

Croatia<sup>1</sup> - ANNUAL REPORT 2004

13/12-04

**IHF FOCUS: freedom of expression and the media; judicial system and independence of the judiciary; freedom of religion; intolerance, xenophobia, racial discrimination and hate speech; returnees and IDPs; labor rights; environmental rights.**

The main human rights problems in Croatia were related to freedom of expression and the media, the operation of the judicial system, religious freedoms, acts of intolerance and discrimination as well the process of return of refugees and internally displaced persons (IDPs), property repossession and reconstruction. In addition, violations of labor and environmental rights became prominent.

The adoption of new basic media laws gave media outlets more freedom and provided more pluralism. On the negative side, changes to the Penal Code were adopted criminalizing defamation and so violating international standards. However, the Constitutional Court annulled the adoption of changes to the Penal Code as a result of which the code did not come into force in December, as had been planned.

The judicial system functioned inadequately and slowly—particularly the execution of sentences—resulting in an enormous backlog of cases.

The situation regarding religious freedoms improved but remained unsatisfactory in 2003. The Roman Catholic Church as the most significant religious community in the country retained a privileged status.

The level of intolerance slightly increased due to the activities of some individuals, groups and organizations. Racial intolerance was promoted mainly by groups of skinheads.

In 2003 the government adopted several legal documents regarding the implementation of the return process of refugees and IDPs, repossession of property and reconstruction of property destroyed during the military conflict. Some provisions of the new legislation were discriminatory. The process of return of occupied private property continued but at a very slow pace.

The Croatian Helsinki Committee (CHC) received numerous reports of violations of labor rights and became involved once more in activities concerning health protection and protection of the environment, and a number of civil organizations were involved in sending complaints to the competent bodies on these issues.

### Freedom of Expression and the Media

The adoption of new basic media laws gave press outlets more freedom. A new news program on the private TV Nova (with national concessions) allowed for more pluralism and the state television, HRT, was gradually transforming itself into a public TV broadcaster. Print media were mostly under private ownership except for *Slobodna Dalmacija* and *Vjesnik*, which were state-owned and waiting to be privatized.

Pluralism of the media gave individuals a better insight into social affairs and access to government sources of information was made easier for all journalists following the

<sup>1</sup> Based on the *Annual Report 2003* of the Croatian Helsinki Committee to the IHF.



adoption of the Freedom of Information Act on 15 October. Its passage was a result of lobbying by an NGO coalition led by the CHC.

Protecting individuals from reporters intruding on their privacy and providing for a right to correction and publication of denials became increasingly problematic. Pressure by media owners on editors to write more sensational tabloid-genre pieces rather than using serious and reliable sources was also increasing due to the lucrative revenue involved. There was a rise in cases brought by journalists trying to protect their professional and material rights, which were violated by employers/media owners.

Positive changes in the relations between the government and the media resulted in the adoption of new basic media laws. Implementation of these laws, however, was challenged in practice. NGOs (e.g. the CHC, Journalists' Association) and the media were for the very first time given the opportunity to participate in drafting the laws by submitting suggestions and demands. Cases of government interference in the media seemed to be decreasing, while pressure by other centers of power (especially corporate business lobbies) was getting stronger.

#### *Law on State Television (HRT)*

The main changes to the new HRT law, which was passed in February, concerned the composition of a public surveillance body and managerial system governing the HRT. The CHC's Council for the Media and the Association of Croatian Journalists participated in the drafting of the new HRT law (as well as in other basic media laws) as members of a joint working group within the Ministry of Culture. Some of their proposals were embodied in the text of the law. However, the Council for the Media proposal regarding composition of the HRT Council was not accepted: it had suggested that the old composition should be retained, i.e., one third of members elected directly by NGOs.

The weakest point was the parliament's hesitation in naming the members of the HRT Council. It took almost six months for parliament to appoint the ~~new~~ HRT council members and after two attempts they were still unable to start working due to the lack of quorum.

