Commissioner commends the measures taken so far concerning Roma. He urges the authorities to step up their efforts, drawing on the Council of Europe Committee of Ministers Recommendation (2008)⁵ on policies for Roma in Europe. Despite some recent positive developments, the participation of Roma in political life, public administration and the judiciary needs to be examined and strategically reinforced. The Commissioner remains deeply concerned by the significant number of stateless Roma in the region of the former Yugoslavia, including Croatia. This situation further marginalises these populations. This must be looked into as a matter of urgency, and the authorities should facilitate the naturalisation of all stateless Roma, providing them with effective access to free legal aid. The Commissioner underlines the pivotal role of education and calls upon the authorities to comply fully with the recent European Court of Human Rights judgment in the case of *Oršuš and others* by eliminating any tendency of segregation of Roma pupils. Their pre-school education should be reinforced in order to increase the currently extremely low percentage of Roma pupils with completed elementary school education. Targeted professional training measures are also encouraged. As regards housing, the Commissioner stresses that Roma settlements providing substandard, degrading living conditions, such as the one in Struge near Zagreb, should be replaced by adequate housing in compliance with European Social Charter standards. Lastly, whilst the Commissioner takes note of the positive developments regarding anti-discrimination and anti-hate crime legislation, he remains concerned about the persistence of anti-Roma manifestations that include violence. He urges the Croatian authorities to address failures of the justice system and to ensure effective investigation and prosecution in accordance with the established case-law of the European Court of Human Rights in all such cases.

The Croatian authorities' comments are appended to the present Report.

Introduction

1. The present Report follows a visit to Croatia by the Council of Europe Commissioner for Human Rights (the Commissioner) from 6 to 9 April 2010.¹
2. The Commissioner wishes to thank sincerely the Croatian authorities in Strasbourg and Zagreb for the assistance that they provided in facilitating the independent and effective accomplishment of his visit.
3. During the course of the visit the Commissioner held consultations with a number of state authorities, including the President of the Republic, Prof. Dr Ivo Josipović, the Prime Minister, Ms Jadranka Kosor, the Vice-Prime Minister for Social Issues and Human Rights, Prof. Dr Slobodan Uzelac, the Minister of Foreign Affairs, Mr Gordan Jandroković, the Minister of Justice, Prof. Dr Ivan Šimonović, and the Minister of Regional Development, Forestry and Water Management, Mr Božidar Pankretić.
4. The Commissioner also met with regional and local authorities in the counties of Međimurje and Vukovar-Srijem, as well as with national human rights structures, international organisations and NGOs in Zagreb and Vukovar. The Commissioner visited the detention centre for migrants in Ježevo, a Roma site in Struge, near Zagreb, and the Roma settlements in Pribislavec and Lončarevo in the county of Međimurje.
5. Croatia acceded to the Council of Europe on 6 November 1996 and has signed and ratified most of the major Council of Europe and core United Nations human rights treaties. The Commissioner notes that Croatia has not as yet signed and/or ratified the European Convention on Nationality, the Council of Europe Convention on the avoidance of statelessness in relation to State succession, the revised European Social Charter and the UN Convention on the Reduction of Statelessness.
6. The Commissioner notes with satisfaction that Croatia is one of the few Council of Europe member states to have adopted a comprehensive, multi-annual action plan to promote, protect and respect human rights and fundamental freedoms. The major challenge is to sustain efforts to implement the relevant policies in a systematic manner and create an environment where human rights principles and standards can thrive. Such efforts are of particular significance for post-conflict societies where social cohesion and cultural and ethnic diversity should be protected and enhanced.
7. Four Ombudsman institutions (the People's Ombudsman, the Ombudsperson for Children, the Ombudsperson for Persons with Disabilities and the Ombudsperson for Gender Equality) are fully operational and should be further resourced. Government human rights offices, such as the Human Rights Office, the Office for National Minorities and the Gender Equality Office, along with the Human Rights Centre, constitute other pillars of the national human rights system which have acquired valuable expertise.
8. In the course of his visit the Commissioner was informed about an ongoing discussion on the rationalisation of the national system of human rights structures. Efforts aimed at improving the efficiency, coordination, coherence and visibility of the national human rights structures are welcome and should be pursued.
9. Drawing upon the focused nature of the Commissioner's visit, the present Report concentrates on the following major issues: human rights of displaced persons and asylum seekers (section I); proceedings relating to post-war justice (section II); human rights of

¹ During his visit the Commissioner was accompanied by the Deputy to the Director of his Office, Mr Nikolaos Sitaropoulos and his Adviser, Mr Roman Chlapak.

Roma (section III). Each section is accompanied by the Commissioner's conclusions and recommendations.

I. Human rights of displaced persons and asylum seekers

Internally displaced persons (IDPs)

10. At the end of the 1991-1995 war there were 250 000 displaced persons within Croatia (including 32 000 ethnic Serbs). In December 2009 there were reportedly 2 285 IDPs in the country, including over 1 600 displaced ethnic Serbs in eastern Slavonia.
11. The Commissioner was informed that the number of IDPs has only decreased by a few hundred a year since 2005, compared to an average decrease of 4 500 per year between 2002 and 2005. This can be explained by a rather slow, delayed process of reconstruction and housing care programmes (see also relevant sub-sections below).
12. In 2007 the majority of the state-run collective centres for IDPs in eastern Slavonia were closed and a small number of the residents received an alternative form of housing. In 2009 the six collective centres that provided housing for about 170 IDPs, 470 refugees and 40 returnees were planned to be reduced to four. It appears that there was no precise plan for the remaining closures.
13. For the ethnic Croat IDPs who have not been able to return so far, the main obstacle to return seems to be the poor economic situation in return areas, such as the region of Vukovar. Ethnic Serb IDPs are still reported to face several serious obstacles to viable return. The issue of house reconstruction for ethnic Serbs was reportedly addressed with considerable delay and is still in some cases critical (see also relevant sub-section below). Persisting problems relating to excessively lengthy, especially civil and administrative, proceedings (see sub-section on justice system below) have made it harder for IDPs to assert their rights and attain durable solutions.
14. The Commissioner remains worried by the fact that extensive areas in Croatia, including agricultural land and forests and more than 100 towns and municipalities, remain contaminated by mines and explosive remnants of war (ERW). The loss to agriculture is estimated at €44 million a year while the value of wood resources that cannot be used because of mines is estimated at €178 million.² The Commissioner has noted that Croatia made progress in demining large parts of its territory until 2008, in compliance with the 1997 Mine Ban (Ottawa) Treaty, which was ratified in 1999. However Croatia did not manage to meet its Article 5 clearance deadline, and this was extended for 10 more years, until March 2019. Between 1999 and 2008 more than 200 mine/ERW casualties were reported, including 75 deaths and 137 injuries.³
15. Demining and ERW clearance is a serious issue that should be addressed by the Croatian authorities as a matter of extreme urgency, given Croatia's obligations not only under the Ottawa Treaty but also under the European Convention on Human Rights and the contracting states' positive obligation to safeguard notably the right to life of everyone within their jurisdiction (Article 2 of the Convention).

Return of ethnic Serb refugees

16. The Commissioner notes that before the war the Serbian minority in Croatia constituted 12.16% of the population, while in 2001 this percentage had fallen to 4.5%. They still

² *Landmine Monitor Report 2009*, entry on Croatia, <http://www.the-monitor.org>.

³ *Idem*.

remained the largest national minority. Return of ethnic Serb refugees started in 1996. In 2009 the Croatian authorities reported that approximately 40% of the previous Serb population had returned to Croatia.⁴ Facilitation of returns or local integration of refugees and internally displaced persons was one of the major commitments mentioned in the 2005 Declaration which followed the regional ministerial conference on refugee returns, and was signed by the governments of Bosnia and Herzegovina, Croatia and (then) Serbia and Montenegro. At the end of 2009 the Croatian authorities had registered 132 400 returns of ethnic Serbs from other countries in the region of the former Yugoslavia. According to UNHCR, almost 72 000 Croatian Serbs still live in Bosnia and Herzegovina, Montenegro and Serbia.

17. However, UNHCR has identified a number of inconsistencies in official refugee/returnee statistics, e.g. more than 10 000 persons are registered both as returnees in Croatia and refugees in Serbia. UNHCR, in co-operation with relevant authorities, is currently reviewing the number and status of returnees and refugees.⁵
18. Although successive governments have made progress, in particular by undertaking legislative reforms to support the return of ethnic Serbs to Croatia, in practice there are still obstacles to their viable return. In this regard the Commissioner notes the need for the authorities to reflect more on the reasons for which large numbers of displaced ethnic Serbs have not as yet returned, and on possible ways in which returns may be effectively facilitated and made durable.
19. Members of civil society with whom the Commissioner met during his visit to Zagreb and Vukovar highlighted as major problems, faced particularly by ethnic Serb refugees upon their return, the lack of timely social welfare support and continuous police inspection. The Commissioner was concerned by information indicating that police checks are performed on a discretionary basis in houses or apartments of ethnic Serb returnees to verify that the latter reside there on a permanent basis. It seems that returnees risk losing their entitlement to housing if they are not found at home on several occasions.
20. Particular difficulties face returnees who do not hold Croatian nationality. They are obliged to report to the competent authorities when they travel out of the place of their residence. It is noted that these returnees are subject to ordinary aliens' law and may be granted upon their arrival temporary or permanent residence permits for which they reportedly have to pay an administrative fee. As foreigners they are also subject to compulsory payments for health insurance.

Repossession of occupied property

21. The Commissioner notes that the repossession process of occupied private property is now near its end. Administrative obstacles made the process, which started more than a decade ago, lengthy. The Commissioner was informed that 19 200 housing units have been returned to their owners. However 22 cases are still pending before domestic courts. In these cases temporary beneficiaries still occupy property.
22. The Commissioner is aware of four relevant judgments against Croatia delivered by the European Court of Human Rights from 2006 to 2008.⁶ The adoption of general measures by Croatia in order to fully execute these judgments is currently supervised by the Council

⁴ UN CERD, Summary record of the 1920th meeting, CERD/C/SR.1920, 12/03/2009, paragraph 58.

⁵ UNHCR Representation in Croatia, Briefing Note, *Protection and Assistance of Returnees, IDPs and Refugees*, February 2010, p.1.

⁶ *Radanović v. Croatia*, judgment of 21/12/2006, *Brajić-Bratanović v. Croatia*, judgment of 09/10/2008, *Kunić v. Croatia*, judgment of 11/01/2007, *Vučak v. Croatia*, judgment of 23/10/2008, see status of execution of these judgments at: http://www.coe.int/t/dghl/monitoring/execution/Reports/Current_en.asp.

of Europe Committee of Ministers. The applicants in these cases were prevented from using their property as it was allocated by state authorities to third persons on the basis of the "Takeover Act". Between 2000 and 2003, the competent authorities ordered the occupants of the applicants' properties to vacate them, but these orders remained unenforced for several years, thus violating the applicants' property rights. The "Takeover Act" was repealed in August 1998, while in June 2008 the Constitutional Court issued a decision changing the case-law concerning the payment of compensation to owners whose properties had been allocated to third parties by state authorities, aligning itself with the Strasbourg Court's case-law.

23. According to the authorities, temporary beneficiaries have submitted requests for compensation for the investments made in the temporarily allocated housing units. During his visit the Commissioner was made aware of serious concerns by NGOs active in this field that the lawful owners often obtain property back in poor condition, and do not receive fair compensation.
24. As regards agricultural land, the Croatian authorities have informed the Commissioner that the process of repossession of agricultural land was concluded by the end of 2009. A new Law on Agricultural Land is also in place. However the Commissioner has been informed that certain problems persist, such as the imposition of fines on refugees/returnees if they do not wish to or cannot cultivate their lands for various reasons, including the fact that their bona fide cultivated land was not registered before the start of the war.

Reconstruction of houses

25. On 9 April the Commissioner was informed by Minister Pankretić that Croatia has reconstructed 146 600 housing units since 1995, investing for that purpose approximately €2.2 billion. It has been noted that the reconstruction process has slowed down and the date for completion of the process has been postponed. The current number of relevant pending cases indicated by the government is 7 000. In 2010 the reconstruction of houses for 1 000 occupancy/tenancy right holder families (see next sub-section) is planned.
26. The authorities have reportedly spent significant funds (HRK 1.15 billion) on the construction and rehabilitation of communal and social infrastructure. The government indicated that it invested HRK 300 million to reconstruct electricity networks in the areas of return. It is planning to spend HRK 30 million to bring electricity to 16 remaining settlements by the end of 2010. The Project for Socio-Economic Recovery for Areas of Special State Control (ASSC)⁷ (funded by the World Bank and the State) is also being completed.
27. During his visit to Croatia the Commissioner received reports concerning discriminatory attitudes by certain authorities towards ethnic Serb returnees, consisting, inter alia, in underestimating the cost of property damage - thus preventing the owners from fully rebuilding their houses. Decision-making processes regarding reconstruction of houses have lasted several years. There are 2 092 cases awaiting implementation. The Commissioner was informed that the Ministry of Regional Development, Forestry and Water Management has recruited five junior officers to deal with the pending cases which were however reported to be complex, requiring adequate expertise.⁸ The authorities reassured the Commissioner that the pending cases will be dealt with in an accelerated manner in 2010 and 2011.

⁷ ASSC cover areas underdeveloped as a result of the 1991-1995 war as well as other areas which are underdeveloped primarily economically and demographically.

⁸ See also Croatian People's Ombudsman, *Activity Report for 2008*, Zagreb, March 2009 at 23.

28. Lastly, the Commissioner has taken note of a group of eight relevant judgments of the European Court of Human Rights which were rendered against Croatia in 2007.⁹ The cases concern mainly extremely lengthy proceedings concerning claims of damages caused to the applicants during the war by the Croatian army or police or following terrorist acts. The claims had been filed with domestic courts in the first half of the 1990s and the proceedings were stayed by law in 1996. In view of these serious shortcomings in access to justice, the Strasbourg Court considered that the amounts of compensation awarded by domestic courts were unreasonable. The compensation which had been granted was approximately 15% of what the Court was generally awarding in similar cases relating to Croatia. As of April 2010 the adoption of general measures by Croatia in order to fully execute the above judgments was under supervision by the Council of Europe Committee of Ministers.

Occupancy/tenancy right holders and the housing care programme

29. The Commissioner is concerned by the situation of holders of socially owned flats ('Holders of occupancy/tenancy rights' – 'OTR holders'). This form of housing represented 70% of housing units in the former Yugoslavia. The OTR status had many characteristics of that of ownership as the occupancy/tenancy right was kept for one's lifetime. Until 1995 most OTR holders were able to transform their right into ownership by paying a symbolic sum. This however was not the case for a large number of refugees, mostly ethnic Serbs, whose rights were terminated when they fled during the armed conflict. Ethnic Serbs in areas that were outside government control lost their right *ex lege* when the conflict ended. The Commissioner was informed that 23 800 persons, mainly ethnic Serbs, lost their entitlements.
30. The Commissioner has noted the case of Dušan Vojnović, a Croatian of Serb origin, who fled Croatia in 1991. In 2006 he submitted a Communication (no 1510/2006) to the UN Human Rights Committee, complaining that the termination in 1995 of his tenancy rights violated the International Covenant on Civil and Political Rights. The complainant and his wife were deprived of their tenancy rights following court proceedings in which they had not been invited to participate. In 2009 the UN Human Rights Committee found a violation by Croatia of the principle of non-discrimination and of fair trial and equality before courts. Furthermore, the Committee concluded that the termination of the author's tenancy rights was an arbitrary and discriminatory interference with his home which amounted to another violation of the Covenant. The UN Human Rights Committee has noted in its Views that Croatia is under an obligation to provide the Communication's author with an effective remedy, including adequate compensation.
31. The Commissioner has been informed that the Housing Care Programme (HCP) was introduced in 2003 to offer alternative housing for rent or purchase to former OTR holders who exercise their right to return. According to UNHCR 13 749 applications have been filed, of which 8 871 have been successful and 7 092 persons have received housing care. 63% of the relevant applications originate from ethnic Serb IDPs and returnees, out of which more than 5,400 have been granted housing care.¹⁰
32. As regards refugees, including former OTR holders, who do not wish or are not able to return and are in need of housing in neighbouring countries of local integration, the Croatian authorities state that they stand ready to provide them with assistance. In particular, the authorities have indicated that they are willing to co-operate with all host countries concerned and to support the creation of an international, multi-donor trust fund, as discussed at the International Conference on Durable Solutions for Refugees and IDPs (Belgrade, 25 March 2010).

