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CROATIA RETURNS UPDATE

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SUMMARY

On September 3, 2003, Human Rights Watch issued a comprehensive, 61-page report, *Broken Promises: Impediments to Refugee Return to Croatia*, describing the situation of displaced Croatian Serbs. The report argued that tangible progress on returns should be a precondition to European Union (E.U.) membership for Croatia. Human Rights Watch conducted extensive field research in Croatia in February 2004 to assess developments since the release of the report. The purpose of this update is to summarize the findings of the follow-up research. Human Rights Watch's main conclusion is that there have been no significant changes on the key issues affecting refugee return since September 2003.

The Croatian government has made some progress on the repossession of Serb properties in some parts of Croatia, and has set deadlines for the resolution of the remaining housing problems. Progress continues to be slow, however, and formulating deadlines does not guarantee that the deadlines will be met in practice. Evictions of temporary occupants with homes in Bosnia and Herzegovina remain sporadic, and the looting and destruction of vacated property continues unabated. Legislation to provide housing to Serbs who lost tenancy rights has yet to be implemented. War crimes arrests and trials remain marred by ethnic bias, and deter return even for those who have not been implicated. Finally, little or no progress has been made in tackling employment discrimination or providing compensation for lost pension payments.

On December 23, 2003, the Croatian parliament elected a new cabinet, following parliamentary elections on November 22. The cabinet is dominated by members of the Croatian Democratic Union (*Hrvatska Demokratska Zajednica*, or HDZ), which returned to power after four years in opposition. HDZ-dominated governments under President Franjo Tudjman hindered the return of Serb refugees in the five years that followed the end of war in Croatia in 1995.

Both before the elections, and since taking office, the new Croatian Prime Minister, HDZ party leader Ivo Sanader, has made repeated calls for Serb refugees from Croatia to return to the country, and promised to assist them in doing so. On December 18, 2003, as Prime Minister-designate, Sanader signed an agreement with Serb representatives in the Croatian parliament, pledging to make improvements for the Serb minority in various sectors of political and social life. The new prime minister also made an important symbolic gesture by using a traditional Serb greeting on the occasion of the Serb Orthodox Christmas in January 2004.

While these gestures and pledges are significant, the true test of the commitment and ability of the new Croatian government to facilitate refugee return, and to respect the rights of ethnic Serbs, remains concrete activity on the ground. It is of utmost importance that the international community, and in particular the E.U., submit to close scrutiny the return-related policies of the Croatian government. Croatia's aspiration to join the European Union has created a historic momentum for reform and provides the

E.U. and its individual member states with an opportunity and an obligation to encourage Croatia to fulfill its human rights commitments.

The European Union has identified improvements in the Croatian government's policy regarding the return of Serb refugees and full cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY) as preconditions for deepening of relations with Croatia. In the April 2004 opinion on Croatia's application for E.U. membership, which recommends that negotiations for accession should be opened with Croatia, the European Commission highlights the need for Croatia to "accelerate efforts to facilitate the return of Serb refugees from Serbia and Bosnia and Herzegovina" and noted that "Croatia needs to take measures to ensure that the rights of minorities, in particular of Serb minority, are fully respected."[1]

IMPEDIMENTS TO RETURN

According to the Croatian government, approximately 300,000 ethnic Serbs left their homes during the 1991-95 war. Most left for Serbia and acquired refugee status there, but 50,000 Serbs remained at the end of the war in Eastern Slavonia, as internally displaced persons.[2] As of late 2003, according to the government, 108,000 Serbs had registered as returnees. The number of returnees who actually stay in Croatia, however, is far below this number: field surveys conducted by the Organization for Security Cooperation and in Europe (OSCE) Mission to Croatia, and nongovernmental organizations (NGOs) acting as implementing partners for the office of the United Nations High Commissioner for Refugees (UNHCR), suggest that in most areas only about 60 percent of registered returnees are still in place, with the rest having moved back to Serbia-Montenegro or elsewhere. In some parts of Croatia, the percentage of sustainable returns falls far below 50 percent.[3]

Lack of access to their pre-war homes remains is a key impediment to Serb return. Obstacles range from an inability to repossess property held illegally by temporary occupants, to being unable to receive substitute housing or compensation for lost tenancy rights. Fear of arbitrary arrest on war-crimes charges, and discrimination in employment and pension benefits also deter the return of Serb refugees.

These problems reflect the legacy of persistent ethnic discrimination against Serbs by successive Croatian governments. This view is echoed in reports on Croatia from United Nations treaty monitoring bodies, including the Committee on Economic, Social and

[1] European Commission, Opinion on the application of Croatia for membership of the European Union, April 20, 2004, Com (2004) – 257 final, p. 119.

[2] See: Human Rights Watch, "Broken Promises: Impediments to Refugee Return to Croatia," *A Human Rights Watch Report*, p. 32, Vol. 15, No. 6(D), September 2003. Other displaced Serbs went to Serb-controlled areas of Bosnia-Herzegovina and third countries. Human Rights Watch, "Human Rights In Eastern Slavonia During and After the Transition of Authority," *A Human Rights Watch Report*, Vol. 9, No. 6 (D), April 1997.