At the end of 2002, the CHC's Council for the Media concluded a research on political influence on the HRT. The main finding, in comparison with the situation at the end of 1999 (when the ruling party was Franjo Tudjman's Croatian Democratic Community, HDZ) was that the influence of the government and ruling coalition had decreased significantly and that the HRT was no longer a tool of government and parties in power. At the same time the HRT was still far from serving the public interest. Although both the ruling parties and the opposition (especially HDZ) accused HRT of being biased, an independent scientific study pointed to a slight bias in favor of the HDZ and similar ideology.

#### *Law on Telecommunications*

The CHC worked actively in drafting proposals to amend the Law on Telecommunications and succeeded in dividing the law into two separate laws—the Law on Electronic Media and Law on Telecommunications. At the end of July parliament adopted the Law on Electronic Media, making regulations on broadcasting more transparent and detailed, prohibiting media concentration and monopolies, granting national concessions for TV and radio broadcast, and introducing an independent body—the Council for the Electronic Media—in charge of monitoring implementation of the law on behalf of the public.

## *Media Law*

After more than one year of public debate on the first version of the new Media Law during which interested parties, especially journalist organizations and the CHC's Council for the Media were given an opportunity to significantly influence the final version, the new Media Law was adopted at the beginning of October. This text replaced the Public Information Act in its entirety. The most important changes were stipulations on the right to correction and denial in favor of the injured party as well as a provision for shorter court procedures. The law considerably strengthened the position of journalists, guaranteeing the right to quit a job with fair severance if the publisher/employer changes his/her program conception.

## *Freedom of Information Act*

Until 2003, Croatia was without a freedom of information act (FOIA) which would have guaranteed individuals and the media access to information of public interest.

In February, the NGO coalition, including the CHC, acted publicly for the declaration on the "public right to know," urging the government to put this topic on the political agenda, and offering help to civil society representatives. The NGO coalition engaged independent law experts to draft a FOIA proposal and conducted several expert discussions on the draft law, as well as provided for international expertise.

The first efforts to campaign for the drafting and adoption of an FOIA were carried out successfully by the CHC and its 16 NGO coalition partners. On 15 October parliament voted for the FOIA, including some amendments proposed by the NGO coalition partners. This was the first case in Croatia in which civil society succeeded in greatly influencing the government's adoption of a law.

However, the adopted version of the FOIA lacked, for example, basic provisions on access to information in cases when that information is officially classified but of public interest.

## *Penal Code: Defamation*

New changes to the Penal Code regarding slander and offence, introduced by the Ministry of Justice, provoked much public criticism. The CHC's Council for the Media wrote an open letter to the prime minister and president of the parliament criticizing the changes and urging for the decriminalization of free speech.

Together with the Croatian Journalists Association, the CHC regretted the fact that NGOs had not been directly involved in drafting the legislation. Further, they asked the Ministry of Justice to withdraw those provisions which were not in line with international law. These concerned particularly proposals regarding defamation and libel. The suggestion to drop criminal charges for harming the respect of the president (proposed by the president himself, too) was accepted. The suggestion to keep article 203 in the existing Penal Code, which favored journalists involved in libel suits and at least not to worsen their defense—if not decriminalize public speech in general—was not adopted. Regrettably in July parliament passed amendments to the Penal Code, criminalizing defamation as well as dissemination of "false and disturbing rumors." According to the amendments, defamation and insult were to be punished even with imprisonment. Moreover, parliament failed to accept the proposal not to punish civil servants for the disclosure of information of public interest.

The CHC filed a request to the president of the Parliamentary Board for Information and the Media and urged the body not to adopt the defamation order, which would harm journalistic and media freedoms. The CHC also wrote an open letter to the prime minister and president of the parliament, urging them to amend disputed article 203 before the law would come into force in December.

Additionally, in August the CHC filed a request to the Constitutional Court to revise the parliamentary decision on the adoption of changes to the Penal Code, taking into consideration that these changes had been adopted illegally, without the necessary number of votes (58 instead of 76). The CHC based this request on the argument that the law dealt with basic human rights and therefore should be passed by a majority of votes. On 27 November the Constitutional Court ruled in favor of the CHC's request and annulled the adoption of changes to the Penal Code, as a result of which the code did not come into force in December.

