

ECRI REPORT ON CROATIA

(fourth monitoring cycle)

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FOREWORD

The European Commission against Racism and Intolerance (ECRI) was established by the Council of Europe. It is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members, who are appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

In the framework of its statutory activities, ECRI conducts country-by-country monitoring work, which analyses the situation in each of the member States regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI's country-by-country monitoring deals with all member States of the Council of Europe on an equal footing. The work is taking place in 5 year cycles, covering 9/10 countries per year. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, and those of the third round at the end of the year 2007. Work on the fourth round reports started in January 2008.

The working methods for the preparation of the reports involve documentary analyses, a contact visit in the country concerned, and then a confidential dialogue with the national authorities.

ECRI's reports are not the result of inquiries or testimonial evidences. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on an important number of national and international written sources. The in situ visit allows for meeting directly the concerned circles (governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to provide, if they consider it necessary, comments on the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final report of ECRI.

The fourth round country-by-country reports focus on implementation and evaluation. They examine the extent to which ECRI's main recommendations from previous reports have been followed and include an evaluation of policies adopted and measures taken. These reports also contain an analysis of new developments in the country in question.

Priority implementation is requested for a number of specific recommendations chosen from those made in the new report of the fourth round. No later than two years following the publication of this report, ECRI will implement a process of interim follow-up concerning these specific recommendations.

The following report was drawn up by ECRI under its own and full responsibility. It covers the situation up to 22 March 2012 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposal made by ECRI.

SUMMARY

Since the publication of ECRI's third report on Croatia on 14 June 2005, progress has been made in a number of fields covered by that report.

The Constitution has been amended to recognise the existence of 22 national minorities in Croatia.

The Criminal Code has been revised several times. Article 89 defines hate crime; hate motivation is currently an aggravating factor in the determination of the penalty. A new Criminal Code will come into force in January 2013 with a modified definition of hate crime and new provisions on violation of equality and public incitement to violence and hatred. A comprehensive Anti-Discrimination Act was adopted in 2008. It establishes the Ombudsman as the central body for the suppression of discrimination (equality body).

Substantial investments have been made in the Areas of Special State Concern to assist the return of displaced persons, reconstruct damaged or destroyed houses, complete the repossession process of occupied private property and provide housing care to former occupancy/tenancy right holders. The deadline has been removed for the processing of convalidation applications. According to the revised Law on Foreigners, returnees who had residence in Croatia on 8 October 1991 may be granted permanent residence and are deemed to fulfil the required residence requirements for acquiring Croatian citizenship.

There has been a more balanced and impartial approach to the investigation and prosecution of war crimes regardless of the ethnicity of the perpetrators. The quality of war crimes trials has improved.

Significant resources have been invested in addressing inequalities faced by Roma. Pre-school facilities are available to all Roma and the enrolment of Roma children at primary school has increased. Measures are being taken to put an end to separate Roma-only classes. Several Roma settlements have been legalised and infrastructure improvements carried out.

The Asylum Commission was replaced, as of January 2012, by an administrative court in Zagreb dealing with all asylum appeals.

ECRI welcomes these positive developments in Croatia. However, despite the progress achieved, some issues continue to give rise to concern.

Persons belonging to national minorities continue to be under-represented in the public administration and the courts. The low number of Serbs in the police at local level is of particular concern.

Many Roma still do not have personal identity or citizenship documents. The drop out rate among Roma children before completing compulsory primary education is still high and the numbers who continue into secondary school remain extremely low. The failure to bring perpetrators of racially motivated violence against the Roma promptly to justice suggests a reluctance to take such violence seriously.

Legislation has been adopted nullifying indictments for war crimes against prominent Croatian politicians and veterans. A sentenced war criminal was proposed as head of a party list in the December 2011 parliamentary elections.

Integration is a problem for refugees. Language classes are provided only at two licensed centres. Access to employment is difficult and there is no body dealing with housing. Failings in the care of unaccompanied migrant minors include lack of appropriate medical screening, age assessment testing, recording and tracing.

Police misconduct against members of vulnerable groups continues to be reported.

In this report, ECRI requests that the Croatian authorities take further action in a number of areas; in this context, it makes a series of recommendations, including the following.

The authorities should increase their efforts to ensure appropriate initial and continuous training to judges, prosecutors, lawyers and police on applying the new Criminal Code provisions on combating racism and racial discrimination as well as the Anti-Discrimination Act*. The Law on Free Legal Aid should be improved, in close dialogue with all stakeholders, so that vulnerable groups are not denied access to justice on account of complex procedures and prohibitive costs*.

Efforts to resolve all the remaining issues related to the reconstruction of houses, the repossession of occupied property and housing care for occupancy/tenancy right holders should be continued and reinforced. Steps should be taken to increase the recruitment of ethnic Serbs in all public sector employment and in particular the police, especially in areas where there is a significant proportion of Serbs in the population.