[3] This is allegedly the situation in Benkovac and Gracac. Human Rights Watch telephone interview with an OSCE official in Knin, March 2, 2004.

Cultural Rights, the Human Rights Committee, and the Committee on the Elimination of Racial Discrimination.[4]

Until recently, no Croatian government had made a genuine attempt to foster a public opinion more tolerant of the return of Croatian Serbs. Instead, Croatian authorities have consistently prioritized the needs and rights of ethnic Croats—including Croat refugees from Bosnia—over the rights of Serb refugees, internally displaced persons, and returnees.

Repossession of Private Property and Accommodation for Former Tenancy Rights Holders

In February 2004, the new government announced deadlines by which it intends definitively to resolve property-related problems impeding return:

- end of June 2004: repossession of private properties illegally held by temporary users;
- end of 2004: return of all privately owned properties, currently used by temporary occupants, to the owners;
- end of 2004: media campaign and the acceptance of applications for a subsidized housing program for former tenancy rights holders in the areas which were under the control of the government during the 1991-95 war;
- end of 2006: provision of permanent alternative accommodation (*stambeno zbrinjavanje,* which roughly translates as "housing care") for all tenancy rights holders, who meet the requirements set forth by June 2003 government conclusion, in the areas which were under government's control during the 1991-95 war.[5]

An additional deadline was given to Human Rights Watch at a February 2004 meeting with a senior Croatian government representative:

- end of 2005: provision of housing care for former tenancy rights holders, who meet the legal requirements, in areas controlled by Serb rebels during the 1991-95 war (so-called areas of special state interest, previously referred to as "areas of special state concern").[6]

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[4] Concluding Observations of the Committee on Economic, Social and Cultural Rights: Croatia, November 30, 2001, U.N. Doc E/C.12/1/Add.73, para. 12; Concluding Observations of the Human Rights Committee: Croatia, April 30, 2001, U.N. Doc. CCPR/CO/71/HRV, paras. 20 & 22; Concluding Observations of the Committee on the Elimination of Racial Discrimination: Croatia, May 21, 2002, U.N. Doc. CERD/C/60/CO/4, paras. 13 & 15.

[5] *Return of Refugees and Displaced Persons in Croatia: Progress achieved since the beginning of 2003*, statistical overview, February 17, 2004 (obtained by Human Rights Watch from the Croatian Directorate for Expellees, Returnees, and Refugees).

The international community and the European Union in particular, should firmly hold Croatia to the new – and long overdue – deadlines. Past experience dictates caution in approaching the government's pledges, and careful monitoring of its fulfillment. The previous government had committed itself to return of all occupied private properties first by the end of 2002, and then by the end of 2003; both deadlines expired with the government failing to meet the set objectives.

Repossession of Private Property

While Croatia is making some progress in the implementation of the legislation on repossession of property, movement continues to be unjustifiably slow. After the end of the war in 1995, the Tudjman government issued some 19,300 decisions authorizing use of abandoned Serb houses by temporary occupants. As of late 2003, more than 3,300 of these houses were still occupied, effectively blocking the return of their rightful owners.[7]

State attorneys are still not using expedited court procedures for resolving repossession cases, and verdicts are not executed promptly. The OSCE Mission to Croatia has found that, in 2002 and 2003, state attorneys took six months on average to initiate lawsuits at municipal courts after receiving cases from the Directorate for Expellees, Returnees, and Refugees (ODPR). Delays were often due to the incomplete documentation provided by ODPR. It took a further four more months, on average, before the first hearing in the case was scheduled. As of February 2004, only 3 to 3.5 percent of all repossession cases transferred to state attorneys, pursuant to the relevant legislation from July 2002, have been concluded.[8]

The actual repossession rate since July 2002 has been higher than 3 percent, because temporary occupants often leave the property before the court proceedings have been completed.[9] However, the deadlock that results when temporary occupants refuse to vacate remains a problem. During follow-up research in February 2004, Human Rights Watch checked the current status of three repossession cases described in its September 2003 report. All three owners—Dusan Vilenica (from Karlovac),[10] Danilo Stanic (from

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[6] Human Rights Watch interview with Lovre Pejkovic, Head of the Directorate for Expellees, Returnees, and Refugees (ODPR) in the Croatian government, Zagreb, February 26, 2004.

[6] *Return of Refugees and Displaced Persons in Croatia, ibid.*

[7] *Ibid.*

[8] Draft OSCE analysis of property repossession under the July 2002 Amendments to the Areas of Special State Concern, February 2004 (on file with Human Rights Watch).

[9] According to the government, 3,873 properties were returned to their owners during 2003, leaving 3,376 cases still to be resolved. *Return of Refugees and Displaced Persons in Croatia, ibid.* The figures would indicate that more than half of the occupied properties were vacated during the year. The figure is misleading, however, because many official "repossessions" pertained to abandoned properties that were unoccupied. Human Rights Watch interview with international officials in Korenica and Knin, February 2004. Nevertheless, a number of houses—clearly exceeding 3 percent of all occupied properties—were returned to the owners during 2003.

