Croatia

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HUMAN RIGHTS DEVELOPMENTS

Ensuring minority rights remained Croatia's biggest human rights challenge in 2002. The government remained reluctant to lend strong support to the return of Serb refugees and backed away from its previous record of cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY). At the same time, the government was increasingly committed to pursuing domestic trials to establish accountability for abuses committed against Serbs during the 1991-95 war.

The government failed to enact a long-pending constitutional law on minority rights. In February, the cabinet rejected a draft produced by a working group that included minority representatives. The cabinet then established a new working group, this time without minority representation. As of November, the group had not presented a new draft.

Seven years after the Dayton Peace Agreement brought peace to the region, by the close of 2002 most of the 350,000 displaced Croatian Serbs had still not returned home. Between January and August, 7,800 Serbs returned (primarily elderly persons returning to villages), increasing the total number of returnees to 110,000, according to the United Nations High Commissioner for Refugees (UNHCR). An unknown number of returnees had departed again for F.R. Yugoslavia or Bosnia and Herzegovina after a short stay in Croatia. Property issues remained the principal impediment to sustainable return, with thousands of returnees finding their pre-war homes destroyed or occupied by others. Lack of employment opportunities, often resulting from oblique discrimination, also impeded return.

On July 12, the Croatian Parliament set a December 31 deadline for the government to issue administrative decisions on return of occupied private properties to their owners. For property not returned by this deadline, the government obliged itself to pay compensation to owners who had filed property claims. The amendments disbanded the inefficient local housing commissions and vested the State Prosecutor with the authority to file lawsuits against temporary users who refused to vacate occupied property.

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The amendments left in place, however, a number of obstacles to repossession of property. Most significant among these was the requirement that before evicting temporary occupants the authorities must provide them with alternative accommodation, which often proved difficult. The right to alternative accommodation applied even to temporary occupants who could afford to obtain other housing and to occupants who had previously lived within a single household but since the war had multiple homes thanks to their occupancy of Serb houses.

While eviction of illegal occupants of Serb properties was legally mandated, in most cases in which they refused to vacate the property, the competent housing commissions had not sought court-ordered eviction. Only at the beginning of 2002 did the Supreme Court abandon its earlier position and rule that owners, as well as the local housing commissions, could sue to evict illegal occupants. Even where courts had rendered final decisions in favor of the owner, however, the judgments rarely led to actual repossession.

The situation was even more hopeless for those who had pre-war tenancy rights in apartments. Deputy Prime Minister Zeljka Antunovic stated in November 2001 that during the war Serbs had left their apartments voluntarily, and accordingly, they had as a matter of law lost their tenancy rights. Lovre Pejkovic, head of the government's Directorate for Expelled Persons, Returnees, and Refugees, stated in March 2002 that the government had no obligation to former tenancy rights holders.

Roma continued to suffer discrimination in all fields of public life. The Law on Citizenship required citizenship applicants to have five years of permanent residence and excellent Croatian language skills, preventing many Roma from obtaining citizenship. Romani children were segregated into separate and educationally inferior Roma-only classes. On April 19, a group of fifty-seven Romani children assisted by the European Roma Rights Center filed a lawsuit against the Ministry of Education, the Medjimurje county local government, and four primary schools, charging them with segregation. In October, the municipal court in Cakovec dismissed the lawsuit, arguing that racial and ethnic origin of the Roma children was not the reason for the segregation. Roma in Croatia also continued to face discrimination in obtaining access to housing, health care, and employment.

The judiciary continued to suffer from a large inherited backlog of pending cases, inexperienced judges and staff, and political influence at the local level, particularly among judicial appointees of the late President Franjo Tudjman.

In a step back from its previous cooperation with the ICTY, the government failed to arrest and transfer former general Ante Gotovina to the custody of the tribunal. Gotovina was indicted in July 2001 for crimes during and after the 1995 Operation Storm. On August 23, 2002, the tribunal prosecutor indicted retired general Janko Bobetko for war crimes committed against Croatian Serbs in 1993. The government refused to surrender Bobetko to the court, arguing that the indictment contravened the Croatian constitution.

In a welcome development, the authorities accelerated domestic prosecution of ethnic Croats suspected of war crimes committed during the 1991-95 war. Serious concerns remained about the quality of these proceedings, however. Judicial bias and witness tampering characterized some trials, including the high-profile trial in Split for crimes committed in 1992 in the Lora military prison. The witnesses were scared to speak

openly in the courtroom about the crimes, and the presiding judge demonstrated bias in favor of the accused Croatian soldiers. The trial had not been completed as of mid-November.

The central government generally did not interfere with the independence of the media. In February 2002, the state-owned television station declined to air a program prepared by a renowned journalist on the contemporary heritage of the Ustashas, the Croatian World War II allies of Nazi Germany. In March, the Zagreb District Court upheld two lower court libel decisions imposing fines amounting to U.S.$24,000 on the satirical weekly *Feral Tribune* (distinguished for debunking nationalistic myths and researching war crimes against Croatian Serbs). In one of the judgments, the judge faulted *Feral Tribune* for publishing "cosmopolitan opinions and views."

Croatia continued to be a transit country for international trafficking, but it was also increasingly a country of destination for a growing number of women and children trafficked for sexual exploitation from Bosnia and Herzegovina and the countries of the former Soviet Union.