⁹ See the *Popara* group of cases, see status of execution of these judgments at: http://www.coe.int/t/dghl/monitoring/execution/Reports/Current_en.asp.

¹⁰ UNHCR Representation in Croatia, *idem*.

33. As regards the application of the HCP in Areas of Special State Concern (ASSC), the deadline to apply for housing care therein has not yet been determined. According to the authorities, 9 205 applications for housing care in ASSC have been received and 5 868 applications have resulted in positive decisions. The deadline for applying for housing care outside ASSC ended on 30 September 2005. Until then 4 578 applications had been received, 1 540 of which had been granted. The setting of a new deadline for applications for housing care outside of ASSC and a buy-off option for urban areas are under consideration by the authorities who plan to implement the HCP until the end of 2011.
34. The Commissioner has noted that the new Law on Housing Care in ASSC provides claimants with the possibility to appeal against negative decisions. Given a number of shortcomings in these procedures, in 2008 the authorities decided to carry out a joint (with UNHCR) revision of all first instance negative decisions on housing care outside the ASSC. The Commissioner has noted that a number of cases have been sent back to first instance bodies because of administrative or procedural irregularities.
35. The Commissioner is concerned by the slow pace of implementation of the HCP, noting that in June 2008 the government adopted an Action Plan for the Accelerated Implementation of the HCP. The authorities, including Prime Minister Kosor, have stressed that despite the constraints of the national budget, allocations for the HCP have increased in 2010. In March 2010 the Ministry of Regional Development, Forestry and Water Management prepared an action plan for 2010 containing activities and mechanisms for more transparent and effective implementation of the HCP.

Certain issues concerning the integration of returnees

36. The Commissioner took note of the modification of the Law on Foreigners which aimed to regularise the status of refugees who were pre-war inhabitants of Croatia and who missed the end of 2005 deadline for requesting Croatian nationality. Based on their existing links with Croatia, these groups of refugees/returnees now have access to a temporary residence status upon their return. However effective access to citizenship for this group of returnees would lift certain obstacles regarding, inter alia, access to social welfare services.
37. The Commissioner is concerned by reports indicating that Article 22 of the Constitutional Law on National Minorities (CLNM) relating to the employment of minority representatives is not systematically implemented. A study conducted by the Serbian Democratic Forum in 2008 revealed that the representation of the Serb minority in public institutions remains low. The Commissioner has noted with satisfaction positive but still modest changes following the May 2009 local elections in which Serb minority representatives won seats in more than seven municipalities in ASSC. During his visit to Croatia, the Commissioner was pleased by the openness and constructive attitude towards the issue of ethnic minorities which were demonstrated by the regional and local authorities of Vukovar.
38. The Commissioner has been informed that an important number of returnees are elderly people. Many of them (especially those who stayed in occupied territories in Croatia) may not receive their full pensions because their working years during the war have not been validated. The situation is compounded by the current high unemployment rate in Croatia which stands at 18.2%. Unemployment is especially acute in the Areas of Special State Concern which were affected by the war. The Vukovar-Srijem county alone counts approximately 20 000 unemployed persons.
39. The Croatian government has addressed the issue of 'convalidation' (recognition of years worked towards a pension between 1991 and 1995 in areas not under government control). Although progress has been made, the Commissioner is concerned by a high number of negative decisions on 'convalidation' claims. According to UNHCR 20 089 claims were

lodged between May 2008 and February 2010. 8 179 claims resulted in positive decisions, 6 873 received negative decisions and 5 037 are still pending. In many cases the official records had been destroyed during the war and regrettably people are not allowed to provide evidence in the form of statements related to their work experience.

40. Lastly, the Commissioner notes the need for the authorities to step up the efforts aimed at the implementation of the CLNM related to the use of languages and scripts of national minorities. The Commissioner was informed that there are eight Serbian language schools in the county of Vukovar-Srijem and four mixed Croatian-Serbian schools in the town of Vukovar where the knowledge of customs, languages and scripts of national minorities is also promoted in kindergartens. The Commissioner has noted the reported efforts to modify the current City Statute of Vukovar so that it allows the use of the Cyrillic script in public and official communication. It seems that this plan is expected to be clarified after the 2011 census.

Certain issues concerning refugees and immigrants

41. The Commissioner has noted that the Law on Foreigners entered into force in January 2008 and a new asylum law was adopted in 2007. According to UNCHR, the new asylum law that entered into force in January 2008 constitutes a good basis for a fair and efficient asylum system. The asylum law introduced the following: a subsidiary form of protection, a definition of refugees *sur place*, an accelerated procedure and a procedure at borders and in transit zones. The introduction of a more independent Asylum Commission, as a second instance appeal body, is another positive feature of the law. Major problematic provisions of the Law concern the exclusion of interviews in the accelerated procedures and the lack of free legal aid in first instance asylum cases.
42. Croatia is mainly a transit country and the first refugee was recognised in 2006. From 2006 until 2009 20 persons were granted international protection in Croatia: 15 persons were recognised as refugees and 5 were granted subsidiary protection. Asylum seekers are able to communicate through an interpreter during the entire process, but it is not clear if this is the case for new arrivals at the border. Legal counselling in the first instance procedures is funded by UNHCR. Free legal aid is available by the state only on appeal. The Croatian Red Cross provides community services to asylum seekers, with an emphasis on assistance to vulnerable groups such as women, single women with children, separated/unaccompanied children and the elderly. Systematic identification and psycho-social counselling of victims of torture and inhuman or degrading treatment are reported to be lacking.
43. During his visit to Croatia the Commissioner visited the 'aliens' reception centre' in Ježevo, used mainly for detaining migrants subject to deportation. The centre, which opened in 1997, seemed to provide decent material conditions. At the time of the visit 19 migrants were detained there (the maximum capacity is 96 persons), including 5 asylum seekers. The Commissioner was concerned to learn that some of the migrants are detained for very long periods of time (6-7 months). Certain detainees with whom the Commissioner spoke indicated that the information they receive concerning their detention and deportation is in Croatian and thus they were not really aware of their legal status. Also it seemed that some detainees experience difficulties in obtaining legal aid to challenge their detention in a timely manner, even though the detention centre is in principle open to NGOs and lawyers.
44. The Commissioner is concerned that the detained migrants subject to deportation have to pay for their accommodation (HRK 235 per day) if they can afford it. It is unclear how the authorities define whether the detainees are able to pay for their accommodation. The Commissioner is equally concerned by information according to which under current practice migrant detainees who cannot afford to pay for the accommodation risk facing an entry ban in future.

45. The Commissioner is concerned at the absence of a permanent reception centre for asylum seekers. There is now a temporary reception centre for asylum seekers in Kutina, run by the Ministry of Interior. UNHCR has supported the establishment of this centre and provides funding for legal aid and psycho-social services there through the Croatian Law Centre (CLC) and the Croatian Red Cross (CRC).
46. The Commissioner was informed that in 2008 there were 97 unaccompanied/separated children registered in Croatia. None of them applied for asylum. He noted with regret that despite the existing legal framework, no adequate support scheme for unaccompanied/separated children exists outside the asylum procedure, nor are there any special reception facilities. Croatia is reported to lack a comprehensive policy in line with the Council of Europe standards concerning the reception, accommodation and integration of unaccompanied/separated children.¹¹
47. Finally, the Commissioner noted that there is a legal framework for the protection of victims of trafficking. The trafficking of human beings was criminalised in 2004. Moreover, the authorities of Croatia have adopted a national programme against trafficking in human beings and a national action plan for the period 2009-2011. Croatia ratified the UN Convention on transnational organised crime and the protocol on trafficking in human beings, as well as the Council of Europe Convention on action against trafficking in human beings. In 2009 eight victims of trafficking were identified. However, expert organisations have indicated that the number of actual victims is estimated to be much higher.

Justice system - Legal aid

48. The Commissioner has noted with concern that a considerable number of judgments delivered against Croatia by the European Court of Human Rights, from 2004 to 2009, concern excessively delayed justice in civil and administrative proceedings¹² as well as in the context of enforcement proceedings.¹³ As of April 2010, the execution by Croatia of more than thirty such judgments remained under the supervision of the Council of Europe Committee of Ministers.
49. Croatia has implemented a comprehensive judicial reform on the basis of an Action Plan adopted in 2005, in order to fully align the justice system with the requirements of the European Convention on Human Rights and the Court's judgments. The backlog of unsolved cases has reportedly decreased by at least 50% since 2005. The Criminal Procedure Law (2008) and the Law on Amendments to the Civil Procedure Law (2008) introduced new forms of accelerated proceedings. The Mediation Law was amended in June 2009 and court mediation has been introduced in municipal, county and commercial courts. The Commissioner has noted that in 2010 the Ministry of Justice started the revision of the Action Plan on the reform of the judiciary with a view to enhancing further efficiency in delivering justice.
50. Many displaced persons and their families are in need of counselling and assistance to be able to return and enjoy their basic rights, especially since return procedures in Croatia are reported to be lengthy in nature. This has been highlighted by almost all the non-governmental organisations that the Commissioner met. An effective system of free legal

¹¹ See Recommendation CM/Rec(2007)9 of the Committee of Ministers to member states on life projects for unaccompanied migrant minors, 12/07/2007.

¹² See e.g. the *Poje, Jakupović and Počuča* groups of cases; see state of execution of these judgments at: http://www.coe.int/t/dghl/monitoring/execution/Reports/Current_en.asp. In 2009 of the 16 judgments finding violations by Croatia, 6 concerned excessive length of proceedings and 7 concerned the right to a fair trial, see European Court of Human Rights, *Annual Report 2009*, p. 140.

¹³ See e.g. the *Cvijetić* group of cases, *ibid*.

aid is of crucial importance to migrants, including asylum seekers, especially those in detention without sufficient means to secure legal counsel.

51. The Commissioner has noted with interest the government's determination to cope with this issue. A new Law on Free Legal Aid entered into force in February 2009. The Free Legal Aid Department which was created in the Ministry of Justice keeps a register of associations authorised to provide free legal aid. So far twenty eight associations and two legal clinics have been registered. Moreover the above Department is an appellate body in the procedure of granting legal aid and it performs administrative supervision for the implementation of the Law on Free Legal Aid. A public awareness campaign was also launched to familiarise the general public with the provisions of the Law on Free Legal Aid. The overall budget for free legal aid in 2010 amounts to €941 492 (in 2009 the budget allocation was more than one million euros).
52. NGOs providing free legal aid have qualified as complicated the existing framework and conditions concerning funding. They have also indicated to the Commissioner that no contracts were offered in 2010 and that the amount they receive per year is fairly low (approximately €1 000). The Commissioner welcomes the Croatian authorities' willingness to further improve the system of free legal aid. It was reported that the payments to providers increased and that there would be a further growth in the coming four years. The Ministry of Justice has also indicated that the free legal aid application forms have been simplified and the number of the pages is now 4 instead of 7.

Conclusions and recommendations

53. The Commissioner commends the Croatian authorities' efforts to resolve the crucial human rights issues arising out of the forced displacement that occurred during the 1991-1995 war. He underlines that the right to *voluntary return in safety and dignity* is a fundamental, internationally established principle corresponding to a right of all refugees and IDPs.¹⁴
54. Thus the Commissioner highlights the need for the national authorities of the countries in the region of the former Yugoslavia to take all possible measures to resolve the serious remaining issues affecting the lives of the displaced persons and their families, be they inside or outside of their territories.
55. The Commissioner considers positive the discussions held on 25 March 2010 in Belgrade in the context of the International Conference on Durable Solutions for Refugees and IDPs. He encourages all countries concerned to be proactive and continue their co-operation in a sustained and systematic manner.
56. Any measures should be based on updated, reliable data on the numbers and situation of refugees, IDPs and returnees. The Commissioner urges the authorities in Croatia and the relevant neighbouring countries to enhance their co-operation, including with UNHCR, in order to create immediately an updated, harmonised database.
57. The Commissioner calls on the Croatian authorities to accelerate their efforts aimed at clearing the large parts of the country's territory, especially agricultural lands and forests, which remain contaminated by landmines and ERW. The Commissioner notes that this is an obligation emanating not only from the 1997 Mine Ban Treaty but also from Croatia's

¹⁴ See the 2005 UN Principles on Housing and Property Restitution for Refugees and Displaced Persons ('Pinheiro Principles' – Principle 10), the 1998 UN Guiding Principles on Internal Displacement (Principle 28); see also Council of Europe Committee of Ministers Recommendation (2006)6 on internally displaced persons and Commissioner's Viewpoint, 'Persons displaced during conflicts have the right to return', 15/09/2008, http://www.coe.int/t/commissioner/Viewpoints/080915_en.asp.

obligations arising notably from the fundamental provision of Article 2 of the European Convention on Human Rights where everyone's right to life has been enshrined and corresponds to positive obligations on the part of all states parties.

58. The Commissioner remains concerned about the situation of the ethnic Serb refugees and IDPs and calls on the Croatian authorities to take all necessary measures to make these persons' sustainable return possible by facilitating their access to citizenship, housing, property and employment.
59. The authorities are encouraged to ensure the full participation of minority members in all relevant action planning and decision making, in accordance with Council of Europe standards.¹⁵ In this context, the provisions of the Law on the Use of a National Minority Language and Script should be fully implemented. An affirmative action policy is also needed with respect to returnees and the reconciliation of communities. Such measures will strengthen the inherent pluralism, social cohesion and stability of democracy in Croatia.
60. Recalling the relevant European Court of Human Rights' judgments as well as Resolution 1708 (2010) on *solving property issues of refugees and internally displaced persons*, adopted by the Parliamentary Assembly of the Council of Europe, the Commissioner urges the Croatian authorities to pay particular attention to the full and effective enjoyment of property rights by displaced persons. The pending cases concerning repossession of property should be dealt with promptly in full compliance with the relevant case-law of the European Court of Human Rights. The process of reconstruction of houses affected by the war needs to be accelerated and the competent authorities' manpower is to be properly reinforced.
61. Particular attention should also be paid to the issue of agricultural land that was cultivated before the war by people who fled and who now wish to return and stay in Croatia. The authorities should demine these pieces of land immediately and provide all necessary help to displaced persons and returnees who wish to stay and cultivate the land they used to have before 1991. A just solution should be found for the issue of agricultural lands that for a variety of reasons were not registered before the war but were cultivated bona fide. In this context, members of national minority groups concerned should be provided with proper information and if necessary with free legal aid.
62. The Commissioner is concerned by the situation of former OTR holders who do not wish to or cannot return to Croatia and thus benefit from the HCP. The local integration of these persons should be facilitated by their former and new home countries. Effective remedy, including adequate compensation, according to the established principles of international law, should be provided to any former OTR holder who has lost their rights following proceedings that did not correspond to the standards of a fair trial and/or to the principle of non-discrimination.
63. The Commissioner calls on the authorities to continue to improve the HCP, which may include a buy-off option for non-conflict affected areas and should take into consideration the housing needs of applicants who have missed the 2005 deadline concerning housing in out-of-ASSC urban areas. The pending applications should be processed without delay and in a fair and transparent manner.
64. Particular care should be given to the issue of 'convalidation' and recognition of years worked by displaced persons towards a pension during the period 1991-1995 in areas not

¹⁵ See inter alia Articles 7, 10 and 15 of the Framework Convention for the Protection of National Minorities (FCNM) and FCNM Advisory Committee, *Commentary on the Effective Participation of Persons belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs*, 05/05/2008.

under government control. This is of particular importance for the life of all displaced persons and their families, especially of the elderly ones.