[10] *Broken Promises*, p. 17.

Gracac),[11] and Petar Djuric (from Knin)[12]—have been trying to repossess their homes for six years. As of February 2004, their cases were still pending.[13]
Since the publication of the report *Broken Promises* in September 2003, OSCE representatives monitoring the return process in the field have told Human Rights Watch that housing authorities and state attorneys in some parts of Croatia, including in Ogulin,[14] Pakrac,[15] and Korenica,[16] are making efforts to speed up the process of repossession. In the key return area of Knin, however, property repossession remained "virtually stalled" as of early March 2004.[17] Lack of movement on repossessions, coupled with the ongoing failure to resolve lost tenancy rights (see below), has hampered returns to Knin. The Serbian Democratic Forum registered 950 returns to Knin during 2003, contrasted with 1,260 in 2002.[18]

In November 2003, the authorities resolved one of the most prominent cases of use of a Serb-owned house for business purposes.[19] The house, in the town of Krnjak, belongs to returnee Petar Kunic. The temporary occupant, Vinko Petrovic, used the house as a restaurant.[20] The illegal use of Serb houses for business purposes is particularly striking along the road connecting the capital Zagreb with the Dalmatian coast, where Kunic's house is also located. The new government should promptly resolve other similar cases.

Overall, the pace of repossession remains slow, because authorities have yet to use the full complement of measures available to vacate Serb houses. Most repossession currently takes place only when Croat occupants of Serb properties are allocated a plot and materials by the authorities to construct a house. By contrast, there has been little or no progress toward the eviction of temporary occupants who own vacated and inhabitable property in Bosnia and Herzegovina. Such occupants are ineligible for alternative accommodation and should be promptly evicted.[21] State attorneys have initiated eviction procedures in some areas.[22] However, the procedures through which

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[11] *Ibid.*, p. 21.

[12] *Ibid.*, p. 30-31.

[13] Human Rights Watch interview with an OSCE official in Karlovac, February 25, 2004 (the case of Dusan Vilenica); Human Rights Watch telephone interview with a representative of the Gracac office of the Dalmatian Committee of Solidarity, March 24, 2004 (the case of Danilo Stanic); Human Rights Watch interview with Ratko Gajica, Serb lawyer and member of the Croatian parliament, Knin, February 22, 2004 (the case of Petar Djuric).

[14] Human Rights Watch interview with an OSCE official in Karlovac, February 19, 2004.

[15] Human Rights Watch interview with OSCE officials in Pakrac, February 17, 2004.

[16] Human Rights Watch interview with an OSCE official in Korenica, February 19, 2004.

[17] Human Rights Watch telephone interview with an OSCE official in Knin, March 2, 2004.

[18] Human Rights Watch interview with representatives of the Serbian Democratic Forum office in Knin, February 23, 2004.

[19] Human Rights Watch interview with an OSCE official in Zagreb, February 25, 2004.

[20] Organization for Security and Cooperation in Europe & United Nations High Commissioner for Refugees, *4th Report on Issues of Property Repossession under the July 2002 Amendments to the Law on Areas of Special State Concern (June 2003-September 2003)*, October 28, 2003, p. 13 (fn 24).

[21] See: *Broken Promises*, p. 23-25 (chapter "Unauthorized and Unlawful Use of Property") and p. 26 (chapter "Eviction Procedures").

[22] Human Rights Watch interview with OSCE officials in Pakrac, February 17, 2004; Human Rights Watch interview with representatives of the Serbian Democratic Forum office in Korenica, February 20, 2004; Human Rights Watch interview with an OSCE official in Korenica, February 20, 2004; Human Rights Watch interview with an OSCE official in Karlovac, February 25, 2004.

courts verify the status of the properties in Bosnia are inefficient. As a result, NGOs and OSCE officials monitoring return on the ground are either unaware of any case of eviction on this basis in the areas they monitor,[23] or have registered only a handful of cases.[24]

There has been no progress since September 2003 toward amending legislation which blocks repossession within a reasonable timeframe.[25] Croatian law still protects family members who lived in the same household before the war and now occupy two or more Serb houses; under the law these occupants are entitled to government-provided alternative accommodation before they can be evicted.[26] In a similar vein, temporary occupants who are financially or otherwise able to make other housing arrangements are nonetheless entitled to alternative accommodation prior to eviction.[27]

Looting and Property Destruction

Another lingering problem related to repossession of properties is that temporary occupants often loot and seriously damage Serb-owned houses before vacating them.

The latest information suggests that ODPR officials throughout the country issue oral or written warnings to temporary occupants, to advise them that looting and property destruction are illegal and may lead to a loss of entitlement to housing care.[28] In most returnee areas, however, these warnings have failed to prevent the destruction of premises and the looting of furniture.