#### *Media Coverage of Elections 2003*

The CHC, with the financial support of the OSCE Mission to Croatia, organized a successful monitoring of media coverage of the parliamentary elections in late 2003. The CHC monitored news programs and paid campaign time on two TV channels (national TV and the private TV channel Nova), two radio stations (national radio and the private radio Obiteljski) as well as six main dailies.

Three weeks before the start of the election campaign there were only a few cases of hate speech, while so called state/nation building themes slowly disappeared. Results showed a balanced coverage of both the ruling and opposition parties and this balanced coverage continued during the election period itself.

One controversial issue, however, was the rules issued by parliament during the pre-election period. The parties in parliament imposed their own rules on private TV broadcasters regarding coverage of the election campaign and party presentation in the media. Since the number of political parties and candidates for the posts in parliament was enormous (89 parties and 5,245 candidates) it was impossible to give each candidate equal time for presentation not only on HRT but especially on private commercial network (TV Nova and OTV). TV Nova filed a complaint before the Constitutional Court claiming that the rules of market economy had been violated. The CHC also filed a complaint with the Constitutional Court on this matter arguing that the obligation of equal treatment for all 5,000 actors was absurd and violated the independence of the media.

Acting on the complaints brought by TV Nova and the CHC, parliament watered down its first version of the rules governing the coverage of election campaigns: TV Nova refused to obey the rules but did not face sanctions.

#### **Judicial System and Independency of the Judiciary**

The functioning of the Croatian judicial system remained a serious problem throughout 2003. In the most serious cases the delays in some branches of the system were so long as to undermine the rule of law. The approximately 1,400,000 backlog of pending cases (a high percentage of which dealt with the failure to enforce court rulings) was still not properly dealt with. Also, the judiciary continued to lack suitably qualified staff and an appropriate professional training system.

The general public in Croatia continued to have a negative view of the judiciary: it was perceived as slow, unprofessional and politically influenced. Public opinion was mainly formed by what was read, heard and seen in the media on court cases, investigations led by

prosecutors and the judicial system in general, and information was frequently misleading. In light of this, CHC in co-operation with the Netherlands Helsinki Committee started up the project "Strengthening the Legal Culture in Croatia: Improvement of the Relations between the Judiciary and the Media." This project aimed at addressing this issue and at improving relations between the judiciary and the media.

Acknowledging fundamental problems in the functioning of the judiciary, the government adopted a green paper in November 2002 on the reform of the judicial system. It was followed up in June 2003 by an operational plan for its implementation. The reform plan gave a brief outline of the current situation in the Croatian judiciary. Any true judicial reform, however, requires changes in mentality not only on the part of legal professionals, but also of those seeking justice through the courts, stated the CHC. Judicial reform must be coordinated with the reform of other branches of state authority (including police and other administrative bodies) responsible for implementation of the law. The need for such coordinated reform was demonstrated by the 13 November 2003 judgment by the European Court of Human Rights (ECtHR) in the case of *Napijalo v. Croatia*, which found that Croatia had violated two provisions of the European Convention on Human Rights (ECHR) at least in part due to the fact that "there was no co-operation or co-ordination both within the police and between the police and the judicial authorities."

The failure to carry out court decisions presented a serious problem for the administration of justice and contributed to the judicial backlog. The Constitutional Court used more frequently its authority to rule against the excessive length of civil proceedings in the lower courts, but also experienced increasingly significant delays in issuing its own decisions, despite a general rule that it should decide cases within one year.

Part of the efforts to diminish the backlog included the adoption of amendments to the Law on Civil Procedure, with provisions that were intended to expedite procedures. Furthermore, parliament adopted amendments to the Law on Inheritance and the Law on Mediation to speed up proceedings.