65. As regards returnees who do not hold Croatian nationality and express the wish to stay and integrate in the country, the authorities should facilitate their acquisition of Croatian nationality. In this regard, the Commissioner highly recommends the ratification by Croatia of the European Convention on Nationality and of the Council of Europe Convention on the avoidance of statelessness in relation to State succession.
66. With regard to asylum seekers, the Commissioner welcomes the measures adopted by the Croatian authorities to build an asylum system in line with international and European standards. He calls upon the Croatian authorities to further improve asylum legislation and practice in order to address in particular the lack of free legal aid in first instance proceedings and the exclusion of interviews in the accelerated procedures.
67. The Commissioner welcomes the fact that the detained asylum seekers in Croatia are not required to pay for their accommodation and encourages the authorities to extend this practice to all migrant detainees. Moreover, the Commissioner urges the Croatian authorities to remedy the problem of the long-term detention of migrants and the imposition of an entry ban for non-payment. The authorities are called upon to be particularly attentive to and establish an efficient system of identification that would lead to psycho-social counselling and the effective protection of victims of torture and inhuman and degrading treatment, as well as of victims of trafficking.
68. The Commissioner underlines the need for Croatia to establish a permanent reception centre for asylum seekers to strengthen current limited capacities. He also urges the authorities to provide for an adequate support scheme and a special reception facility for unaccompanied/separated children in line with the relevant Council of Europe standards. This particularly vulnerable group of children should be granted accommodation, access to quality education and specific protection from violence and risks of trafficking.
69. Finally, the Commissioner urges the Croatian authorities to step up their efforts aimed at enhancing the efficiency of the national justice system, in accordance with the relevant judgments of the European Court of Human Rights. Particular attention should be paid to the problem of excessively lengthy judicial proceedings, which affect in particular vulnerable social groups such as displaced persons and asylum seekers. The Commissioner recalls the Council of Europe Committee of Ministers Recommendation (2010) 3 and highlights the need to establish effective domestic remedies for all cases concerning excessive length of proceedings. The authorities are urged to continue to look with particular care into the issue of free legal aid for those persons in need thereof, and enhance the national legal aid system so that access to justice becomes a real possibility for everyone.

II. Proceedings relating to post-war justice

Legal framework and international co-operation

70. Commissioner has noted that Croatia is vested with an adequate legal framework relating to the prosecution of war-related crimes, relevant co-operation with neighbouring countries and with the International Criminal Tribunal for the Former Yugoslavia (ICTY). Croatia's co-operation with the ICTY is regulated by the Constitutional Law on Co-operation of the Republic of Croatia with the International Criminal Tribunal of 1996. The Criminal Code was notably amended in 2004 to include the new criminal offences of 'crime against humanity' and 'preparation of criminal acts against values protected by international law'. The amendments also introduced into domestic law the well-established principle of superior or

command responsibility which concerns the responsibility of military and civilian superiors for criminal acts committed by their subordinates.

71. The Commissioner welcomes the Croatian authorities' ongoing efforts to enhance co-operation in this field with neighbouring countries. The co-operation of Croatian police with their counterparts in Bosnia and Herzegovina and Serbia was reported to be efficient. The Commissioner welcomes the willingness of the Croatian authorities to complete the work aimed at establishing a special database of common war-related crimes covering the region of the former Yugoslavia.
72. The Commissioner has noted that Croatian prosecutors co-operate in the exchange of evidence and the transfer of some war-related criminal cases with prosecutors from Bosnia and Herzegovina and Serbia. In 2005, the Chief State Prosecutor of Croatia signed a protocol with his counterparts of Bosnia and Herzegovina and Serbia and Montenegro, establishing a mechanism for direct co-operation at the pre-trial stage. Exchanges of evidence, documents and data between prosecutors of the above countries have reportedly led to investigations, prosecutions and convictions.
73. The Commissioner was informed that in Croatia and neighbouring countries constitutions prohibit the extradition of nationals. This has proven to be a problem contributing to the impunity of a large number of war-related criminals. For example, Branimir Glavaš was convicted by a Croatian court for war-related crimes, found refuge in Bosnia and Herzegovina and has not been extradited. The Commissioner noted with interest that in February 2010 Croatia and Bosnia and Herzegovina signed an Agreement on mutual execution of court decisions in criminal matters. Under this Agreement convicts with dual nationality (of the above two states) can no longer escape to one country and thus avoid serving their sentences which are now to be executed in either state.

Co-operation with the ICTY

74. The Commissioner notes that under its 'completion strategy',¹⁶ the ICTY has concentrated on the prosecution and trial of the most senior leaders while referring other cases involving medium and lower-ranking defendants to national courts. Thus the ICTY continued the proceedings concerning the Croatian former generals Gotovina, Cermak and Markac. The trial commenced in March 2008 and the judgment is expected to be rendered in 2010. The three defendants are charged with war crimes and crimes against humanity arising from the 1995 military offensive 'Operation Storm' in the region of Krajina.
75. The Commissioner has been informed of and concerned that the ICTY has experienced problems in gaining access to important documents related to the above-mentioned proceedings. He noted that upon the personal initiative of the Prime Minister of Croatia in October 2009, an Inter-Agency Task Force was established and a report was produced identifying the existing administrative gaps and the measures that should be adopted for identifying missing evidence. On 9 April 2010 the Commissioner was informed by the Croatian Ministry of Justice that many documents relevant to these proceedings had disappeared, having been withdrawn by several officers from the Ministry of Defence. In this context, criminal proceedings against 20 persons had been instituted and missing files in the Ministries of Defence and of Justice have been sought.
76. In accordance with the 'completion strategy', the ICTY transferred to Croatia in November 2005 the case of *Ademi* and *Norac* for crimes allegedly committed in the Međak pocket in 1993. In addition to charges of ordering indiscriminate attacks, Ademi and Norac were

¹⁶ The 'completion strategy', endorsed by the United Nations, aims to conclude all proceedings in ICTY by 2014, the ICTY having established in the meantime coordination with domestic legal systems in the former Yugoslavia, see <http://www.icty.org/sid/10016>.

charged on the basis of command responsibility for failing to prevent and punish crimes by their subordinates, as a result of which approximately 30 Serb civilians were killed. The domestic proceedings ended in 2009, following a judgment by the Croatian Supreme Court, with the first defendant's acquittal and the sentencing of the second to six years' imprisonment.¹⁷

77. The Commissioner underlines the importance of transferring, when possible, such cases to national jurisdictions, in accordance with the principle of subsidiarity of international justice. This is a process that also contributes to the strengthening of national judicial systems. In this regard the project for national prosecutors and young professionals from the former Yugoslavia, set up by the ICTY and the European Commission, is noted. As a result of this project, in June 2009 three prosecutors from Bosnia and Herzegovina, Croatia and Serbia, started working as liaison prosecutors with the Office of the ICTY Prosecutor in the Hague.

Domestic proceedings concerning war-related crimes

78. The Commissioner has noted that since 1991 more than 600 people have been convicted for war-related crimes, another 600 have been indicted and several hundred more are under investigation in Croatia. Croatia has issued 700 international arrest warrants for war crime suspects. However, it has been reported that from 2005 to 2009 only 80 war-related criminal cases have been prosecuted.¹⁸ Many cases still remain unresolved, and in a number of cases the perpetrators of war-related crimes have not been identified.
79. During his visit the Commissioner noted that serious efforts have been undertaken by the Croatian judicial authorities to rectify domestic judgments delivered in the 1990s in reportedly biased, war-related trials. The Supreme Court of Croatia has quashed a number of disputed verdicts and remitted cases for retrial. Thus, the Supreme Court remitted the case of *Arambasic*, a U.S. citizen and former Serb police officer, for retrial in April 2009. The Supreme Court ordered Arambasic's release as he had already spent six years and eight months in detention, considering that further detention would not be proportional to the expected sentence.
80. Moreover, in 2009 prosecutors reviewed all war-related criminal cases in which there were indictments or ongoing investigations. For 254 of the 1 242 individuals involved in these cases, prosecutors either downgraded the charges from war-related crimes to armed rebellion, for which amnesty would apply, or annulled proceedings for other reasons, such as insufficient evidence.
81. The Commissioner welcomes the adoption of the provisions of the 2009 Criminal Procedure Act providing for the reopening of cases concerning war-related crimes, which were tried *in absentia*. The cases can be reopened upon the presentation of new evidence by either the defendant or the prosecutor. Importantly, the defendant is no longer required to be present as used to be the case. Prosecutors have requested the reopening of approximately 20% of cases tried *in absentia*. According to the Office of the Chief State Prosecutor, in 2009 prosecutors requested that trials be reopened for 93 of the 464 individuals convicted *in absentia* and courts of original jurisdiction granted requests on behalf of 48 defendants and rejected cases involving 24.
82. The Commissioner is concerned that despite this progress, war-related criminal trials *in absentia* against ethnic Serbs continued, despite the reported opposition from the State Attorney's Office. In 2009 54% of Croatian Serb defendants were reported to be tried *in*

¹⁷ ICTY, Status of transferred cases, see <http://www.icty.org/sid/8934>.

¹⁸ Amnesty International, *Briefing to the European Commission and Member States of the European Union (EU) on the Progress Made by the Republic of Croatia in Prosecution of War Crimes*, EUR 64/002/2010, April 2010, p. 7.

absentia, in the context of two large trials in the county court of Vukovar.¹⁹ The quality of trials *in absentia* was reported to be low. For example, in some cases the right to a defence counsel was reported not to have been properly safeguarded. This practice has so far led to a perception, especially in the refugee community, that ethnic Serbs, regardless of their war-time past, are potentially subject to arrest and prosecution upon return to Croatia. A persistent problem in the presentation of evidence in such cases has been the unwillingness of witnesses, particularly those from Serbia or Montenegro, to come and testify before the courts.

83. The Commissioner has noted an increasing awareness by the authorities in Croatia of the need to ensure that all war-related criminal cases are investigated and prosecuted without any ethnic bias. In October 2008 the State Prosecutor's Office adopted instructions for county prosecutors which established general criteria in war-related criminal cases to avoid bias against ethnic Serbs. The Ministry of Justice informed the Commissioner that one third of perpetrators are former members of the Croatian armed forces. Ethnic Croats were defendants in a number of high-profile cases, such as the one concerning Branimir Glavaš who was found guilty *inter alia* for his command responsibility, having failed to prevent subordinates from torturing and murdering civilians.
84. The Commissioner is concerned that in several cases service in the Croatian army or police was considered as a mitigating circumstance. In the aforementioned, high profile case of *Ademi and Norac*, which was transferred from the ICTY, Norac was found guilty of war crimes against civilians. A mitigating factor in sentencing Norac was his service in the Croatian army. The Supreme Court reduced his sentence from seven to six years' imprisonment and upheld Ademi's acquittal. In January 2010 the Croatian Supreme Court confirmed the conviction of Mihajlo Hrastov for ruthlessly murdering thirteen and injuring two disarmed former Yugoslav People's Army (JNA) members, but reduced his sentence from eight to seven years' imprisonment partly because the defendant served in the Croatian police and participated in the 1991-1995 war.
85. War-related criminal trials against members of Croatian military and police units are reported to be often burdened by pressure on behalf of veterans associations, local politicians and the public. In the aforementioned *Glavaš* case the national parliament granted permission to conduct criminal proceedings but withheld permission to detain the defendant who was an MP. Some high ranking officials also took public positions in favour of members of the Croatian army or police accused of war-related crimes on several occasions.
86. As regards amnesty by virtue of the Law on Pardon, in a number of cases where investigations have failed to substantiate original charges of war-related crimes, courts have convicted the defendants on reduced charges, thereby making them eligible for amnesty. According to the Office of the Croatian Prosecutor General, between 2004 and 2005 investigations and prosecutions were abandoned or the original charges were reclassified as 'armed rebellion' for about 750 members of Serb paramilitary groups. One such case is the one of *Maslovar*, extradited from Greece in April 2008 based on a war crime investigation. After extradition, his charge was reclassified as armed rebellion, amnesty was later granted and thus he was released from detention.
87. The Commissioner has noted that the system of support to witnesses and victims has been progressively developed. The new Criminal Procedure Law provides for the use of testimony made through a video link. Five county courts have been equipped to use this type of testimony. In 2009 a video link was used by the county courts of Zagreb, Rijeka and

¹⁹ Human Rights Watch, *Concerns and Recommendations on Croatia*, submitted to the UN Human Rights Committee, September 2009, <http://www.hrw.org/en/news/2009/10/05/human-rights-watch-concerns-and-recommendations-croatia>.

Vukovar. As regards protection of witnesses, it has been noted that the names of witnesses, their statements and court records have been publicly disclosed to the media in the *Glavaš* case. The journalist who covered the case reportedly received death threats and refused to testify. The new Criminal Procedure Law provides for confidentiality of investigations and the protection of witnesses.

88. The Department for Support to Witnesses and Participants in War Crime Proceedings was established in 2006 to provide legal, physical and psychological support to witnesses. It was reported that the Department offered support to 1 800 victims from 2006 to 2009. However witness support still appears to suffer from shortcomings and a number of witnesses have been subjected to intimidation.²⁰
89. The Law on Application of the Statute of the International Criminal Court and Prosecution of Criminal Offences against the International Law of War and International Humanitarian Law provided inter alia for the establishment of specialised chambers within the county courts in Zagreb, Osijek, Rijeka and Split, to adjudicate on war-related criminal cases. One of the main aims of this initiative was to protect witnesses from pressure and intimidation. The first transfer to a specialised chamber took place in 2006 based on the Chief State Prosecutor's concerns over impartiality and witness intimidation in the local jurisdiction.
90. Representatives of the Ministry of Justice informed the Commissioner that in the past five years, proceedings for war-related crimes were conducted before 21 county courts, in the environment and the community where the crime had been committed. According to the authorities this indicates the readiness and maturity of domestic courts in prosecuting and trying all war crimes. However, a number of courts lack the expertise and infrastructure for witness protection and support. For example they do not have separate entrances for the public, the accused and the witnesses. The Commissioner was informed that the courts with specialised chambers have been equipped to protect witnesses and use videoconferences.
91. Another major issue relating to post-war justice is the victims' right to reparation under the established principles of international law. The Commissioner is concerned that national authorities in the countries of the former Yugoslavia, including Croatia, have not managed so far to establish an effective mechanism that would ensure reparation for the victims of war-related crimes and their families. Indeed, post-war justice may not be obtained solely by prosecuting and convicting war criminals but also by restoring the human dignity of all victims who have suffered pecuniary and especially non-pecuniary damages.
92. Croatian legislation provides for the possibility for war victims and their families to file compensation claims against the State. The Law on the Responsibility for Damage Caused by Acts of Terrorism and Public Demonstrations as well as the Law on the Responsibility of the Republic of Croatia for Damage Caused by Members of Croatian Armed and Police Forces during the Homeland War entered into force in 2003. However it appears that attempts by many victims' families to receive compensation for damage caused by the loss of their family members through private lawsuits against the State failed. It was reported that so far at least 50 claims for compensation were filed but all have been rejected.²¹
93. Last but not least, the Commissioner underlines that the Croatian authorities' efforts in identifying the approximately 2 000 pending cases of missing persons due to the war, should continue unabated. Prime Minister Kosor assured the Commissioner that despite current budgetary constraints the ongoing work of the Croatian authorities in this field will continue and be supported by all funds necessary. The Commissioner has also noted with

²⁰ Amnesty International, *ibid.* pp. 11-13.