State prosecutors are mandated under the law to sue temporary occupants who intentionally damage or loot property that has been allocated to them, but organizations monitoring returns have no knowledge of any such prosecutions taking place.[29] Serb returnees are unlikely to bring court action themselves: the temporary occupants usually continue to live in the same area, making returnees reluctant to sue. Moreover, court proceedings are expensive, and returnees remain skeptical about their ability to obtain justice before the courts.[30]

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[23] Human Rights Watch interview with representatives of the Serbian Democratic Forum office in Petrinja, February 19, 2004. Human Rights Watch interview with an OSCE official in Karlovac, February 25, 2004.

[24] Human Rights Watch telephone interview with a representative of the Gracac office of the Dalmatian Committee of Solidarity, March 24, 2004.

[25] *Ibid.*, p. 25.

[26] See: *Broken Promises*, p. 23 (chapter "Unauthorized and Unlawful Use of Property").

[27] On February 20, 2004, the Croatian government adopted a Conclusion entitling the authorities to accommodate the owner within the excess living space of his house prior to the occupant receiving alternative housing. *See:* Organization for Security and Cooperation in Europe & United Nations High Commissioner for Refugees, *5th Report on Issues of Property Repossession under the July 2002 Amendments to the Law on Areas of Special State Concern (LASSC) (November 2003- March 2004)*, Zagreb, April 19, 2004, p. 3. The measure is likely to have a negligible impact on repossessions.

[28] Human Rights Watch interview with OSCE officials in Pakrac, February 17, 2004.

[29] Human Rights Watch interview with OSCE officials in Pakrac, February 17, 2004; Human Rights Watch interview with an OSCE official in Karlovac, February 25, 2004; Human Rights Watch telephone interview with a representative of the Gracac office of the Dalmatian Committee of Solidarity, March 24, 2004.

[30] See: *Broken Promises*, p. 31.

Accommodation of Former Tenancy Rights Holders

Since 2000, the Croatian government has gradually introduced legislation to provide former tenancy rights holders with government housing assistance.[31] The new government has also undertaken to provide accommodation for all tenancy right holders by the end of 2006. In practice, little progress has been made. Lack of resolution regarding tenancy rights is a key obstacle to the return of Serbs to urban areas, where most of the housing stock was under the regime of tenancy rights.[32]

Thousands of families lost tenancy rights in so-called areas of "special state interest" (those occupied by rebel Serbs during the war).[33] The Law on Areas of Special State Concern, as amended in July 2002, provides for housing care for those former tenancy rights holders who do not own property in other parts of Croatia and former Yugoslavia, and who wish to return to Croatia. In practice, however, implementation of this aspect of the law has not even started. The government is still merely collecting applications for housing care from former tenancy right holders.[34]

Some of the obstacles to implementation would be simple to overcome. A number of apartments in towns like Udbina, Licki Osik, Gracac, or Knin, are still empty. With fairly modest investments the government could repair and allocate them to former tenancy rights holders.[35] It appears that the apartments have not been used for these purposes because the dissolution of socialist enterprises, which owned the apartments before the war, has left the issue of ownership over the apartments unresolved.[36] The government, however, should speed up the process of revision of the ownership status and set out a deadline for its completion.

Elsewhere in Croatia, the implementation of the June 2003 government-subsidized housing program in those areas has yet to begin. More than 23,000 Serb families lost tenancy rights in those areas, which remained under Croatian government control during the war. During 2004, the government will be mainly receiving applications from former

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[31] See: *Broken Promises*, p. 37-39 (chapter "The Government's Failure to Resolve the Tenancy Rights Issue Through Other Means").

[32] It is estimated that of all residential properties in urban areas in the former Yugoslavia, 70-80 percent were under the tenancy rights regime. OSCE Mission to Croatia, "Prethodne informacije po pitanju izgubljenih stanarskih prava u Hrvatskoj" (Background Information Concerning Lost Tenancy Rights in Croatia), November 26, 2001 (version in Croatian), p. 2.

[33] There are no government statistics or reliable estimates of the number of tenancy rights in the areas controlled by Serbs during the war. More than 23,000 Serb families lost tenancy rights in the areas controlled by the government.

[34] Human Rights Watch interview with OSCE officials in Pakrac, February 17, 2004; Human Rights Watch interview with representatives of the Serbian Democratic Forum office in Pakrac, February 17, 2004; Human Rights Watch interview with representatives of the Serbian Democratic Forum office in Korenica, February 19, 2004; Human Rights Watch interview with an OSCE official in Karlovac, February 25, 2004.

[35] Human Rights Watch interview with representatives of the Serbian Democratic Forum office in Korenica, February 19, 2004 (Udbina); Human Rights Watch interview with OSCE officials in Korenica, February 19, 2004 (Licki Osik, Udbina); Human Rights Watch interview with Ratko Gajica, Serb lawyer and member of the Croatian parliament, Knin, February 22, 2004 (Knin); Human Rights Watch telephone interview with a representative of the Gracac office of the Dalmatian Committee of Solidarity, March 24, 2004 (Gracac).