It was generally assumed that all lawyers who had graduated from universities in the former Yugoslavia after 1945 had considerable gaps in their education, the most important being the absence of any awareness of the rule of law, separation of powers and human rights. Generations of lawyers were trained without the necessary abilities to interpret and apply international human rights law. In view of this, the CHC in cooperation with regional partner organizations, organized the second phase of training programs on the project "Retraining Lawyers in Transition Countries of South East Europe." Besides providing the trainees with necessary knowledge and skills in these fields, it was of great importance to familiarize the participants with the jurisprudence and actual practice in their countries and abroad, as well as with the decisions of the ECtHR and supervisory bodies of the international human rights treaties.

### **Freedom of Religion**

The situation regarding religious freedom had improved but remained unsatisfactory in 2003. An important development was the Law on Legal Status of Religious Communities which permitted all "traditional" confessions to develop freely, found schools and carry out humanitarian work on an equal basis.

However, the Roman Catholic Church as the most significant religious community in the country retained a privileged status. This originated from an agreement signed between the Holy See and Croatia. While other religious communities had over the course of the past year signed agreement with the state (as provided for by the Law on Legal Status of Religious

Communities), these agreements did not guarantee similar privileges to those communities as enjoyed by the Roman Catholic Church.

The status of freedom of religion in the country was still assessed according to the standards of the Roman Catholic Church, which in practice resulted in distortions in the treatment of religious communities. Moreover, the Roman Catholic Church tried to impose itself as a social arbiter, and also indirectly promoted certain political projects and parties, mostly of nationalist and conservative orientation.

In addition, issues regarding the return of property that had belonged to religious communities had not been addressed by the time of writing. Legal regulations were generally accepted, but they were impossible to carry out in practice. This was due to the fact that rectifying the old injustice (from the Communist times when church property was confiscated and nationalized) would result in large numbers of innocent people and their families suffering because they lived in the houses and apartments which used to belong to the church. It was argued that any return of church property would need to be linked to solving their housing situation. No acceptable solution was found to solve the problem and all religious communities expecting the return of property remained impatient.

### **Intolerance, Xenophobia, Racial Discrimination and Hate Speech**

In 2003 the level of intolerance slightly increased due to the activities of some individuals, groups and organizations. Racial intolerance was promoted mainly by groups of skinheads while some parts of the Catholic Church openly promoted extreme nationalist views and intolerant attitudes towards religious minority groups as well as atheists. In a similar vein, some Catholic conservatives, as well as others, expressed strong intolerance of groups leading alternate lifestyles, including homosexuals.

Due to the electoral campaign in November, public hate speech increased somewhat especially in the media. In general, though, there was a decrease of hate speech in comparison with 1990s.

In spite of numerous reports of attacks on citizens and foreigners of different religions and races, according to police data, only three criminal acts were registered in 2003. Police failed to confirm the suspicion that the perpetrators were skinheads.

- On 6 August, two young skinheads dressed in black beat up Karim Hassan, the 11-year-old son of an Egyptian diplomat, in Zagreb. The police immediately arrested the perpetrators as well as the group to which they belonged. Due to the fact that almost all of them were minors, only one was charged.
- The same day in a local tram, a family of Austrian nationals of Pakistani origin were beaten up. A few days earlier, four students from Egypt, Oman, Japan and Kyrgyzstan had been beaten up by a group of five to ten 17-year-old skinheads on a student campus.
- There were also three reported cases of street violence consisting in the demolition of a store owned by Chinese.

Following the case of Karim Hassan, the Croatian government expressed a public apology and the police established the Department for Extreme Violence and Terrorism. Generally though, the police did not react properly (they usually merely registered the cases) and the courts did not hand down adequate sentences.

Roma often fell victim to racial intolerance and violent attacks. According to police reports, five attacks qualifying as criminal plus two misdemeanors were committed at the expense of the Roma people. Judging by the everyday situation in Croatia, there was no doubt that in reality the number of attacks against Roma was much greater than that recorded in police data.