²¹ Centre for Peace, Non-Violence and Human Rights Osijek, Documenta – Centre for Dealing with the Past, Civic Committee for Human Rights, *Monitoring of war crime trials*, Report 2009, February 2010, p. 8.

satisfaction the increased co-operation and contacts that took place in 2009 between the competent Croatian and Serbian authorities, including missing persons' family associations from both countries, in order to resolve the fate of the war victims who are still reported missing.

Conclusions and recommendations

94. The Commissioner wishes to underline the importance for post-war peace and stability of the international legal principles of accountability, justice and the rule of law. He recalls the 2005 UN 'Basic Principles and Guidelines',²² notably states' obligation to effectively investigate and take action against all persons allegedly responsible for gross human rights violations and serious international humanitarian law violations.
95. At the same time, everyone claiming to be a victim of such acts should have effective access to justice and be provided with effective remedies, including reparation. The Commissioner urges the Croatian authorities to take measures to ensure fair and adequate reparation to victims of war-related crimes and their families, in line with the established principles of international law as reiterated in the 2005 UN 'Basic Principles and Guidelines'. To this end, the authorities are urged to continue their efforts to enhance the national system of free legal aid, so that this is accessible by everyone in need thereof (see also above section I).
96. The Commissioner has noted that the ICTY has played a crucial role in setting standards of responsibility for war-related crimes in Croatia. He urges the Croatian authorities to continue strengthening the effectiveness of their co-operation with the ICTY.
97. The Commissioner supports the reform measures aimed at strengthening the independence, impartiality and professionalism of the judiciary. Cases concerning war-related crimes should be systematically examined and followed through in domestic courts, in accordance with the standards of promptness and fairness established notably by the European Court of Human Rights.
98. The Commissioner welcomes the authorities' efforts aimed at rectifying past, war-related crime judgments and reviewing the ones delivered *in absentia*. As a matter of principle, persons convicted *in absentia* should have access to an effective remedy, in accordance with the fair trial standards established by the European Court of Human Rights.²³ All persons wrongfully convicted and punished should have effective access to compensation, in accordance with Article 3 of Protocol No 7 to the European Convention on Human Rights.
99. The Commissioner urges the Croatian authorities to take effective measures to ensure that cases of war-related crimes are always prosecuted in an unbiased manner, independently of the alleged perpetrator's ethnic or other background, in accordance with the general prohibition of discrimination of Protocol No 12 to the European Convention on Human Rights. Service in the Croatian army or police should not be a mitigating circumstance for serious human rights violations. All remaining war-related criminal cases should be investigated without delay.
100. The Commissioner encourages the reinforcement of the four county courts which specialise in war-related crime trials, as well as the establishment of efficient, special investigation

²² Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN GA Res. 60/147, 16/12/2005.

²³ See, inter alia, *Sejdovic v Italy*, judgment of the European Court of Human Rights (GC), 01/03/2006.

departments therein. Enhanced specialisation will contribute to raising the quality of relevant proceedings.

101. The Commissioner urges the authorities to enhance regional co-operation, facilitate the participation of witnesses in war-related criminal proceedings and take all necessary measures to effectively protect them from possible intimidation attempts.
102. The Commissioner is concerned by the fact that requests concerning the extradition of nationals are often denied by Croatia and other neighbouring states and highlights the need to investigate and prosecute all persons, without any distinction, who have allegedly committed war-related crimes. Croatia, together with its neighbouring countries, should further reduce the regional impunity gap. The measures which may need to be taken include constitutional amendments to allow extradition and bilateral/multilateral agreements to facilitate extradition or to ensure that convicts always serve their sentences in one country.
103. The Croatian authorities are encouraged to continue with the same energy and determination their efforts, at national and regional level, aimed at identifying the approximately 2 000 pending cases of persons missing due to the war. In this regard, the Commissioner urges the authorities to ratify the 2006 International Convention for the Protection of All Persons from Enforced Disappearance, which was signed by Croatia on 6 February 2007.
104. Lastly, the Commissioner wishes to note that post-war justice and peace call for measures far beyond the necessary criminal proceedings and victims' reparation. He recalls Council of Europe Parliamentary Assembly Recommendation 1880 (2009) on *history teaching in conflict and post-conflict areas* and reiterates the significant role of history teaching for reconciliation in post-conflict situations, such as the one in the region of the former Yugoslavia. Genuine knowledge of history facilitates understanding, tolerance and trust between individuals, especially the young ones, and peoples. All countries concerned should realise the vital need to teach history without resorting to one single interpretation of events. The Commissioner stresses that it is only through an open dialogue, knowledge of the truth and deep reflection that members of post-conflict democracies in Europe may attain social cohesion and preserve their inherent, valuable pluralism.²⁴

III. Human rights of Roma

Overview of the situation of Roma in Croatia

105. Roma in Croatia are currently estimated by the authorities to number between 30 and 40 thousand, while the 2001 national census had registered 9 500.²⁵ A large number of Roma have migrated, especially in the past twenty years, from other parts of the region of the former Yugoslavia. It has been noted that some Roma declare themselves as members of other ethnic groups and a significant number of them are de facto or de iure stateless (see third sub-section below). Whilst Roma have been present in Croatia for more than 600 years and are recognised as a national minority, the preamble of the Constitution does not expressly mention them among the 'autochthonous national minorities'.²⁶

²⁴ See also Commissioner's Viewpoint, 'Atrocities in the past must be recognised, documented and learnt from', 22/03/2010, http://www.coe.int/t/commissioner/Viewpoints/100322_en.asp.

²⁵ See UN CERD, Summary record of the 1920th meeting, CERD/C/SR.1920, 12/03/2009, paragraph 43.

²⁶ According to the preamble of the Constitution, 'the Republic of Croatia is established as the national state of the Croatian nation and the state of members of autochthonous national minorities: Serbs, Czechs, Slovaks, Italians, Hungarians, Jews, Germans, Austrians, Ukrainians and Ruthenians and the others who are its citizens'.

106. Croatia has ratified the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages. A reservation has been made though in respect of Article 7, paragraph 5, of the Charter, which results in the non-application of the protective provisions of the Charter to 'non-territorial' languages, including the Romani language.
107. On the domestic level, Croatia has put in place a solid legal basis to protect and promote the rights of national minorities, including the Constitutional Law on the Rights of National Minorities (CLNM), the Law on the Use of a National Minority Language and Script, and the Law on Education and Schooling in a National Minority Language and Script.
108. Similarly to the situation in other member states, Roma in Croatia face marginalisation seriously affecting, inter alia, their social and economic well-being. Among factors contributing to the persistent marginalisation of Roma, the National Programme for Roma has indicated reduced access to healthcare services, low educational level, very poor housing conditions and low employment rates. The Commissioner has noted that an important number of Roma in Croatia are recipients of welfare allowances (reportedly more than 50% of the current Roma population).
109. The Commissioner welcomes a series of measures taken by the Croatian authorities to improve the situation of the Roma, in particular the adoption in 2003 of the comprehensive National Programme for the Roma (NPR), as well as the Action Plan for the Decade of Roma Inclusion 2005-2015. The NPR aims to improve the protection of the rights of Roma in fields such as social welfare, education, employment, healthcare and the fight against discrimination, inclusion in social and political life and preservation of the Roma culture. The priorities so far are reported to be regularisation of civil status, housing and education.
110. The Prime Minister, Ms Jadranka Kosor, chairs the commission for monitoring the implementation of the NPR and is the national coordinator for the Action Plan for the Decade for Roma Inclusion. Prime Minister Kosor assured the Commissioner of her government's sincere commitment to continuing their efforts in order to improve the situation of Roma in Croatia as well as the fight against all forms of discrimination.
111. The Council for National Minorities, composed of representatives of national minorities, is in charge of allocating funds for national minority associations and institutions and their programmes. The funding and the number of programmes have grown every year since the establishment of the Council in 2002. The authorities informed the Commissioner that in 2009 overall HRK 39 000 000 (€5 368 605) was spent to improve the situation of Roma in Croatia.
112. Drawing upon his discussions with Roma representatives, the Commissioner notes however that there appears to be a perception of lack of transparency and accountability in the process of allocating funds. Many Roma still do not believe that there have been tangible, positive changes, feeling also that they have not been sufficiently involved and consulted on the matters related to their minority. This is a real challenge as the Roma population is heterogeneous. However, all major processes affecting their lives need to be inclusive and based on genuine dialogue and open, systematic consultations.

Participation of Roma in public life

113. The Commissioner has taken note of the efforts undertaken by the authorities to improve the representation of the Roma minority in public life. One Roma MP was elected in 2007. The Commissioner has noted with satisfaction that minorities vote for a general and a minority list in the parliamentary elections, which leads to a minimum, fixed representation of minorities in the Parliament. Moreover, Roma representatives are members of the commission for monitoring the implementation of the NPR as well as of a working group

monitoring the implementation of the Decade of Roma Inclusion. The CLNM provides for proportional representation of minorities in executive bodies. Article 22, paragraph 2, of the CLNM also promotes the representation of national minorities in public administration and the judiciary.²⁷

114. The Commissioner notes that despite these commendable measures the representation and participation of Roma at the levels of national and local authorities remains low. According to official data the Roma is the least represented minority in public administrations (one representative), while the implementation of the recruitment plan for national minorities has apparently not substantially improved the level of employment of Roma in public administration.²⁸ A long-term strategy to implement the employment provisions contained in the CLNM appears to be lacking.

Statelessness

115. The fact that a significant number of Roma, especially those who have migrated to Croatia from other parts of the region of the former Yugoslavia during the wars, are stateless remains of deep concern to the Commissioner. This is a situation that seriously affects the enjoyment by these persons of vital civil, social and economic rights. UNHCR and civil society estimate that in Croatia there are 1 000 de facto stateless Roma while a further 2 000 persons are of unknown citizenship at risk of statelessness (reportedly citizens of the former Socialist Federal Republic of Yugoslavia). Romani NGOs have estimated that 25% of the current Roma population do not have citizenship documents and, thus, do not have access to social benefits, employment, voting rights, or property restitution. The NPR has identified the legal status of Roma as a priority. Pursuant to the NPR, mobile teams consisting in particular of representatives of the competent Ministries, centres for social welfare and Roma NGOs are charged with providing assistance, legal advice and information to the Roma population.
116. An EU-UNHCR project on Roma is also under way since August 2009 covering the region of the Western Balkans, including Croatia. The project will run for a period of 18 months in cooperation with the Office of the Ombudsman. The aim of the project is the acquisition of citizenship by 100 Roma and provision of assistance to another 1 000 individuals in order to regularise their civil status.
117. Notwithstanding these steps, there are serious obstacles for Roma in access to citizenship or residence permits: the current legislative framework, such as the provisions requiring knowledge of Latin script or Croatian culture; shortcomings in the administration, such as excessive procedural delays; and complicated procedures. The Law on Croatian Citizenship indicates that citizenship may be refused if the applicant does not know the Croatian language or Latin script. Most of the elderly Roma and many Roma women are illiterate and therefore cannot abide easily by the administrative requirements. In addition, many Roma, especially those who have migrated during the wars in the region of the former Yugoslavia, do not possess civil status-related certificates necessary for their naturalisation.
118. The Croatian authorities recognise these problems, pointing to shortcomings in the application of the legislation and subsequent delays in the procedures. According to data provided by Ministry of Interior representatives, between August 2007 and April 2010 188 Roma were granted Croatian citizenship and 70 applications have been rejected (mainly because of the applicants' alleged involvement in criminal offences or inability to prove

²⁷ Advisory Committee on the FCNM, Third Report submitted by Croatia, 12/10/2009, p. 7.

²⁸ Ministry of Health and Social Welfare, *Implementation Report on the JIM follow-up process on social inclusion of the Republic of Croatia, between the Government of Croatia and the European Commission for the period March 2007-June 2008*, Zagreb, July 2008, pp. 33-34.

residence). The Commissioner has noted the particular problems encountered by most Roma in identifying civil status-related documents because they are poor and often unable to seek, or are unaware of the existence of free legal aid. Often they cannot afford to go to other countries of the former Yugoslavia to obtain documents required for citizenship applications.

119. The Commissioner notes that a substantial reinforcement the free legal aid programme in order to target more the Roma population would be highly beneficial for the regularisation of their civil status. The Commissioner is concerned that the new Law on Free Legal Aid (2009) excludes persons of unregulated legal status in Croatia, thus hindering the access of many Roma to free legal aid which is vital for accessing the administration and above all justice (see also above section I).

Access of Roma to education

120. During the visit to Croatia, many of the Commissioner's interlocutors stressed the importance of education of Roma for their successful integration and access to employment. Indeed, education may act as a real catalyst for the promotion and respect of the human rights of Roma and for accelerating their integration in Croatian society.
121. The Commissioner has noted that the Croatian authorities have taken steps to improve the enrolment of Roma children in pre-school, primary and secondary education. The number of Roma children enrolled in primary schools has risen in Croatia. The Croatian authorities have reported that in 2010 there are 5 000 Roma children enrolled in schools,²⁹ while in 2005 this number was only 1 000. In the county of Međimurje, visited by the Commissioner on 7 April, Roma children constitute 12% of all school pupils. However, in 2009 there were only 300 Roma children in secondary education and 12 in higher education in Croatia.³⁰
122. The authorities have taken measures to provide textbooks, transportation, accommodation in dormitories and scholarships for Roma students. Free textbooks, free transport and accommodation in students' dormitories as well as scholarships for Roma students have been provided. In Međimurje the authorities have decreased the number of Roma-only classes from 50 to 37. In this county, due to reported poor knowledge of the Croatian language among Roma children who attend schools, the Ministry of Education has employed teaching assistants from the Roma community. These teaching assistants have received relevant training.
123. Despite these measures, the Commissioner has been informed of a number of serious, persisting problems. While the special language classes have been integrated into mainstream programmes, de facto segregation of Roma pupils persists in some schools.³¹ Presently pre-school education is decentralised (transferred to municipalities) and has a limited capacity for accommodating all children. Regrettably pre-school education lasts only a few months.
124. Progress on the successful completion of primary education is unsatisfactory. The Commissioner has been informed that currently only 10 to 25% of Romani children finish primary school.³² Furthermore, Roma women are substantially disadvantaged regarding the

²⁹ Nations Unies, CERD, Compte rendu analytique de la 1921e séance, CERD/C/SR.1921, 18/01/2010, paragraph 5.

³⁰ UN CERD, Summary record of the 1920th meeting, CERD/C/SR.1920, 12/03/2009, paragraph 43.

³¹ UN Human Rights Committee, Concluding observations on Croatia, CCPR/C/HRV/CO/2, 04/11/2009, paragraph 19.