[36] Human Rights Watch interview with an OSCE official in Zagreb, February 25, 2004.

tenancy rights holders.[37] Even when the implementation of the program begins, however, there are concerns that it may be inaccessible to its purported beneficiaries. The purchase price of the apartments available to former tenancy rights holders is not significantly below the market price. In contrast, those former tenancy right holders whom the government had not divested of tenancy right were able to purchase their apartments for a much lower price.[38]

The program's value will be tested during 2004, when government-subsidized housing will be offered for the first time to returnees, according to the Croatian official in charge of returns policies. The official told Human Rights Watch in February 2004 that an unspecified number of newly built state-owned apartments are available in Sisak and Slavonski Brod. During 2004, former tenancy rights holders outside the areas of the special state concern will be given an opportunity to lease or purchase these apartments.[39]

Reconstruction of Damaged or Destroyed Property

While the government has done impressive work in reconstructing damaged or destroyed ethnic Croat houses, reconstruction assistance to returning Serbs began only at the end of 2002. According to the government, a total of 8,000 housing units had been reconstructed as of early 2004, of which 70 percent belonged to Serbs. The government says that another 9,500 housing units are envisaged for reconstruction before the end of 2004.[40]

Current information from the field seems to support the government's claims that a large number of Serb houses are currently under reconstruction.[41] While belated, the current efforts of the government in reconstructing Serb houses are to be commended.[42] These efforts clearly benefit return, as manifested by the numbers of returns in Western Slavonia, which had suffered major destruction of properties: mainly due to

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[37] Human Rights Watch interview with Lovre Pejkovic, Head of the Directorate for Expellees, Returnees, and Refugees (ODPR) in the Croatian government, Zagreb, February 26, 2004.

[38] See: *Broken Promises*, p. 38-39 (chapter "The Government's Failure to Resolve the Tenancy Rights Issue Through Other Means").

[39] Human Rights Watch interview with Lovre Pejkovic, Head of the Directorate for Expellees, Returnees, and Refugees (ODPR) in the Croatian government, Zagreb, February 26, 2004.

[40] *Return of Refugees and Displaced Persons in Croatia, ibid.*

[41] For example, in the municipality of Okucani (in Western Slavonia), where numerous Serb houses were destroyed during the war, the government has recently reconstructed a number of houses. Human Rights Watch interview with OSCE officials in Pakrac, February 17, 2004. Reconstruction is also proceeding "remarkably well" in the area of Benkovac. Human Rights Watch interview with a representative of the Serbian Democratic Forum office in Benkovac, Knin, February 23, 2004.

[42] On March 26, 2004, the Government also granted an additional six-month window to allow for further applications for state-funded reconstruction. See: Decision on Final Deadline For Submitting Reconstruction Applications, *Narodne novine* (official gazette of the Republic of Croatia), no. 41/2004., March 31, 2004. The extension is of limited importance, however, because the vast majority of owners of destroyed properties had already filed the applications in December 31, 2001, when the previous deadline expired.

reconstruction efforts, the number of returnees (around 1,000) in Western Slavonia in 2003 remained at the level of the previous year.[43]

Despite the progress in reconstruction, Serb families continue to face serious obstacles in accessing reconstruction assistance. A number of owners of destroyed or damaged properties are ineligible for reconstruction assistance under the law because their pre-war registered residence does not match the property they now seek to repair. Prior to the war, many Croatian residents had tenancy rights to an apartment as well as a private house, and were usually registered as residing in the apartment.[44] Having lost the tenancy rights through the blatant violation of pre-1991 laws and the imposition of discriminatory legislation in 1995,[45] these individuals have been unable to repossess the apartments or receive substitute housing; at the same time, they are barred from receiving reconstruction assistance from the government.[46]

War Crimes Trials

Human Rights Watch remains concerned that Croatia's judiciary is not currently equipped to handle war crimes cases in a manner that fully respects internationally recognized fair trial standards. Flawed war crimes prosecutions have negative effects on the return of refugees.

There is continuing ethnic bias in war crimes prosecutions. During 2002, for comparable offenses, the OSCE determined that 28 of the 35 persons arrested for war crimes in Croatia were Serbs. Serbs also comprised 114 of 131 of those under judicial investigation; 19 of 32 persons indicted; and 90 of 115 persons on trial. According to the OSCE, this trend appeared to continue in 2003.[47] While a perfect symmetry in the numbers of war crimes indictees from the two ethnic groups—Serb and Croat—might not reflect the actual number of crimes committed, the disproportion in the number of prosecutions brought against Serbs compared to Croats (a ratio of 5:1, on average) is so

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[43] Human Rights Watch interview with representatives of the Serbian Democratic Forum office in Pakrac, Pakrac, February 17, 2004.

[44] Human Rights Watch interview with a representative of the Croatian Helsinki Committee, Knin, February 23, 2004.

[45] See: *Broken Promises*, p. 34-36 ("Termination of Tenancy Rights").