The media was largely responsible for the spreading racial intolerance and promoting violence. Some media outlets, in order to get the highest public ratings, offered space to anonymous extremists to express freely their intolerant ideas. Furthermore, most journalists were willing to report, alongside the name of the perpetrator, their ethnicity, in cases in which the perpetrators were not members of the majority population.

Ethnically motivated incidents against Serbs were recorded more often than before, which apparently was mainly due to increased awareness under pressure from the EU.

- A Belgrade band "Bajaga i Instruktori" held a concert in Split on 10 August, during which a couple of tear gas-cylinders were thrown into the public and the concert was immediately stopped. The security guards in the entrance wore T-shirts with a big letter "U" but it was not possible to prove that the "U" was used solely to stand for "Ustasha" or whether it meant something else.<sup>2</sup>
- On the occasion of the Memorial tournament of the Croatian defenders in Vukovar, a 14-year-old boy of Serb origin was banned from the local soccer team FC Vukovar on account of his ethnic belonging. According to the press this was approved by the Vukovar based organizations established after the "Homeland War" (war widows and disabled persons announced that Serbs were "not allowed" to play soccer on the Memorial Day of the Croatian Defenders). A shocking factor was that the local authorities did not issue any statement regarding the incident.

Another case dealing with ethnically motivated hatred and intolerance against the Serb population in Croatia, was the well-known trial of Gordana Dumbovic, former mayor of the city of Petrinja, who was charged on account of her highly derogatory speech towards Serbs and Roma on the local radio station during the electoral campaign 1999/2000. After more than two years of trial the municipal court of Kutina cleared her of all charges.

### **Returnees and IDPs**

In 2003 the government adopted several legal documents regarding implementation of the return process, property repossession and reconstruction.

The Ministry for Public Works, Reconstruction and Construction started implementation of the June 2000 Amendments to the Law on Reconstruction regarding destroyed residential property and in July three new Laws were adopted.<sup>3</sup>

---

<sup>2</sup> "Bajaga" was not the first Serbian group to hold a concert in Croatia and particularly in Split. Before it other bands such as "Elektricni orgazam" and "Rambo Amadeus" played in Split too without any incidents or problems.

<sup>3</sup> The Law on the Responsibility for Damage Caused by the Terrorist Acts and Public Demonstrations, the Law on the Responsibility of the Republic of Croatia for the Damage Caused by Members of the Croatian Armed Forces and Police During the Homeland War, and the Law on Responsibility of the Republic of Croatia for Compensation Resulting from Damage Caused in the Former FRY for which the Former FRY was Responsible.

During the parliamentary procedure of adopting the above-mentioned laws, the CHC criticized several discriminatory provisions, including the one stating that refugees of Serb ethnicity could not apply for compensation if they did not possess Croatian citizenship. This provision was deleted from the law in its later stage. Another discriminatory and restrictive provision referred to the compensation process in cases of responsibility for damage caused by terrorist acts. According to the law, the right to compensation was possible only in cases of death, physical injuries or damaged health. However, the main obstacle lay in the provision that allowed for retroactive enforcement of the law and its application in court procedures initiated prior to its enforcement, thereby violating article 84 of the Constitution.

Furthermore, the process of return of occupied private property continued but at a very slow pace. On 17 April, the government adopted a decision on compensation to owners of occupied property. The decision referred to the procedure and amount of compensation to be paid to owners whose property was allocated by the government for the accommodation of others under the 1995 Law on Temporary Take-Over and Administration of Specified Property but was not returned within the defined deadlines. The main reason for the slow pace of property return was the inefficiency of the judiciary and the fact that it tended to favor occupants over the legal rights of owners.

The situation of displaced tenancy rights holders improved following the introduction of a government decision in June 2003 according to which accommodation would be provided for persons outside the Areas of Special State Protectorate, i.e. in former Krajina, parts of Croatia affected by the war which were under Serbian occupation. Implementation had not commenced at the time of writing, but the CHC is part of the coalition of NGOs pushing the government to fulfill its promises.