³² See also Centre for the implementation of integration into the EU (coalition of 24 NGOs), *Alternative Report on implementation of the FCNM for the period 2004-2009*, January 2010 p.15.

completion of education and illiteracy, mainly due to the unfortunate phenomenon of underage pregnancies and marriages. It seems that the drop-out problem has not been effectively addressed to date. Moreover, in Međimurje the local authorities with whom the Commissioner met informed him that they are in need of more human resources, especially psychologists, educators and social workers for Roma children.

125. The Commissioner has noted that in the judgment of 16 March 2010 delivered by the Grand Chamber of the European Court of Human Rights in the case of *Oršuš and others v. Croatia*, the Court found that placing Roma children in separate classes in primary schools was discriminatory. The application, lodged in 2003, concerned fourteen Roma applicants from Međimurje who alleged that their segregation into Roma-only classes deprived them of their right to education and made them endure severe educational, psychological and emotional harm and, in particular, feelings of alienation and lack of self-esteem.
126. The Court found that the placement of the applicants in Roma-only classes during their primary school education had not been justified, in violation of Article 14 taken together with Article 2 of Protocol N°1 to the Convention. The Court underlined that temporary placement of children in a separate class on the grounds that they lack an adequate command of the language is not, as such, automatically contrary to the Convention. However, in this case such placement, not based on objective criteria, affected exclusively members of the disadvantaged ethnic group of Roma and was not followed by adaptation of the education system to the specific needs of the children. The Commissioner has noted with satisfaction that the national authorities he met during his visit expressed their determination to execute and comply fully with this judgment. The Commissioner will follow the relevant developments closely.

Access to employment, housing and healthcare

127. The Commissioner has noted that in the framework of the NPR and the Action Plan for Roma Inclusion 2005-2015, the Croatian authorities have implemented various measures, including additional schooling and adult vocational training, especially for young Roma women, to promote employment.
128. The Commissioner is concerned that despite these measures, Roma are reported to face endemic unemployment. If employed, the majority of Roma usually get seasonal jobs or short-term jobs on building sites. The traditional businesses, like basket weaving, are unfortunately disappearing. Efforts aimed at requalification do not appear to be systematic. During his visit the Commissioner was informed about the successful implementation of a project that provided IT courses until 2009, which however may stop because of lack of necessary funding.
129. According to the NPR, the main obstacles to the employment of Roma are low educational level, employers' prejudices and marginalisation due to poverty.³³ It seems that currently there are no Roma Employment Advisors in the Croatian Employment Service, even though the NPR provided for the employment of six such Advisors. The Commissioner was informed about cases of alleged discrimination in the process of employment in recent years, when young Roma who were invited to job interviews were rejected allegedly because of their ethnicity.
130. The Commissioner has noted certain progress in Roma housing, including the policy of legalisation of irregular Roma settlements. In the county of Međimurje, 9 out of 12 settlements have been legalised.³⁴ Since 2005 several infrastructure programmes

³³ Government of the Republic of Croatia, National Programme for Roma, 2003, available at: <http://www.vlada.hr/nacionalni-program-romi/content/view/23/38/lang,english>.

³⁴ Advisory Committee on the FCNM, Third Report submitted by Croatia, *ibid.* p.6.

concerning Roma settlements have been launched. An encouraging case in 2006 was the relocation of seventeen Roma families from flood-risk areas to newly purchased houses in a safer area in the settlement of Donja Dubrava. The Commissioner himself witnessed that the situation in the largely legalised settlements of Pribislavec and Loncarevo, in Međimurje, provides decent living conditions for Roma.

131. This is in sharp contrast to the situation in the irregular Roma settlement in Struge, near Zagreb, which the Commissioner visited on 7 April. The Commissioner noted that the living conditions of Roma in this settlement are substandard and may be qualified as degrading. Reportedly 350 persons live there, including approximately 250 children. The site does not provide a system of running water (apart from one public water pump) to the families that live mainly in makeshift, overcrowded houses. There is no drainage system or waste disposal facility. The municipal authorities have installed chemical toilets. Families thus live in literally dangerous, sanitary conditions. One family reportedly lived in a car on the site with 4-5 children for four years. The Commissioner believes that urgent measures are to be taken to provide the Roma in Struge with adequate housing and humane living conditions. He would welcome information from the Croatian authorities on any relevant measures envisaged.
132. Roma who are citizens of the Republic of Croatia are entitled to healthcare, pursuant to the provisions of the Health Protection Act and the Health Insurance Act. The government has reported that the level of vaccination of Roma children has reached that of other children in Croatia (100%). It was indicated that student healthcare is the responsibility of the specialists in school medicine employed by the county institutes for public health. According to the government, healthcare services are also provided by visiting nurses whose work is organised by the community health centres.³⁵

General measures against discrimination

133. The principle of equality is enshrined in Article 14 of the Constitution of Croatia. The Commissioner noted with satisfaction the adoption of the Anti-discrimination Law in 2008, which entered into force in 2009, and Prime Minister Kosor's personal interest and involvement in the drafting of this legislation. The Law provides for 'protection against discrimination on the grounds of race, ethnic affiliation, colour, gender, language, religion, political or other belief, national or social origin, property, membership in a trade union, education, social status, marital or family status, age, health condition, disability, genetic heritage, gender identity, expression or sexual orientation'.³⁶
134. In 2008, the government adopted the national anti-discrimination policy plan for the period 2008-2013 and the related action plan for the period 2008-2009.³⁷ Roma are given special attention in the national plan, regarding in particular employment, effective participation in decision-making, the fight against stereotypes and discrimination in public media and society in general.
135. The anti-discrimination legislation is in its early phase of implementation and may face difficulties because of announced budget cuts. While the government has taken measures to prevent and combat discrimination, the Commissioner remains concerned about de facto discrimination, intolerance, violence and harassment faced by Roma.
136. The Commissioner was informed of a number of recent anti-Roma manifestations, such as the appearance of swastikas on houses and cars belonging to Roma in the city of Vodnjan in January 2010. In this case both public authorities and civil society strongly condemned

³⁵ Ibid., p. 21.

³⁶ Anti-discrimination Law, Article 1, paragraph 1, July 2008.

³⁷ Advisory Committee on the FCNM, *ibid.*, p.24.

these acts. On 4 February 2010 the inscription 'Do not touch Roma – they are infected' reportedly appeared in the main bus station of Zagreb.³⁸ The Commissioner would like to be informed whether an investigation into this incident has been initiated.

137. During his visit to Croatia the Commissioner was informed of recent offensive anti-Roma graffiti in Cakovec. Also, one week before the Commissioner's visit, a Roma man was reportedly beaten by the police in Karlovac. The Ministry of Interior apologised for the incident, four police officers have been suspended from service temporarily and one has been taken into custody. According to members of civil society, even though there are good examples where journalists have condemned hate speech, the level of hate speech in the media, websites, forums and blogs remains high.³⁹
138. The Commissioner has noted with interest that the Criminal Code was amended in 2006 so that hate motivation of a criminal offence became an aggravating circumstance (Articles 106 and 174). A special Division for Terrorism and Extreme Violence has been established within the Zagreb police department to conduct criminal inquiries into that type of case. Since June 2006, the Ministry of Interior has been conducting training of law enforcement personnel to combat hate crime. In the period 2006-2008 there were 43 hate crime-related charges, 22 indictments and 8 convictions.⁴⁰
139. The Commissioner notes that on 31 May 2007 the European Court of Human Rights in the case of *Šečić v. Croatia* found that the respondent state had violated the Convention due to the failure of the competent authorities to carry out in 1999 an effective investigation into a racist attack against a Roma person by unidentified individuals. The Court noted that the criminal proceedings remained pending at the pre-trial phase for almost seven years, without the police using appropriate investigative measures or bringing any charges. The Court also observed that, knowing that the attack was the result of ethnic hatred, the police should not have allowed the investigation to drag on for more than seven years without taking serious steps to identify or prosecute those responsible.
140. As of April 2010, the Council of Europe Committee of Ministers was still supervising the adoption by Croatia of general measures for the full execution of this judgment. The Committee of Ministers' notes of the agenda indicated that despite measures taken by the authorities, it appears that, in view of more recent, similar judgments by the Court,⁴¹ the lack of an effective investigation into allegations of violence by individuals, including against Roma, and the failure to bring perpetrators of such violence promptly to justice, might still represent an issue in Croatia.⁴²
141. According to the NPR, the Ministry of Justice is expected to keep statistics of offences committed on discriminatory grounds, including their breakdown by type of discrimination. The Anti-Discrimination Law defined the Croatian People's Ombudsman as the national anti-discrimination body. The Ombudsman's Office receives complaints from individuals. It seems however to be understaffed and in urgent need of further funding.

Conclusions and recommendations

142. The Commissioner wishes to underline that the vast majority of Roma and Travellers in most of the Council of Europe member states, including Croatia, remain in urgent need of

³⁸ Centre for Peace, Legal Advice and Psychological Assistance, Shadow Report on the implementation of the FCNM, February 2010, p. 10.

³⁹ Ibid. pp. 17-18.

⁴⁰ Delegation of the Republic of Croatia, *Additional responses to the questions posed by CERD*, February 2009, p. 8.

⁴¹ *Sandra Janković v. Croatia*, judgment of 05/03/2009, *Beganović v. Croatia*, judgment of 25/06/2009.

⁴² See Department for the execution of the Judgments of the European Court of Human Rights, state of execution, http://www.coe.int/t/dghl/monitoring/execution/Reports/Current_en.asp.

effective protection of their human rights. This concerns especially their vital social rights, such as the right to adequate housing and to education.

143. The Commissioner commends the efforts and measures undertaken so far by the Croatian authorities to improve the situation of the Roma. However, there are numerous shortcomings in practice that need to be addressed and to which adequate solutions should be found.
144. The Commissioner urges the Croatian authorities to implement promptly their strategy to address legal and/or social discrimination against Roma, in accordance with the Council of Europe Committee of Ministers Recommendation CM/Rec(2008)5 on Policies for Roma and/or Travellers in Europe. The authorities are urged, in particular, to effectively monitor and to publish regular evaluation reports on the implementation and impact of their action plans, in line with the above Recommendation.
145. During his visit, the Commissioner noted certain improvements in the involvement and participation of Roma in public life. Nonetheless, Roma remain critically underrepresented in political life, public administration and the judiciary. A strategy and a subsequent coherent action plan are needed to remedy this situation, in accordance with the relevant standards of the Council of Europe.⁴³
146. The Commissioner remains deeply concerned by the significant number of stateless Roma in the region of the former Yugoslavia, including Croatia. He urges the Croatian authorities to take additional measures to facilitate Roma access to citizenship, especially for children. In this regard, the Commissioner urges Croatia to ratify the Council of Europe Convention on Nationality, signed by Croatia on 19 January 2005, and to sign and ratify the Council of Europe Convention on the avoidance of statelessness in relation to state succession. Naturalisation procedures for Roma should be simplified. Adapted possibilities for learning the Croatian language should also be provided and made known to the Roma.
147. The Commissioner stresses that the substantial reinforcement of free legal aid targeting Roma would be highly beneficial for the regularisation of their legal status. In light of the likely exclusion of Roma without regularised civil status from the recent Law on Free Legal Aid, additional funds may have to be generated to extend project activities to all Roma in need.
148. The Commissioner is particularly worried by the de facto very limited access of Roma to education. The rates of completion of primary education by Roma are extremely low. Recalling the judgment of the Grand Chamber of the European Court of Human Rights in the case of *Oršuš and others*, the Commissioner notes the urgent need to improve access to education for Roma children as a particularly disadvantaged group. This is critical for the successful social integration of Roma.
149. Robust measures are required to improve literacy among the Roma population, in particular women and girls, who suffer from the effects of underage pregnancies and early marriages. More efforts should be deployed to ensure pre-school preparation for Roma children and to substantially improve their rates of school completion. The Croatian authorities are also called upon to take measures to improve awareness among Roma parents and their community as a whole on the benefits of education.

⁴³ See inter alia Articles 7, 10 and 15 of the FCNM and FCNM Advisory Committee, *Commentary on the Effective Participation of Persons belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs*, 05/05/2008.

150. The Commissioner calls on the Croatian authorities to provide possibilities for Roma children to study also in their mother tongue. Classes and educational material in Romani (and Bajashi) should be supported by the authorities. In this context, the Commissioner encourages Croatia to re-examine its reservation to Article 7, paragraph 5, of the European Charter for Regional or Minority Languages which results in the non-application of the protective provisions of the Charter to 'non-territorial' languages, so that the Romani language is not affected by this reservation.
151. The Commissioner remains concerned by the high and endemic unemployment of Roma and calls on the authorities to fully implement the provisions of the Constitutional Law on the Rights of National Minorities regarding employment of Roma. The Croatian authorities are encouraged to improve targeted professional training encouraging the initiatives and employment of Roma. The recruitment by the Croatian Employment Service of Roma Employment Advisors, as provided for by the NPR, should also be systematically pursued.
152. The Commissioner welcomes the efforts deployed for improving Roma housing and legalising Roma settlements. However, these efforts are to be intensified. More Roma settlements should benefit from assistance in improving standards of living. Irregular Roma settlements, such the one in Struge, near Zagreb, offering substandard, degrading conditions of living should be replaced by adequate accommodation, in accordance with the standards enshrined in the European Social Charter.
153. The Commissioner welcomes the legislative measures adopted in the context of the fight against discrimination. Despite progress in its implementation, the Commissioner is concerned about instances of de facto discrimination, intolerance, violence and harassment faced by Roma. The authorities need to enhance measures aimed at countering anti-Gypsyism, drawing notably on ECRI's General Policy Recommendation N° 3 on Combating racism and intolerance against Roma/Gypsies.⁴⁴
154. The Commissioner remains concerned by the implementation of hate crime legislation. Many cases appear to remain unreported, which shows a lack of confidence on the part of the Roma in the competent authorities. The Commissioner urges the Croatian authorities to address the failures of the criminal justice system to successfully investigate and prosecute hate crimes, in full compliance with the relevant case-law of the European Court of Human Rights. Intensive training of the police forces and members of the judiciary in the field of anti-discrimination and in the case-law of the Court are highly recommended by the Commissioner.
155. Finally, noting that human rights education should start early, the Commissioner calls on the Croatian authorities to strengthen their efforts to combat racism and racial discrimination at school, taking into consideration ECRI's General Policy Recommendation N° 10 on Combating Racism and Racial Discrimination in and through School education. Such efforts may well be framed in the national human rights action plan. In this context, the Commissioner encourages the Croatian authorities to translate and disseminate the *Factsheets on Roma History*,⁴⁵ prepared by the Council of Europe Directorate General of Education, Culture and Heritage, Youth and Sport (DG IV) in schools.

⁴⁴ http://www.coe.int/t/dghl/monitoring/ecri/default_en.asp.

⁴⁵ <http://romafacts.uni-graz.at/>.

Appendix

COMMENTS OF THE GOVERNMENT OF THE REPUBLIC OF CROATIA ON THE REPORT BY MR. THOMAS HAMMARBERG, COMMISSIONER FOR HUMAN RIGHTS OF THE COUNCIL OF EUROPE, FOLLOWING HIS VISIT TO CROATIA FROM 6 TO 9 APRIL 2010

Croatian authorities thank Mr. Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe for his visit to Croatia in April 2010, and his report focused on the human rights of displaced persons and asylum seekers, post-war justice, and the human rights of Roma. The Croatian Government will give careful consideration to his recommendations with a view for their implementation.

The Report, in general, acknowledges, the measures taken by the Croatian Government in the areas of concern. The Government is particularly pleased that Commissioner has recognized Croatia as one of the few Council of Europe member states which has adopted a comprehensive action plan to promote, protect and respect human rights.