[46] Human Rights Watch interviewed one such family in February 2004, Stana and Radomir Radulovic, a married couple. The couple had fled to Serbia in August 1995, in the wake of Operation Storm in which the Croatian Army regained control over the Knin area. In September 1995, Croatia enacted a law stipulating that tenancy rights in the areas previously held by Serb rebels would be terminated if the tenants did not return to the apartment within ninety days after the law became effective. The Radulovics were afraid to return to Knin, where many elderly Serbs who had stayed were killed. Upon arriving to Belgrade, Mr. and Mrs. Radulovic notified the Croatian Office in Belgrade, as well as the Croatian embassy in the neighboring Hungary, that they had not abandoned their apartment in Knin. The notification was not legally relevant, however, and the couple lost the tenancy right upon expiration of the three-month period stipulated by the law. They returned to Knin area in February 1999. In March 1999, they applied for reconstruction of their summerhouse five kilometers south-east of Knin. On July 14, 2003, the county reconstruction office issued a negative decision, based on the fact that the applicants had not permanently resided in that house. Human Rights Watch interview, Polaca (near Knin), February 23, 2004.

[47] OSCE Mission to Croatia, "OSCE Mission to Croatia report finds ethnic Serbs 'disadvantaged' in war crime trials," press release, March 1, 2004, [online] http://www.osce.org/news/show_news.php?id=3893 (retrieved March 1, 2004).

large that it strongly suggests discrimination. By way of comparison, the Office of the Prosecutor for the International Criminal Tribunal for the former Yugoslavia has issued just over twice as many indictments against ethnic Serbs as against ethnic Croats (a ratio of 11:5) for crimes committed in the Croatian war.[48]

Human Rights Watch learned in April 2004 that the Croatian State Prosecutor is committed personally to reviewing outstanding war crime indictments and supporting evidence, with a view to dropping those indictments for which no credible evidence against the suspect exists.[49] This would be a major improvement in this sensitive area. However, a note of caution is warranted since a statewide review of the outstanding war crime indictments has already been ongoing for two years, while abuses of prosecutorial authority have continued unabated.[50]

Problems arising from ethnic bias also affect the proceedings at trial stage. In 2002, Serbs represented 47 of 52 persons convicted. Conviction rates were much higher for Serbs than for Croats: 83 per cent of all Serbs put on trial for war crimes (47 of 57) were found guilty, while only 18 per cent of Croats (3 of 17) were convicted.[51]

Two recent examples illustrate the problem of ethnic bias in the judiciary. Ivanka Savic, a Croatian Serb woman, was tried before the Vukovar District Court in Croatia and sentenced on January 21, 2004, to four and a half years imprisonment for war crimes. Some of the crimes for which she was convicted—on dubious evidence—include having an ethnic Croat serve and cook for her, and theft. Key legal issues in the case were never examined, including whether the crimes concerned met all the criteria for war crimes, whether there was a nexus between the acts of which the defendant was accused and the armed conflict, and whether other conditions for applying the Fourth Geneva Convention were met. Moreover, while Croatian Serbs have been prosecuted for such crimes, our research has not revealed any cases in which ethnic Croats were prosecuted for war crimes stemming from similar facts.

Svetozar Karan, a Serb returnee to Korenica, was convicted by the District Court in Gospic in July 2003 and sentenced to thirteen years' imprisonment. The court refused to take into account exculpatory evidence and relied only on contradictory statements of witnesses that linked Karan with people who tortured prisoners of war. The highly politicized judgment by the Gospic district court faulted Karan "and his ancestors" for having been "burden to Croatia in the past 80 years"; the judgment also lamented over the five centuries in which "the accused and his ancestors ... together with Turks were coming and destroying Croats."[52]

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[48] See: website of the International Criminal Tribunal for the former Yugoslavia, [online] http://www.un.org/icty/glance/index.htm (retrieved March 1, 2004.)

[49] Human Rights Watch interview with Petar Puliselic, Croatian Deputy State Prosecutor, Zagreb, April 16, 2004.

[50] See: *Broken Promises*, p. 49 (chapter "War Crimes Arrests").

[51] OSCE Mission to Croatia, "OSCE Mission to Croatia report finds ethnic Serbs 'disadvantaged' in war crime trials," press release, March 1, 2004, [online] http://www.osce.org/news/show_news.php?id=3893, (retrieved March 1, 2004.)

[52] Judgment by the District Court in Gospic, no. K-4/03-185, July 30, 2003,p. 23.

On February 5, 2004, the Supreme Court of Croatia overruled the sentence and ordered a retrial.[53] The judgment was also condemned in the Croatian media. Nonetheless, the Karan judgement reverberated strongly in the refugee community in Serbia and Montenegro, apparently dissuading many from traveling to Korenica and the surrounding areas to visit their homes.[54] Moreover, there has been no indication that the judge will be reprimanded or disciplined for his overt expression of racial hatred and the abuse of judicial authority.