DEFENDING HUMAN RIGHTS

Robust and professional human rights organizations were active, particularly in the urban centers of Zagreb, Karlovac, Split, Osijek, Vukovar, Knin, and Rijeka. In February 2002, a group of leading civil society groups prepared a shadow report for the U.N. Committee on the Elimination of Racial Discrimination (CERD). In March 2002, the parliamentary ombudsman submitted its annual report. The complaints received by the ombudsman mostly pertained to property and housing rights of Serb returnees, and to pension, disability and medical insurance, and social welfare. The report noted that ministries and administrative bodies continued primarily to ignore the ombudsman's communications. At the July 9 session of the Parliamentary Commission for Constitutional Issues, a representative of the ruling coalition, tacitly supported by other coalition members, strongly criticized the ombudsman for his critiques of the human rights situation in the country.

THE ROLE OF THE INTERNATIONAL COMMUNITY

United Nations

On November 30, 2001, the U.N. Committee on Economic, Social, and Cultural Rights issued its concluding observations and recommendations on Croatia's implementation of the International Covenant on Economic, Social, and Cultural Rights. The committee noted that many post-independence transitional measures were being amended or superseded by new laws that better conformed to international human rights principles. The committee nonetheless criticized continued discrimination, mostly affecting Roma and displaced Croatian Serbs.

In its March 19 concluding observations, the U.N. CERD welcomed Croatia's efforts to promote equality. The committee expressed concern at the continued segregation of Romani children in education and at reports of discrimination against Roma in access to employment, health, political representation, and citizenship rights. The committee also urged Croatia to take effective measures to prevent discrimination, especially against Croatian Serbs, as regards the restitution of their property, tenancy rights,

access to reconstruction assistance, and rights to residency and citizenship.

Organization for Security and Cooperation in Europe

The six-month report of the Organization for Security and Cooperation in Europe (OSCE) Mission to Croatia presented on May 24 welcomed several important government policy statements on property repossession, judiciary reform, regional cooperation, and minority legislation. The report also pointed out the main areas of concern, including return of refugees and property repossession, the issue of tenancy rights, and the state of the judiciary and the rule of law. The mission attempted to develop a dialogue with the government while issuing reports critical of its return-related practices.

Council of Europe

In a March 1 decision in the case Kutic v. Croatia, the European Court of Human Rights (ECHR) addressed a Serb applicant's claim for compensation for property destroyed during the 1991-95 war. The case was typical of thousands of compensation claims filed by Serb property owners in Croatian courts, which had simply stayed the proceedings and failed to act on the claims. The ECHR held that there had been a violation of the right of access to courts and ordered Croatia to pay the applicant €10,000 in non-pecuniary damages. In several other cases, not related to return of Serb refugees, the court also found violations of the right to a fair hearing within a reasonable time and the right to an effective remedy.

On February 6, the Advisory Committee on the Framework Convention for the Protection of National Minorities published its April 2001 opinion on Croatia. The committee found that implementation of the Framework Convention had improved regrettably slowly and singled out employment as the area in which the protection of the Serb and Roma minorities merited urgent attention. In its response, the Croatian government invoked the consequences of war as a factor affecting the rights of minorities, and listed legislative and policy reforms underway to improve its record.

On September 27, Council of Europe Secretary General Walter Schwimmer recalled that full co-operation with the ICTY was one of the commitments that Croatia undertook upon accession to the Council of Europe. He called for a swift and unconditional surrender of the recently indicted General Bobetko to the tribunal.

European Union

Croatia and the E.U. signed a Stabilization and Association Agreement in late 2001. Pending ratification by all E.U. member state parliaments, an Interim Agreement on the trade-related provisions of the agreement was in effect as of January 1, 2002. In its April 4 Stabilization and Association Report, the European Commission identified the continuing weakness of the judiciary and nationalistic pressures in Croatia as the most far-reaching potential threats to the return of refugees, cooperation with the ICTY, and the achievement of overall economic, political, and social reform. At the beginning of October, Javier Solana, E.U. high representative for common

foreign and security policy and Danish Foreign Minister Per Stig Moeller, acting on behalf of the E.U. Presidency, called separately on Croatia to hand over General Bobetko to the ICTY. On October 21, the Council of the European Union "strongly encouraged" Croatia to cooperate fully with the ICTY.

United States

During a July 2002 visit to Croatia, United States Ambassador-at-large for War Crimes Issues Pierre Prosper supported the Croatian government's efforts to conduct domestic war crimes trials and take over cases from the ICTY. Prosper's statements left it unclear whether the U.S. considered it a priority that such domestic trials meet international standards.

In July, the United States requested that Croatia enter into an agreement exempting U.S. citizens from transfer from Croatia to the International Criminal Court. A spokesman for the Croatian Ministry of Interior expressed a negative opinion of the proposed agreement, while the president and prime minister linked Croatia's response to the E.U.'s position. U.S. Ambassador Lawrence Rossin stated in September that U.S. support for a possible Croatian application for NATO membership might depend on whether Croatia signed the agreement.

In October, Ambassador Prosper publicly reminded the government of Croatia of its commitment to cooperate with the ICTY and urged the government to surrender General Bobetko.

RELEVANT HUMAN RIGHTS WATCH REPORTS:

The NATO Summit and Arms Trade Controls in Central and Eastern Europe, 11/02

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