However, some parts of the Report are not fully correct, and some others do not accurately reflect the situation on the ground. Therefore, in accordance with the established procedure and in the spirit of constructive cooperation, the Croatian authorities find necessary to make the following comments and observations:

PART I – HUMAN RIGHTS OF DISPLACED PERSONS AND ASYLUM SEEKERS AND CORRESPONDING RECOMMENDATIONS

A) Regarding displaced persons

The Commissioner deals extensively in **paragraphs 10 to 69** with the issues of displaced persons, return and integration. Croatia appreciates that, following his visit and talks he had conducted, the Commissioner welcomed the intention of Croatian authorities to rapidly resolve the remaining issues relating to the return of displaced persons to their homes. In Croatia, all necessary conditions have been set for the return of displaced persons and this process should be accomplished in the near future. The Government subscribes to the Commissioner's recommendation in **paragraph 53** that the right to voluntary return in safety and dignity is a fundamental, internationally established principle. It is, however, important when addressing this particular issue to have in mind the context in which the displacement in region took place and the efforts that were invested so far in order to address this problem.

In **paragraph 11**, for example, the Commissioner refers, in the context of the internally displaced persons, to a 'rather slow, delayed process of reconstruction and housing care programmes'. This assessment should be read against the fact that some 195,000 housing units were destroyed in Croatia during the war, and in some cases, even whole cities. At the same time, Croatia had to provide shelter for over one million people, which included 555,000 internally displaced persons and 400,000 refugees from the region. The war damage in Croatia amounted to 32 billion Euros. Croatia has invested 5.3 billion Euros in post-war reconstruction and displaced persons related costs and funded this process almost entirely from its own resources.

It should be noted that, at the beginning of 2005, there were 15,000 IDP's in the Republic of Croatia. In 2005 this number decreased by 5,000 persons. Between 2005 and 2009, the IDP's number was constantly decreasing reaching, at the end of 2009, a figure of 612 internally displaced persons. The mentioned delays in implementing the Reconstruction and Housing Programmes in Croatia do not date from 2005. On the contrary, the implementation was accelerated after 2007. A certain slow down in implementation occurred only in 2009 due to the economic crisis, having an impact on the Croatian economy.

Regarding paragraph 12, the Croatian Government points out that there is a concrete plan for the closure of the state-run collective centers for IDPs/refugees. There is a plan to close the collective centers Dumača near Petrinja and Blace near Vinkovci by the end of 2010. Two collective centers for IDPs/refugees, Mala Gorica near Petrinja and Kovačevac near Nova Gradiška would remain in use for providing organized accommodation until the end of 2011. According to planned closures of the state-run collective centers for IDPs and other organized accommodation facilities, the center "Pisarovina" was closed in 2009 and 88 beneficiaries were provided with alternative accommodation. For most of the remaining IDPs, refugees and returnees who still live in state-run collective centers, permanent housing is being secured or reconstruction of their houses and apartments is approaching an end. This would enable their return to Croatia and Bosnia and Herzegovina, or their local integration, which is planned to be mostly completed in 2011. Following the conclusions of the Regional Conference on Durable Solutions for Refugees held in Belgrade in March 2010, the preparation of a joint regional project devoted to solving the needs of people in the collective centers in the region is underway.

The Commissioner states **in paragraph 13**, that 'ethnic Serb IDPs are still reported to face several serious obstacles to viable return and that the issue of house reconstruction for ethnic Serbs was reportedly addressed with considerable delay and in some cases is still critical.' It should be stressed that, since 2003, the majority of reconstruction beneficiaries have been Croatian Serbs. A significant step has been made in the past two years towards solving the large number of backlogged proceedings resulting from negative decisions on reconstruction. At the beginning of 2008, 14,000 appeals have been recorded. In May 2010, there were only 3,773 appeals in 2nd instance procedures and 2,930 other various appeals that will be dealt with on an accelerated pace during 2010 and 2011.

In paragraph 16 the Commissioner refers to the fact that approximately 40% of the previous Serb population has returned to Croatia. It should be noted that all material preconditions for their return have been set up as well as a general climate favorable to return. In comparison with some other parts of the region, this level of return can be considered as satisfactory. For example, in Republika Srpska, in Bosnia and Herzegovina, only 12,000 Croats, out of pre-war 200,000, have returned.

Furthermore, in the same paragraph the Commissioner states that almost 72,000 Croatian Serbs still live in Bosnia and Herzegovina, Montenegro and Serbia. While it is possible that this number of Serbs that formerly lived in Croatia and have now chosen to live in its neighborhood, in particular in a country because of the ethnic link and they may consider as their homeland, this number should not be confused with the number of the refugees from Croatia living in these countries. The number of refugees is currently not yet officially known, but it is certainly significantly smaller.

As to the UNHCR statistics which the Commissioner refers to in **paragraph 17**, it should be noted that at the Conference in Belgrade in March 2010, the UNHCR reported a figure of almost 25,000 double registered persons, on one side as returnees to Croatia and on other side as

refugees in Serbia. The Commissioner now refers, again from the UNHCR sources, to the figure of 10,000 double registered persons. This is evidence of the importance to clarify the statistics on refugees. The governments in the region, precisely Croatian and Serbian, are currently reviewing the number and status of returnees and refugees in a joint process. The UNHCR is acting as a mediator in this process.

The Republic of Croatia has made additional efforts pursuant to the Sarajevo Declaration of 2005 to secure the return of all persons wishing to return and live in Croatia. The reconstruction and housing programmes are focused on the viable return of ethnic Serbs to Croatia, by securing the fundamental conditions for return, which is, housing care. On the other hand, the regional and local infrastructure reconstruction programmes, the programme for economic and social recovery (PSGO) and other projects financed from EU funds (CARDS, PHARE, IPA), in which strengthening and development of less developed areas is preformed, are all aimed towards sustainable return and the process of local integration for returnees.

After investing the 5.3 billion Euros in reconstruction and refugee related issues, the Government can not fully agree with the Commissioner's assessment that the Government made progress 'in particular by undertaking legislative reforms'. The Croatian Government is glad that the Commissioner has noticed its legislative efforts. However, at the time when Croatia approaches the end of the return process, the accomplishments are far from limited to the legislative field, that is 146, 000 housing units have been reconstructed and the housing provided for a significant number of families under the housing care programme. These are concrete, costly undertakings that enabled persons to return. In reference to the Commissioner's recommendation to reflect on the reasoning for which large numbers of displaced ethnic Serbs have not yet returned, the Croatian Government draws the attention to the extensive study¹ ordered by the OSCE in Croatia and Croatian Government in 2004 exploring this issue in detail. The study revealed that, already in 2004, the majority of those who did not wish to return stated the reasons for their decision as: integration in new surroundings; wish to stay closer to their children, and even disassociation with Croatia as their homeland after Croatia become independent.

In respect to the information in **paragraph 19**, relating to police checks in houses or apartments of ethnic Serb returnees in order to verify that the latter reside there on a permanent basis, it should be noted that for returnees who have been entitled to housing and were allocated an apartment or house, but who have not taken the keys and signed the relevant lease agreement, the relevant Croatian authorities have been paying expenses of maintaining the allocated State property. Significant monetary assets have been paid from the State Budget for the maintenance of vacant apartments and houses; while on the other hand, urgent cases where people are in real need of housing can not be resolved. Returnees who are entitled to housing and who respect positive Regulations in Croatia, do not lose their entitlements and neither are subjects of relevant institutional checks. Another reason for checks may be status-related. The Commissioner himself referred in his Report to a significant number of people who are double registered as refugees and returnees. This is the reason why in the course of the process of regulating stay, it is being checked whether the person has actually returned to the Republic of Croatia or whether she/he intends to use both statuses simultaneously. In any case, the returnee shall not forfeit the right of the status in the Republic of Croatia solely on the grounds of the fact that he/she has not been found at the address, but all other factors and circumstances indicating his actual or pro-forma return have to be established. The concerned returnee shall be invited to take part in the procedure and to explain his/her absence from the place of registered stay.

¹ *Croatia's refugee Challenge: Motivational and emotional factors for the return of refugees to their homes and the acceptance of their return by local population*, Empirical research by PULS Agency, Zagreb, 2004

In respect to the repossession of occupied property (**paragraphs 21-24 and correspondent recommendation**), the fact that few cases still remain unresolved should be measured against the fact that 19,200 housing units were returned to their owners. The Government is fully aware and follows with particular attention the remaining 22 still pending legal cases, in particular as this issue is also part of the execution of judgments of the European Court for Human Rights. With regard to four relevant judgments against Croatia delivered by the European Court of Human Rights from 2006 to 2008, the Republic of Croatia has fulfilled its obligation and temporarily allocated property has been returned to its owners.

In cases where the returned property is devastated, owners are allowed to submit a request for reconstruction² In accordance with owner's request, housing units are reconstructed into a state suitable for living, pursuant to the instructions on sanitation that are approved by landowner's signature.

The new Act on Agricultural Land envisages the possibility for the collection of fines on landowners who do not cultivate the land. The mentioned Act is applied to all landowners, not only refugees/returnees. Nevertheless, the new Act on Agricultural Land also allows landowners (including refugees/returnees) to lease agricultural land, which they are not able to cultivate themselves, to private or legal entities for the period of up to three years, who in return pay rental fees to the landowner. The Government considers this issue fully resolved, but is ready to look into the possibility to clarify further the application of the Law. Similarly, from the perspective of full completion of the return process in near future, the respective Ministries will give appropriate attention to other issues raised in the Commissioner's report.

With regards to **paragraph 25**, the Commissioner was informed by the Deputy Prime Minister and Minister of Regional Development, Forestry and Water Management Mr. Pankretić on the results achieved through the implementation of reconstruction programmes in Croatia. Minister Pankretić did not state that the reconstruction process has slowed down and the date for completion of the process has been postponed. Rather, he highlighted to the fact that, due to the economic recession, the pace in 2009 has decreased in reaching the self imposed benchmark in the Action Plan for housing of former tenancy right holders (FTRH). He also emphasized that all activities and obligations for 2009 intensified at the beginning of 2010 and currently, there are 1,500 apartments under early stages of the reconstruction process, public procurement procedures and drafting project documentation. In implementing the annual operational programs for reconstruction and repair (financial supports for repair of housing units - 1-3 damage degrees and organized reconstruction of family houses - 4-6 damage degrees), there is no waiting lists, whereas all decisions with established reconstruction and repair model are automatically implemented; on this basis of assets from the State Budget are secured, so that the deceleration in the implementation of reconstruction and repair program can not occur. As the beneficiaries in question are still mainly outside the Republic of Croatia, there are difficulties in communicating with the beneficiaries who often change residential address and may have impact on the process as the prerequisite for the beginning of works on the damaged housing unit is the beneficiary's signature on the Housing Unit Repair Project as well as the Reconstruction Contract is required.

Furthermore, in the same paragraph, the Commissioner refers to 7,000 unresolved cases. It should be noted that this number does not refer to the number of beneficiaries with established right on reconstruction or repair models, but to appeals lodged on the first instance decisions, issued by the authorized Reconstruction Office. For the purpose to promptly resolve the cases, additional

² Pursuant to the Conclusion of Croatian Government, adopted on July 23, 2005

officers (lawyers) were recruited about a year ago and progress in this matter can be seen and relevant data are given earlier in the text. In the same paragraph, it is alleged that the reconstruction of houses for 1,000 former tenancy rights holders is planned to be performed in 2010. The correct information is that the whole program of organized reconstruction in 2010 includes about 1,000 houses (4-6 damage degrees), including 180 former tenancy rights holders' families (E4 model).

Regarding **paragraph 27**, in respect to the alleged reports on discriminatory attitudes by certain authorities towards ethnic Serb returnees in the process of reconstruction regarding the underestimation of the cost of property damage on houses, it should be noted that generally, all war-damaged or destroyed housing units were listed and evaluated during previous years, i.e. after the liberation of war affected areas - from 1995 onward. The assessment of war damage is performed pursuant to the legislation of the County Committee for War Damage Assessment. It is important to emphasize that exercising the rights under the Reconstruction Act (Official Gazette 24/96, 54/96, 57/00 and 38/09) is based on the war damage, and the term "war damage" is defined by the Act on establishing war damage (Official Gazette 61/91) and by the Instruction for the application of the assessment of the war damage (Official Gazette 54/93) in which each damage category includes a description of damage that is the basis for determining the appropriate damage degree.

At the appellate level, it was noticed that in most of the cases the damage degree was not underestimated, but the damage occurred by the devastation of the housing unit, such as the damage of the housing unit's interior, equipment and furniture disposition and alike, made by unknown persons regardless of the war and military actions; there were also cases of damage occurred due to bad weather, lack of maintenance and not using the facility, what is war unrelated and therefore is not a basis for exercising the rights under the Reconstruction Act.

However, this Ministry has secured donations of construction material through the housing programme, along with the rights under the Reconstruction Act, in order to repair those damages which are not caused by the war, as well as organized repair of the devastated housing units in order to create conditions for return and living, regardless of the nationality of the beneficiaries.

In reference to the doubts on the abilities of recruited junior officers (lawyers) in dealing with the pending cases which are reported to be complex, requiring adequate expertise, we must highlight that those "young lawyers" working on the managing of the second instance procedures have been educated and constantly supervised by lawyers with long-standing experience. Complex cases are resolved by lawyers with experience. Among other things, for the unique application of legislation and practice, constant control and supervision of senior civil officers according to the proposed solutions of each individual case is necessary, so all lawyers working on second instance procedures (not only trainees) are supervised.

In **paragraph 29** the Commissioner is dealing with the issue of the 'holders of socially owned flats'. The Government would very much appreciate if the Commissioner had quoted the sources of data set out in this paragraph, including the source of the estimation that 70% of housing units in the former Yugoslavia was governed by this regime and that most OTR holders were able to transform their rights into ownership by paying a 'symbolic sum' what is, least to say, an overgeneralization. The Croatian Government would also be grateful to learn the source of the quite precise figure of 23,800 persons that, according to the Commissioner, lost their entitlements. It is fully correct to state that the status of former tenancy rights holders had many characteristics of ownership since this was rejected by the relevant judgments and decisions of the European Court for Human Rights.

The Commissioner has mentioned only briefly the Housing Care Programme that was established as the closest alternative for former tenancy rights for all those who wish to return to Croatia. The Government reiterates that this program restores the closest possible alternative to the former tenancy rights, in the new economic and social conditions, where tenancy rights as a part of the old socialist system do not exist anymore. Under this regime, the contract on the lease is signed for an indefinite period of time and it offers a high level of protection. If apartment is used in accordance with the purpose of protected tenancy, the protected lease of the apartment also passes to the heirs of the beneficiary after his death in accordance with Article 24 of the Law on Lease of Apartments.

The Program is seen as an appropriate solution for former tenancy rights holders by the representatives of the international community present in Croatia, including the representatives of the UNHCR and the OSCE Office in Croatia, who also closely follow its implementation. The Status Report of the OSCE Office in Zagreb dated March 2009 underlined that the Government of Croatia invests enormous efforts into accomplishing the housing care program in time and underlines the highest political commitment of Croatia to implement this program, and thus encouraging the return of refugees³. The OSCE Status Report dated October 27, 2009 refers to 'the continuous and extraordinary effort made by Croatia, in the housing care programme for former OTR holders which demonstrate that the implementation is now irreversible with or without OSCE assistance.' The Report also stresses 'the confirmed and repeatedly expressed commitment by the highest Croatian authorities to fully finalize the HC program for former OTR holders, which is fostering refugee return and promoting regional development.'⁴

A fact that under the above mentioned programme a total of 13,803 requests were submitted to date by former tenancy rights holders for the allocation of apartments proves that the program is seen as credible, efficient and desirable housing solution for this group of people.