Enjoyment of Social and Economic Rights

Employment Discrimination

The European Commission's Stabilisation and Association Report of 2003 stressed the need for the Croatian government to create social and economic conditions aimed at improving the climate for returns and the acceptance of returnees by receiving communities.[55] There has been little or no progress in tackling the persistent employment discrimination documented by Human Rights Watch in its September 2003 report.[56] In most areas of return, virtually no Serb returnees are employed in state, municipal, or town-run services and institutions, such as health centers, schools, child-care centers, post offices, or power-supply companies.

The situation is identical in the judiciary, the police, and the state administration, despite the enactment of the Constitutional Law on the Rights of National Minorities in December 2002, which mandates proportional representation of minorities in these areas.[57] Those few Serbs who do manage to get employment in state or municipal institutions are usually teachers, nurses, or policemen who were displaced within Croatia (in the area of Eastern Slavonia, which remained under Serb control throughout the war), and were already employed there.[58] For the refugees, returning from Serbia and

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[53] "Croatian Supreme Court orders retrial of Serb war crimes suspect," *Deutsche Presse-Agentur*, February 5, 2004.

[54] Human Rights Watch interview with OSCE officials in Korenica, February 20, 2004.

[55] European Commission, *Croatia: Stabilisation and Association Report 2003*, p. 14.

[56] *Broken Promises*, p. 53-55 (chapter "Discrimination in Employment").

[57] The absence of Serb policemen in areas in which Serbs make half the population or more is particularly striking. Examples include Vojnic, Korenica, and Donji Lapac. Human Rights Watch interview with a representative of the Norwegian Helsinki Committee, Sisak, February 19, 2004 (Vojnic); Human Rights Watch interview with representatives of the Serbian Democratic Forum office in Korenica, February 19, 2004 (Korenica); Human Rights Watch telephone interview with an OSCE official in Korenica, February 20, 2004 (Donji Lapac). The situation is identical in areas such as Knin and Pakrac, where Serbs now make up less than half the population, but have returned in their thousands. Human Rights Watch interview with representatives of the Serbian Democratic Forum office in Pakrac, February 17, 2004; Human Rights Watch interview with representatives of the Serbian Democratic Forum office in Knin, February 23, 2004.

[58] At the end of 2003, two Serb policemen from Vukovar transferred to Gvozd. Human Rights Watch interview with a lawyer from the office of the Serbian Democratic Forum in Gvozd, February 19, 2004. Similarly, a Serb judge from Vukovar recently applied for the vacated post of a judge in her hometown of Korenica; the process of selecting the judge is still ongoing, but the Serb candidate received a positive opinion from the competent judicial council in the Licko-Senjska county to which Korenica belongs. Human Rights Watch telephone interview with an OSCE official in Korenica, March 24, 2004.

Montenegro and elsewhere, finding employment in public institutions or the judiciary remains all but impossible.

Serb returnees have been able to find some work in private businesses owned by Croat entrepreneurs, such as a sawmill and a brickyard in Gvozd,[59] a supermarket and a restaurant in Korenica,[60] screw factory in Knin,[61] fish processing factory in Gracac,[62] and the factory producing sparkling-water in Lipik.[63] Even in those businesses, the number of employed returnees is in the dozens rather than hundreds. Many among them are employed as seasonal workers only.

Pensions

The new government has yet to establish a new deadline for submitting requests for the validation of work completed between 1991-95 in areas controlled by rebel Serbs. Most refugees were unaware of the first deadline for submitting the claims, between April 1998 and April 1999, and thus missed it.

Like its predecessor, the new government continues to deny back payment of pension installments for the period after 1991. Those claiming the installments are refugees and returnees who acquired their pensions before the war but did not live in the government-controlled territory when the war began. Most resided in territory controlled by rebel Serbs and received very limited payments from the de-facto authorities.[64] The Croatian government argues that those limited payments amount to a pension and that the same person cannot receive two pensions for the same period. In October 2003, the government's legal argument was supported by a European Court of Human Rights decision.[65]

The government also refused to provide back payments for the inhabitants of Serb controlled territories between 1995, when Serb-rebels pension payments ceased, and whenever the person resumed receiving the Croatian pension (generally upon return to Croatia) The argument of "double payments" cannot apply to the period after 1995, however.

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[59] Human Rights Watch interview with a lawyer from the office of the Serbian Democratic Forum in Gvozd, February 19, 2004.

[60] Human Rights Watch interview with representatives of the Serbian Democratic Forum office in Korenica, February 19, 2004.

[61] Human Rights Watch interview with representatives of the Serbian Democratic Forum office in Knin, February 23, 2004.

[62] Human Rights Watch telephone interview with a representative of the Gracac office of the Dalmatian Committee of Solidarity, March 24, 2004

[63] Human Rights Watch interview with OSCE officials in Pakrac, February 17, 2004.

[64] A lawyer who worked as misdemeanor judge in Gvozd during the war told Human Rights Watch: "My salary during the war sometimes was equivalent of 3 German marks. You can imagine then how low was an average pension at the time." Human Rights Watch interview with Jelena Suznjevic, a lawyer with the Serbian Democratic Forum in Gvozd, February 19, 2004.