The agreement by which the government committed itself to pay the rent to the owners of the appropriated property remained unsatisfactory, and there were only a small number of people who actually fulfilled their obligations, among other things, by signing the agreements to this effect. The owners of the property had to renounce their rights to seek interest rate and other compensation for damages, and they were obliged to drop any charges currently underway.

The CHC continued to work with refugees and returnees on an individual basis. The CHC also introduced some special programs for possible returnees still settled in Serbia and Montenegro and Republika Srpska. The main aim of the project was to collect and disseminate accurate information regarding procedures, administrative obstacles, and all other difficulties faced by them upon their return. The CHC specifically focused on the elderly population because of the fact that the UNHCR provided similar help exclusively for people younger than 65.

## **Labor Rights**

In 2003, the CHC, among other things, made a special effort to resolve labor disputes, especially regarding the payment of compensation and other guaranteed labor rights.

Following the government's parliamentary procedure regarding changes to the Labour Law, CHC made moves to retain positive provisions. Based on the new draft, the rights of workers and other rights dealing with labor relations would be significantly decreased, including payment of smaller amounts of compensation, shortening of deadlines for dismissal, etc. In an attempt to maintain at least a minimum of the existing labor rights, guaranteed by the previous Labor Law, the CHC organized a round table on the topic, to which trade union representatives, representatives of the relevant ministries, the State

Inspectorate, the Croatian Fund for Health Insurance and the Croatian Retirement Fund were invited.

There was noticeable progress in the Bankruptcy Law following the introduction of amendments. In comparison to the previous Bankruptcy Law, former employees who according to their compensation belonged to the group of second grade payments under the new law entered the group belonging to first grade payments.

The application of the Convalidation Law also provoked numerous debates regarding the failure of workers to accomplish their rights to retirement, social insurance and similar. Since a large number of insured persons had not managed to solve this problem, and since complaints regarding the recognition of their status during the war period remained unresolved, a series of actions were undertaken in order to apply the law as flexibly as possible in practice.

There was a common problem regarding the realization of the right to payment of remaining salaries and compensation for the former employees of firms, which were undergoing bankruptcy procedures. The main obstacle was the bankrupt firms' lack of financial means. Several hundreds of former workers of large companies such as "Željezara Sisak," "Vama," "Nama" and others turned to the CHC for help.

In addition to the abovementioned complaints, there was also a smaller number of complaints regarding relations between employers and employees. There were also problems within schools, where some teachers complained of violations of their rights by headmasters.

Individual problems regarding denial of rights stemming from labor relations also occurred in private firms as well as in state institutions. Individuals often complained of the working conditions in their workplace, non-payment of salaries, threats of dismissal and failure of employees to pay compensation.

Actions against dismissal tended to last for many years and those few who managed to have their rights confirmed by the competent court were then faced with an entirely different set of problems. Employers often failed to respect the court decisions, and found various ways of preventing employees from returning to their former place of work.

The CHC had good working relations with the competent ministries, such as the Ministry of Work and Social Care, the Ministry of Justice as well as the State Inspectorate – Inspection of Work. Consequently, CHC's proposals regarding the new Labor law draft were partly adopted.

### **Environmental Rights**

During the year the CHC became involved once more in activities concerning health protection, and protection of the environment and a number of civil organizations were involved in sending complaints to the competent bodies on these issues.

Most complaints referred to the former cement factories Koromacno in Istria and CHIOS in Zagreb, which incinerated hazardous waste, as well as "Dalmacijacement" in the vicinity of Split. Since these companies and factories did not have appropriate filters, they emitted a large quantity of dangerous substances into the atmosphere.

The governmental order regarding emissions from stationary sources,<sup>4</sup> according to which polluters were allowed to emit a larger quantity of emissions, while they should have been reduced, remained a source of controversy. In spite of the fact that citizen's organizations had turned to the competent bodies on several occasions, significant steps were not taken.

The CHC initiated a series of activities in order to present the issue to the public. The problem was also recognized by the Ombudsman's Office, whose deputy warned of the need to find an appropriate solution.

---

<sup>4</sup> NN-105/02