With the view to accelerate this process, the Government of Croatia also adopted the Action Plan for the accelerated implementation of the housing care programme within and outside the Areas of Special State Concern (ASSC) for refugees, former tenancy right holders wishing to return to Croatia for the period from 2007 to 2009. The Government has self-imposed, through this Action Plan, clearly set implementation benchmarks. Pursuant to this Plan, 3,500 FTRH were provided with housing, that is, 71% of planned 5,000 families. Commitments for 2007 are completely fulfilled, i.e. 1,418 families were provided by housing (1,010 within the ASSC and 408 outside the ASSC). In 2008, 1,362 families were provided by housing (920 within the ASSC and 442 outside the ASSC) and for the remaining 80 FTRH families there is an ongoing organized reconstruction/construction process for their family houses. A significant number of projects for housing unit reconstruction/construction is coming to an end, and the works haven't been completed yet due to the beneficiaries who signed contracts for reconstruction/construction relatively late, at the end of 2009, when construction works could not been performed due to objective circumstances (such as a bad weather). Out of the total planned 2009 commitments (housing care for 2,070 families; 1,578 within the ASSC and 492 outside the ASSC), until the present day, apartments for 750 families have been secured (36.2% of planned is implemented). Economic recession, as well as partly slower construction works, is an indirect consequence of the recession, influenced on the slower pace of implementation for 2009 HCP. In March 2010, Ministry of Regional Development, Forestry and Water Management prepared the Action Plan

³ Status Report on Mandate-related developments and Activities, Organization for Security and Co-operation in Europe Office in Zagreb, 26 March 2009

⁴ Conclusions, Status Report on Mandate-related Developments and Activities, Organization for Security and Co-operation in Europe, OSCE Office in Zagreb, 27 October 2009.

for 2010 containing activities and mechanisms for more transparent and effective implementation of the HCP. The plan for completion of the HCP in 2010 and 2011 is prepared for all persons entitled to housing pursuant to Croatian Regulations. Despite the economic crisis and cuts in the State Budget, assets for this purpose have been increased in 2010. Precisely for these reasons, Croatia finds that the process of housing for refugees wishing to return to Croatia is in the final stage. With the view to secure the maximum transparency in this process, a number of technical commissions have been established, which discuss various aspects of the implementation of this complex Program jointly with the international community.

As the Commissioner referred in particular to the fair and effective treatment of the claims of those refugees/ex-OTR holders who do not wish to return, it should be underlined that the former tenancy rights never equaled to property rights. This was clearly confirmed by the European Court of Human Rights in the Decision as to the Admissibility of Application no. 125/05 by Branko Rašeta against Croatia, where the Court established that the protected tenancy right holder was not the owner of the flat.

In **paragraph 30** the Commissioner elaborated on the case of Vojnović against Croatia before the Human Rights Committee. It should be stressed that the author of this communication has applied for the housing care programme and was successful in its claim obtaining the Consent that confirmed his right and right of his family for the housing care as they fulfilled the required conditions set in the Government's conclusion on the housing care of returnees – former tenancy rights holders. The author was also allocated by this Consent a specific apartment that corresponds to his pre-war accommodation.

As the Commissioner paid particular attention to this one case before the Human Rights Committee, the Government would like to draw the attention to a practice of the European Court for Human Rights relevant for this issue. Several cases relating to former tenancy rights were submitted before the ECHR and not a single violation has been established. At the level of the Grand Chamber, the case *Blečić v. Croatia*, related to the termination of tenancy rights, was decided solely on procedural grounds. This being the case, it is not without importance that in the previous Chamber judgment in the same case, the Chamber addressed the issue of termination of tenancy rights by Croatian courts holding that the existing legislation in this respect pursued a legitimate aim, namely the satisfaction of the housing needs of citizens, and that its application by the Croatian courts was within the margin of appreciation necessary in democratic society.

Nevertheless, followed by humanitarian motives, Croatia has established a housing care program explained above, offering a mechanism that provides adequate housing for those ex-OTR holders who wish to return, which was as well the main purpose, in other social and economic reality, of the tenancy rights system.

Recognizing that the passage of time has resulted in local integration of many former refugees, including ex-OTR holders, Croatia supports the establishment of a similar program for refugees/ex OTR holders who do not wish to return and who are still in need of adequate housing in their countries of local integration. Croatia is prepared to assist this process with its experience and best practices. Other countries in the region may not be in position to fund these programs alone as Croatia has done. In this respect, Croatia is ready to actively support the establishment of the *International Multi-donor Trust fund*, as mentioned by the Commissioner.

The Commissioner refers in his recommendations to the need for an effective remedy, including adequate compensation, in the cases where it was established that the tenancy rights were terminated in the procedure which did not correspond to the standards of a fair trial and/or the

principle of non-discrimination. It goes without saying that the establishment of the violation in each individual case of the fair trial or breach of the non-discrimination principle, rights protected by the Croatian legislation as well as by the international treaties making part of the Croatian legal system, would call for the application of the efficient remedy at the national level, in accordance with the relevant established national procedures.

Regarding **paragraphs 14, 15 and 57** Government is perfectly aware of the fact that more than 103,000 mines and other unexploded ordnances (UXO) have been left as a deadly legacy of the war in Croatia that still contaminates 887 km² of Croatian territory. The landmine problem was at an early stage recognized as an economic, ecological and safety problem and one of the impediments to normal life and development, and Government has been striving to address this issue as a matter of urgency.

The new *National Mine Action Strategy of the Republic of Croatia* was approved by Croatian Parliament in September 2009 and includes all the relevant information on mine action since 1991, current status of mine suspected areas (size, positioning, structure and impact on society and economy), description of available capacities for mine action execution and their performance, and the basic goals to be achieved in the period 2009 to 2019, with established methods and preconditions for their realization. Therefore, an area of 756.5 km² should be demined and reduced by demining companies and Croatian Mine Action Center (CROMAC). The total of 660 million Euros should be secured for these activities, which includes the cost of the general survey and reduction conducted by CROMAC staff. The largest activities should take place between 2012 and 2015, and they will require the biggest financial means (280 million Euros). The financing of mine action is conducted through the State Budget, World Bank Loan funds, public companies and state administration bodies and donors. During the period 2004 – 2009, 235.9 million Euros was spent for demining, enabling the removal of mine threats from the area totaling 146 km².

Furthermore, the *Humanitarian Demining Plan for the period 2009 to 2011* was approved by the Croatian Government in July 2009. It defines basic tasks and their implementation for the next three-year period. Notably, the first priority in this period is complete the removal of mine dangers from houses for the reconstruction, infrastructural facilities, as well as from over 2/3 of all agricultural areas. As it is clearly stated in the *Extension Request*, the mine problem in the area for the reconstruction of houses and infrastructural facilities is to be resolved by the end of 2011. Agricultural land is to be completely demined by the end of 2014 and the remaining mine hazardous areas are to be cleared until 2019.

At the end of 2005, CROMAC started the revision of suspected hazardous area (SHA) aiming towards sustaining constant up-to-datedness of all data relating to SHA. The revision was completed in October 2008. From starting point of 1350 km² of SHA in 2004, Croatia has by end 2009 reached 887 km² of SHA. Basic indicators on the status of SHA in Croatia upon completion of processing the data are as follows - SHA in Croatia extends through 104 towns and municipalities in 12 counties. It is marked with 16,000 mine warning signs. In towns and municipalities affected by SHA lives 20% of the total population of Croatia. Today, the largest part of SHA is in forest areas (more than 58%). So far, 25 km² of forest area was cleared. Demining is conducted in accordance with the financial plan of the state company “Hrvatske šume”. The total value of the wood wealth that can not be used because of mines is 170 million Euros. The current structure of SHA is a result of demining activities in the areas for the sustainable return of displaced persons (houses and yards, infrastructural objects, power lines, roads, railways etc.). Since it is not possible to have sustainable return without the opening working possibilities for the returnees, all areas that were in plan for the reconstruction were

cleared. All power lines and local electric network were cleared, as well as areas around schools, hospitals and kindergartens. From 1998 until 2010, more than 20 industrial and commercial zones were demined, as well as 200 km of highways, 350 km of state and local roads, and 200 km of railway lines.

Regarding paragraph 39

It should be pointed out that from the day of entry into force of *the Ordinance on the convalidation procedure for decisions and individual acts pertaining to pension insurance* (May 17, 2008) to April 12, 2010, a total of 20,713 applications for convalidation of years of insurance were submitted, of which 17,009 (82.12%) have been resolved. Of the total number of resolved applications, 52.21% were granted and 44.79% were denied. To the same date, a total of 335 applications were submitted for convalidation of decisions on the acknowledgment of the right to pension, of which 232 (69.25%) have been resolved. Regular monthly reports on the implementation of the Ordinance are submitted to the Ministry of the Economy, Labour and Entrepreneurship which, as the competent authority for the supervision of the work of HZMO, closely monitors the application of the Ordinance.

Decisions for each particular case are reached by observing the principle of evidence assessment, pursuant to the provision of Article 9 of the Act on the General Administrative Procedure. This means that an official person decides on the facts to be considered, as proven on the basis of conscientious and careful assessment of evidence individually and collectively, and on the basis of the results of the entire procedure.

The practice of resolving cases has developed and become more uniform through the review of decisions. According to Article 123 of the Pension Insurance Act, decisions pertaining to years of insurance are subject to review by a central organizational unit of the HZMO. Furthermore, the practice has developed in line with decisions of the Administrative Court, which serves as guidelines. Through review and the appellate procedure, the HZMO continues to implement uniform procedures throughout its regional offices.

B) Regarding asylum seekers and immigrants

In the introduction under the title Human rights of displaced persons and asylum seekers, it is deemed that the detention of migrants, including asylum seekers, especially for long periods, should be avoided and should constitute exception and not the rule.

It should be clarified that asylum seekers are entitled to accommodation at the Reception Centre for Asylum Seekers during the period of the asylum procedure. Nevertheless, if during a forced removal procedure at the Aliens Reception Centre, aliens apply for asylum, the Aliens Act („Official Gazette” No 79/07 and 39/09) shall be applied representing in such cases *lex specialis*. The Aliens Act states that asylum seekers, after being accommodated at the Aliens Reception Centre at Ježevó, shall remain at the Centre until the expiry of the term set forth for their accommodation, that is, until the moment of the approval of their asylum status or the subsidiary protection status.

Relating to the accelerated asylum procedure and free legal aid (**paragraph 41**), it should be noted that the Government has proposed to the Parliament the Amendments to the Asylum Act, which provide for an accelerated procedure and the right of asylum seeker to free legal aid. Herewith, it is explicitly set forth that the asylum application is lodged verbally to the minute, recognizing in this procedure the provisions concerning the questioning of asylum seeker. The

questioning of asylum seeker may be omitted only under the conditions set forth by the law, such as when the asylum application is being rejected in an accelerated procedure as manifestly unfounded. This amendment ensures that asylum seekers will, from the very moment of applying for asylum, have the right to present all the facts and circumstances related to the reasons which have been taken as the basis for the application and to enclose all available proof. A competent authority has the right to exclude questioning of asylum seekers in the first-instance procedure only in exceptional circumstances laid down by the law.

The said Amendment provides for an obligation on part of this Ministry of Interior, that in the course of the first-instance procedure, all asylum seekers should be offered general information on the method of asylum procedure. They are being informed of their rights and obligations in the procedure, as well as of the possibility of being granted free legal aid and the access to the representatives of UNHCR and other organizations that deal with refugees' rights, particularly with the Croatian Legal Centre. Free legal aid comprises of assistance in drafting an appeal, as well as representation before a competent second-instance authority. The right to free legal aid belongs to asylum seekers who lack sufficient means of subsistence or property of high value. Furthermore, under the Act on Free Legal Aid ("Official Gazette" No 62/08), asylum seekers are entitled to free legal aid under the same conditions as the Croatian nationals.

Regarding paragraph 42

In line with the existing legislation, the Ministry of the Interior informs all asylum seekers on their rights and obligations pending the asylum procedure, particularly on the possibility of approaching the representatives of UNHCR and the Croatian Legal Centre. Since 2010, the Croatian Legal Centre has been holding, once a week, legal counseling at the Reception Centre for Asylum Seekers in Kutina, offering to those interested asylum seekers legal information on their rights and obligations in the course of the asylum procedure.

Furthermore, it should be pointed out that in the Republic of Croatia there is provided a systematic care for the health of asylum seekers which includes also their psychological state. At the Reception Centre for Asylum Seekers, there operates a permanent health care service under the responsibility of a primary-care doctor working 4 hours per day. The Ministry also employs a full time medical nurse there and regularly checks the medical and psychological state of the asylum seekers, as well as administering and controlling the execution of daily medical therapy.

In compliance with the Contract between the Ministry of the Interior and the Croatian Red Cross, 5 employees of the latter deal with psycho-sociological aspects of the care at the Reception Centre for Asylum Seekers conducting interviews, drafting reports on social status, dealing with creative workshops for adult asylum seekers, particularly women, and they also maintain a play-room for children. The Croatian Red Cross also engages a psychologist, twice a month for 2 hours, who is an external expert who assists persons who have been identified as in need of psychological assistance. When social workers decide that an urgent observation is needed for a certain asylum seeker, the said expert is invited even outside working hours. The Croatian Red Cross also renders the psycho-social care to the victims of trafficking in human beings, under a special project.

The psycho-social care, particularly in the procedure of reception and accommodation of the asylum seekers is also rendered by two social workers of the Ministry of the Interior who are permanently full time employed at the Reception Centre for Asylum Seekers. They conduct individual and group meetings with asylum seekers in order to find out about their psycho-social

needs, integration of their children into the educational system of the Republic of Croatia, under the Asylum Act ("Official Gazette 79/07). They work together with other expert services in compliance with the asylum seekers needs and render assistance in the integration of asylum seekers into local community.

Regarding paragraph 43

The Aliens Act in Article 101 prescribes that the accommodation at the Aliens Reception Centre is set forth for a time period of 180 days, whereas Article 102 prescribes that the accommodation may exceptionally be extended to include another period of 180 days.

In line with the rules on administrative procedure, such a procedure is carried out in the Croatian language and a Decision on Accommodation at the Aliens Reception Centre is also written in the Croatian language. However, in the course of performing this procedure, an alien is provided with interpreting service of an interpreter in a language he/she understands. Also, before being served the decision in question, it is verbally interpreted to an alien into a language he/she understands.

Regarding paragraph 44 and correspondent recommendation in paragraph 67

Croatian authorities took Mr. Hammarberg suggestion very seriously and would appreciate if he could provide some concrete examples of best practice in this area of other Council of Europe member states.

Regarding paragraph 45

In order to present complete information, it is necessary to give some explanatory remarks. The Reception Centre for Asylum Seekers is located in Kutina in the premises owned by the Ministry of the Interior. The Reception Centre for Asylum Seekers cannot move out of the previously mentioned premises until a new site is found. Even though the mentioned site is defined as a temporary one, the reception and accommodation standards comply with all international standards and with its capacity, the Reception Centre for Asylum Seekers on this very location answers the current needs of the Republic of Croatia. The Ministry of the Interior, by analyzing the needs relating to the projections of increasing the number of asylum seekers, intensely seeks solutions in terms of finding new sites for the premises of the Reception Centre for Asylum Seekers. These new sites may, as needed, only receive certain groups of asylum seekers (family, unaccompanied minors, single men), and if such a location, the capacity of which would satisfy all needs, is found, it is possible that the overall Reception Centre for Asylum Seekers be relocated to this new location.