[65] European Court of Human Rights, Decision as to the Admissibility of Application no. 15085/02 by Ljuba Cekic and Others against Croatia, October 9, 2003.

RECOMMENDATIONS

In addition to a comprehensive set of recommendations to the Croatian government, Human Rights Watch addressed detailed recommendations to the international community – including to the E.U. and the OSCE – on their role in advancing refugee return to Croatia in its September 2003 report, Broken Promises. Those recommendations, and the need for continued international engagement to progress on return, remain equally important today. Facilitating refugee return to Croatia, however, is fundamentally the responsibility of the Croatian authorities. Only the Croatian government has the power to resolve the issues that currently inhibit return and to live up to its obligations and commitments. The recommendations that follow are therefore directed toward the Croatian government. Human Rights Watch encourages Croatia's international partners, particularly the E.U. and its individual member states, to make Croatia's implementation of the below recommendations an integral part of their bilateral relations with the Croatian government.

To the Croatian Government:

On the Repossession of Property:

- Temporary occupants who refuse housing care (*stambeno zbrinjavanje*) or temporary alternative accommodation offered by the government should be evicted after prompt proceedings meeting due process standards;

- Croatia should fully implement the legislation, adopted in July 2002, which denies entitlement to alternative housing care to temporary occupants who own vacated property in Bosnia and Herzegovina or Serbia and Montenegro;

- Owners of temporarily occupied property should receive just compensation from the state for continued deprivation of the use of property, as provided by law, as well as compensation for deprivation of the use of property in the past;

- Courts should use expedited procedures for resolving repossession cases, irrespective of whether these have been initiated by the state prosecutor or the property owner; verdicts reached under the Law on Areas of Special State Concern should be promptly executed;

- Temporary occupants' use of Serb houses for business purposes should be promptly ended;

- Temporary occupants who use the property only occasionally, while living and working elsewhere, should be deemed multiple occupants and evicted without prior provision of alternative accommodation; the Law on Areas of Special State Concern should be amended accordingly;

- Wherever members of a family lived in the same household before the war and now occupy two or more Serb houses, it should be considered a case of multiple occupancy and the temporary occupants should be evicted without prior provision of alternative accommodation; the Law on Areas of Special State Concern should be amended accordingly;

- Temporary occupants who are determined to be financially or otherwise able to make other housing arrangements should be subject to eviction without prior provision of alternative accommodation.

On Looted and Damaged Properties:

- The government of Croatia should introduce looting and property damage as ex-officio prosecutable criminal offenses tailored for the specific circumstances of occupied property, rather than acts prosecutable in civil proceedings;

- State prosecutors should prosecute temporary occupants who intentionally damage or loot property that has been allocated to them;

- If reasonable grounds exist for concluding that a temporary occupant damaged or looted the property allocated to them, the government should consider that person ineligible for state-provided housing care even before the conclusion of the judicial proceedings.

On Tenancy Rights to Socially Owned Properties:

- Where apartments have not been privatized, original tenancy rights holders should be given an opportunity to repossess them, and they should be offered an opportunity to obtain a protected lease or purchase the apartments on terms comparable to other privatizations;

- Where the apartments have not been privatized because they were destroyed after the termination of the pre-war tenancy rights, the pre-war rights holders should be beneficiaries of the building reconstruction or should be entitled to a similar apartment in another location;

- Where the post-conflict occupant has purchased the apartment, the former tenancy rights holder should be entitled to a property of equivalent value;

- If the former tenancy rights holder does not choose any of the solutions from the above, he or she should be given fair compensation.

On War Crimes Prosecutions:

- Authorities should show a greater commitment to apprehending and trying fairly war crimes suspects irrespective of their ethnic origin;

- Given the high number of dropped charges and acquittals in war crimes cases against Serb returnees in recent years, the authorities should wherever possible pursue provisional release as an alternative to detention of indictees pending trial;

- As part of the government's ongoing statewide review of outstanding war crime indictments and supporting evidence, those indictments for which the state prosecutor does not have a prima facie case should be dropped.

On Employment and Pensions:

- The government should closely monitor employment practices in state institutions and enterprises. Pertinent ministries should intervene in cases in which discrimination on ethnic grounds is apparent and develop a proactive strategy for recruitment and hiring of qualified minority candidates;

- The government should end discriminatory practices and ensure fair employment opportunities for Serb returnees in the state administration and state-owned enterprises;

- Croatia should vigorously implement the July 2003 amendments to the Labor Law, which prohibit discrimination on the basis of ethnic origin, among other grounds;

- With respect to pensions, the government should establish a new deadline for submitting requests for the validation of work completed between 1991-95 in areas under the control of de-facto Serb authorities;

- The government should relax the requirements for proving 1991-95 employment status, by unequivocally eliminating the requirement that only witnesses who have validated their own employment status can testify that the applicant was employed in the same company. Witness statements should be considered to create a rebuttable presumption of the applicant's wartime employment.