It should be also noted that the overall staff of the Reception Centre for Asylum Seekers are permanent employees who, given their numbers, qualification structure and competencies, completely comply with all standards. The 19 employee of the Ministry of Interior and 5 Croatian Red Cross employees work at the Reception Centre for Asylum Seekers. Consequently, relocation would only imply physical transfer from one location to another. This part of the Report does not correspond to the real situation nor is correct given the efforts (both human and material-financial) the Republic of Croatia has invested into the asylum system.

Regarding the issue of free legal aid

The Free Legal Aid Act entered into force on June 7, 2008 and its application began on February 1, 2009. Under the Act, legal aid is provided for civil and administrative proceedings in

accordance with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the case-law of the European Court of Human Rights. Furthermore, under Article 7 of the Free Legal Aid Act, asylum seekers are beneficiaries of free legal aid, in the proceedings in which legal aid is not provided for under *lex specialis*.

Asylum seekers accommodated at the Aliens Reception Centre have the right to free legal aid under the same terms as those accommodated at the Reception Centre for Asylum Seekers. The Ministry of the Interior provides them with information on their rights and obligations in the asylum procedure, in the same manner as all other asylum seekers. Moreover, during their stay at the Aliens Reception Centre, they may contact UNHCR and the Croatian Legal Centre, which employees are present there on a regular basis.

Regarding the paragraph 52

It should be noted that on March 17, 2010, the contracts for financing legal aid were offered to associations and legal clinics authorized to provide free legal aid in 2010. So far, 26 associations have signed the contract.

In regards to financing, during 2009 Associations and Legal Clinics authorized to provide free legal aid did not spend all the financial resources allocated to them. Under Article 6 of the *Ordinance Establishing the Project Valuation Criteria of Associations Authorized for the Provision of Free Legal Aid and Legal Clinics and On the Project Reporting*, associations and legal clinics are obliged to return unused funds to the State Budget. Thus, in 2010 another funding system was introduced, by which financial means will be allocated quarterly.

PART II - PROCEEDINGS RELATING TO POST-WAR JUSTICE

In **paragraph 78** it has been stated that there have been only 80 prosecuted war crime cases in the last 5 years. The Government points out that this data (and its source cited in the reference No. 18) does not correspond to official data provided to Commissioner by the Ministry of Justice. The official data is 88 war crime judgments for 195 persons sentenced in the last 5 years.

	<i>County Court</i>	Number of judgments		<i>County Court</i>	Number of persons sentenced
1.	<i>Osijek</i>	15	1.	<i>Osijek</i>	27
2.	<i>Zadar</i>	14	2.	<i>Zadar</i>	34
3.	<i>Vukovar</i>	13	3.	<i>Vukovar</i>	57
4.	<i>Sisak</i>	11	4.	<i>Sisak</i>	15
5.	<i>Šibenik</i>	8	5.	<i>Šibenik</i>	9
6.	<i>Karlovac</i>	7	6.	<i>Karlovac</i>	7
7.	<i>Bjelovar</i>	4	7.	<i>Bjelovar</i>	9
8.	<i>Zagreb</i>	3	8.	<i>Zagreb</i>	7
9.	<i>Požega</i>	2	9.	<i>Požega</i>	7
10.	<i>Gospić</i>	2	10.	<i>Gospić</i>	2

11.	<i>Split</i>	2	11.	<i>Split</i>	9
12.	<i>Rijeka</i>	2	12.	<i>Rijeka</i>	4
13.	<i>Slavonski Brod</i>	2	13.	<i>Slavonski Brod</i>	2
14.	<i>Varaždin</i>	1	14.	<i>Varaždin</i>	4
15.	<i>Dubrovnik</i>	1	15.	<i>Dubrovnik</i>	1
16.	<i>Virovitica</i>	1	16.	<i>Virovitica</i>	1
17.	<i>Velika Gorica</i>	0	17.	<i>Velika Gorica</i>	0
18.	<i>Zlatar</i>	0	18.	<i>Zlatar</i>	0
19.	<i>Pula</i>	0	19.	<i>Pula</i>	0
20.	<i>Koprivnica</i>	0	20.	<i>Koprivnica</i>	0
21.	<i>Čakovec</i>	0	21.	<i>Čakovec</i>	0
Total		88			195

Regarding some others Commissioner's concerns under this item, the Governments draws attention to the following:

In **paragraph 84** it is stated that in several cases the service in the Croatian army or police forces was considered as a mitigating circumstance. However, even if it is a fact that in a certain concrete cases Croatian courts considered the fact that the accused were members of the Croatian Army or police forces, this does not mean that the decision was solely based on this fact. Namely, it has always been assessed in relation to other circumstances of each particular criminal offence and circumstances of a given case. Participation in the Homeland War has sometimes been assessed as an aggravating factor, because members of the Croatian Army had some specific knowledge connected with carrying out a defense activity. Since the participation of members of Croatian army or the police forces was sometimes qualified as a reason to exclude unlawfulness, sometimes as a reason for a more lenient punishment and sometimes this fact was not taken into consideration at all because it was irrelevant for the sentence, it is very difficult to draw a general conclusion that service in the Croatian Army or police forces was considered as an justified mitigating factor.

War crimes proceedings are being carried out impartially and professionally, regardless of the ethnic affiliation of the perpetrator. War crime trials conducted in the Republic of Croatia in 2009 showed the maturity of the Croatian courts in terms of ensuring impartial trials, not burdened by ethnic bias. The Ministry of Justice made an analysis of the judgments rendered in war crime cases for the period 2005 – 2009 in order to identify whether there was ethnic bias in war crime proceedings. The analysis showed a balanced approach in sentencing all criminal offenders, irrespective of their ethnic origin.

Out of 88 judgments in war crime cases, 73 are related to 148 JNA (Yugoslav Peoples Army) members, while 15 judgments are related to 47 members of the CAF (Croatian Army Forces). Out of 148 JNA members, 83 were judged in their presence and 65 in absentia.

The data on sentencing indicate that a total of 124 persons were judged in their presence; out of who 41 were members of the CAF (33%) and 83 were members of the JNA (67%). Out of 81 convicted persons sentenced for war crimes in their presence, 34 persons or 42% were members of the CAF and 47 persons or 58% were members of the JNA.

Data on sentenced perpetrators based on their army affiliation show the objectivity and impartiality of the Croatian judiciary that acts without ethnic bias in the sentencing (convictions and acquittals) of war crimes perpetrators.

Speaking of tendencies and trends, data for 2009 for convictions in the presence are: 19 judgments against members of the CAF and 18 against JNA members. For the first time, in 2009 a higher number of members of the CAF were convicted than members of the JNA.

Out of 43 persons acquitted for war crimes, 7 or 16.2% were members of the CAF, and 36 persons or 83.7% were members of the JNA. A significantly higher number of members of the JNA were acquitted

Out of a total of 139 convicted persons in the past five years after being tried for war crimes in their presence or *in absentia*, 38 or 27.3% were members of the CAF and 101 or 72.7% were members of the JNA.

We can observe a significant difference with respect to trials for war crimes in the presence and *in absentia*. Out of 81 convicted persons tried for war crimes in their presence, 42% were members of the CAF while 58% were members of the JNA. With reference to persons convicted *in absentia*, 7% were members of the CAF, while 93% were members of the JNA. In this respect, it should be taken into account that persons prosecuted *in absentia* are still at liberty. Moreover, it can be presumed that all of these persons will request a renewal of procedures once they become accessible to prosecution.

The OSCE Office in Zagreb in its last Status Report also noted as a positive trend *the adoption* of the prosecutorial policy to abstain from *in absentia* trials in line with the Instruction for Work on War Crime Cases for County State Attorneys, No. O-5/06, 8 February 2006.

Since the number of sentenced person include all acquitted persons, it is also important to consider the number of convicted persons as the most relevant indicator for the evaluation of a potentially biased attitude. The numbers both of sentenced CAF members (33%) and of convicted CAF members (42%) confirm that the prosecution of war crimes in Croatia is not biased.

The large gap between the number of indicted persons and the number of sentenced persons in the past five years also reveals that the majority of persons indicted for war crimes are still out of reach of the Croatian judiciary. Croatia has issued hundreds of international arrest warrants for war crimes suspects, requesting third countries to extradite the wanted persons. Without their extradition and prosecution, impunity will remain the main problem related to the prosecution of war crimes committed in Croatia.

PART III - HUMAN RIGHTS OF ROMA

The Government takes significant efforts to improve the status of Roma and to eliminate any form of discrimination against them. In the 2010 State Budget, funds have been secured through competent ministries and offices for the implementation of the National Programme for the Roma and the Action Plan for the Decade of Roma Inclusion in the amount of HRK 25 million (including financial support from EU funds).

Regarding paragraphs 130&131

As regards to housing, it should be noted that all plans have been drawn up, thus creating the preconditions for legalization of twelve settlements inhabited by the Roma. Continuous measures for the legalization of illegal Roma settlements are taken wherever possible.

Paragraphs 115-119 (*Statelessness*)

The operational teams have been set up for the implementation of the National Programme for the Roma on local level. Employees from police administrations and stations working on the status related issues who are especially educated and perceptive of the Roma issues, as well as employees from social service centers and representatives of Roma associations, are all involved in the work of the operational teams. They visit Roma settlements and explain to Roma ways they can regulate their status. The intention is to include as greater number of Roma in activities regarding regulation of their status, where certain obstacles can arise.

The status of those Roma who were born or have lived in Croatia for many years is regulated within the shortest timeframe and in the simplest manner. Also, additional efforts shall be put in order to realize the goals set in the National Programme for the Roma and Action Plan for the Decade for Roma inclusion (2005 -2015). A basis for admitting any person into **Croatian nationality** is the fulfilment of the prerequisites prescribed in the Act on Croatian Nationality independently of the applicant's national affiliation. However, in comparison with other European countries, Croatia's legislation prescribes lighter conditions for the acquisition of nationality. There are problems with those Roma that do not have their legal status regulated in the country of their birth (Serbia, Bosnia and Herzegovina, Macedonia), often due to the failure of their parents or administration to register births of children or legally confirm their nationality status. They neither possess identity documents, certificates of nationality status of the country of origin nor is the incidence of their birth entered into the birth registry. However, all those who filed a request are regularly acquainted with manner of regulating their legal status and are instructed to contact competent foreign authorities. In this context, better cooperation with the countries in the region needs to be established in order to allow the submission of requests through the foreign diplomatic and consular missions in the Republic of Croatia. Since August 2007 to June 2010, 162 persons who declared themselves as Roma were granted Croatian nationality, 26 guarantees for admittance into Croatian nationality were issued, while 68 requests are still pending decision. By accepting the principle of legal continuity of Croatian nationality in the Act on Croatian Nationality, Croatia has prevented statelessness.

Knowledge of the Croatian language and Latin script as a prerequisite for the acquisition of Croatian nationality is only prescribed for those persons with regulated stay in Croatia who acquire Croatian nationality on a regular basis (Act on Croatian National). This criteria does not apply for elderly Roma persons who, based on their stay in Croatia, may exercise their right to Croatian nationality. Since August 2007, no single request has been rejected on the grounds of not possessing the knowledge of the Croatian language and Latin script.

Access of Roma to education

Paragraph 121

The most recent data on the number of the members of the Roma national minority included in the **education system** for 2009, are: 692 in preschool education, 4,186 in primary schools, 304 in secondary schools and 25 higher education. Since September 2007 to the end of 2009, 977 members of the Roma minority participated in adult education programmes, i.e. adult literacy and training courses. In 2009, a total of HRK 929,700.00 was allocated to adult literacy programmes.

Paragraph 122-124 and 148-149

Preparation of measures to execute the judgment of the European Court of Human Rights in the case of **Oršuš and others v. Croatia** is under way. The measures shall incorporate recommendations provided in the Commissioner's Report – to increase the percentage of Roma national minority members who complete primary education and to eliminate the impetus for placing Roma children in separate classes. The Republic of Croatia expresses its readiness to execute the judgment. in its entirety.

Paragraph 150

Concerning the calls on the Croatian authorities to provide possibilities for Roma children to study in their mother tongue, we would like additionally to stress that a **Romani-Croatian and Croatian-Romani Dictionary** was published in 2008, with the financial support of school authorities. It is edited by the Department of Oriental Studies of the Croatian Philological Society and Kali Sara (association that promotes education for Roma) in collaboration with the experts who are members of the Roma national minority.

By building up expertise and developing human resources, the preconditions for teaching the Romani language and culture in schools shall be met. The Republic of Croatia supported festivities in observation of the Day of the Romani language, a summer school organized by Romani associations, and the publication of children's books and other materials on the Romani culture. Also, the initiative of the Republic of Croatia for the establishment of **World Day of the Romani Language** is currently being considered by the relevant government authorities.

Paragraph 155

The implementation of the **“ECRI recommendation No. 10 on combating racism and racial discrimination in and through school education”** shall be intensified and be made available in the Croatian language, as well as all Council of Europe documents on the history, language and culture of Roma.

General measures against discriminations

The Government draws attention to the fact that the Republic of Croatia signed the **Memorandum of Understanding with OSCE/ODIHR** on the training of police officers (2007) of hate crimes and collection of statistics of hate-crimes. The Working Group for Monitoring Hate Crimes has been set up and hold its first meeting (March 2010) having discussed the situation in the field regarding recognition and reporting of hate crimes and, ultimately, the prosecution of such crimes.

Also, with a view to overcoming prejudices against ethnic minorities, especially the Roma, and to combating all forms of discrimination, in July 2008, Croatia joined the **Council of Europe Campaign “Enough!” (“Dosta!”)**, aimed at fighting discrimination against the Roma minority throughout Europe. In line with the recommendation of the Council of Europe and the obligations

assumed by the Republic of Croatia as a participant in the campaign “Dosta!”, a promotional video was filmed in 2009 and is broadcast on Croatian Television.

Paragraph 136

A criminal investigation concerning the **case in Vodjan** is underway with the aim of establishing the perpetrators of the discriminatory acts.

Paragraph 137

The criminal investigation in **case Alen Ajkić** established that the assault against him was not racially motivated. He was physically attacked by a police officer, who was not on duty at the time of the assault. The motive was a verbal conflict related to an earlier conduct of the police officer towards Ajkić as a perpetrator of a traffic offence. A criminal report has been filed to the State Attorney against police officer who assaulted Ajkić because of the existence of reasonable doubt that the police officer had committed a criminal act of “severe bodily injury” (Article 99 (1) of the Penal Code). Upon the completion of criminal investigation, the police officer has been brought in to the County Court Investigation Centre. Disciplinary procedures were initiated against this police officer and two other police officers who had not been on duty and who had been in his company, but did not participate in the conflict. A number of disciplinary procedures have been initiated against the police officers conducting the first intervention measures as failures in the criminal investigation methodology and disregard for the rules on police conduct have been established in relation to the aforementioned incident.

Paragraph 138

Concerning the **Department for Terrorism**, the Government draws attention to the fact that this department is organized within the General Police Directorate and that it is competent for acting upon and keeping up with criminal acts of “*hate-crime*” in the territory of the entire Republic of Croatia. Moreover, divisions for “*terrorism and extreme violence*” are organized within district police administrations, and the composition of criminal police units in some police administrations includes specialized police officers dealing with the problem of “*hate-crime*” who have completed a special educational programme.