The authorities should continue and strengthen their efforts to increase Roma children's participation in all levels of education, but especially at secondary school. They should reinforce the deployment of mobile teams to travel to areas where Roma live and provide assistance to resolve legal status issues. All possible steps should be taken to inform Roma about the importance of birth/civil registration and this should be facilitated in practice. Efforts to improve the housing situation of all Roma, by legalising the remaining settlements and developing the infrastructure or by providing standard housing, should be continued and reinforced.

Politicians should be encouraged to take the utmost care to avoid perpetuating hostility on ethnic grounds. Political leaders on all sides should take a firm and public stance against the expression of racist attitudes.

A comprehensive strategy for all migrants, including asylum seekers and refugees, should be adopted paying particular attention to regulating the care of unaccompanied minors*.

A body fully independent of the police and prosecuting authorities empowered to investigate allegations of police misconduct, including racism or racially discriminatory behaviour, should be set up with a view to ensuring that suspects are brought to justice.

* The recommendation in this paragraph will be subject to a process of interim follow-up by ECRI no later than two years after the publication of this report.

FINDINGS AND RECOMMENDATIONS

I. Existence and Application of Legal Provisions

International legal instruments

1. In its third report, ECRI recommended that the Croatian authorities press ahead with the declaration provided for in Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination. ECRI recommended that the Croatian authorities ratify the Revised European Social Charter, the Convention on the Participation of Foreigners in Public Life at Local Level and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. ECRI also recommended that the Croatian authorities conclude the process of ratifying the European Convention on Nationality as well as the Additional Protocol to the Convention on Cybercrime as soon as possible.
2. ECRI notes that the declaration under Article 14 has not been made but that a special working group has been set up to look into its preparation. It regrets that the Revised European Social Charter, the Convention on the Participation of Foreigners in Public Life at Local Level and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families have still not been ratified by Croatia. The authorities have informed ECRI that there are possibilities for the ratification procedure concerning the Revised European Social Charter to begin in 2012 though no concrete steps have been taken yet.
3. Croatia signed the European Convention on Nationality on 19 January 2005 but has not ratified it. Despite this, the authorities informed ECRI that the principles of the convention are being followed by Croatia. In ECRI's view, ratification of this instrument could help to settle the legal status of certain vulnerable groups, such as Roma (see below and *Vulnerable/Target Groups – National/ethnic minorities - Roma*). ECRI is pleased to note that the Additional Protocol to the Convention on Cybercrime was ratified on 4 July 2008.
4. ECRI recommends again that Croatia ratifies the Revised European Social Charter, the European Convention on Nationality, the Convention on the Participation of Foreigners in Public Life at Local Level and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. It also reiterates its recommendation that Croatia makes the declaration under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination.

Constitutional and other fundamental provisions

- *Constitution*

5. In its third report, while welcoming the adoption of the Constitutional Law of 13 December 2002 and the improvements that it brings, ECRI encouraged the Croatian authorities to find a satisfactory solution to the lack of explicit reference to certain national minorities in the Preamble to the Constitution.
6. Amendments to the Constitution have been adopted and entered into force on 16 June 2010. Chapter one, entitled "Historical Foundations", now explicitly lists all 22 national minorities in Croatia and guarantees their members who are citizens equality with citizens of Croatian nationality. ECRI welcomes this significant development.

7. However, ECRI notes that citizenship is a condition for being recognised as a national minority member. The Advisory Committee on the Framework Convention for the Protection of National Minorities has pointed out that, while this does not violate any international instrument, it is a restrictive element and can have discriminatory effects for those who face difficulties in obtaining Croatian citizenship, particularly Roma and ethnic Serbs¹.

- *Law on Citizenship*

8. In its third report, ECRI urged the Croatian authorities to take all the necessary measures to resolve the problems that long-term residents who are not ethnic Croats have encountered in obtaining Croatian nationality. In particular, naturalisation could be facilitated by abolishing the requirement that any other nationality be renounced and by embracing the concept of dual nationality.
9. Amendments to the Law on Citizenship were adopted on 28 October 2011 and entered into force on 1 January 2012. ECRI observes that, in general, the amendments have increased the restrictions on obtaining Croatian citizenship by naturalisation. According to Article 8, it is now necessary for foreigners to have eight years uninterrupted registered residence in Croatia before applying for citizenship, instead of five. The condition that applicants must have been granted the status of foreigner with permanent residence has been added. Not only is proficiency in the Croatian language and Latin script required but now also knowledge of “Croatian culture and social structure”. This is to be established through a test. The requirement to renounce any other nationality before being admitted to Croatian citizenship has not changed.
10. As concerns, Article 16, which continues to provide more favourable conditions for “a member of the Croatian people” not having habitual residence in Croatia to acquire citizenship, which was highlighted in ECRI’s second and third reports, ECRI agrees with the Advisory Committee on the Framework Convention for the Protection of National Minorities that the rules in question amount to discrimination against non-ethnic Croats who have a strong link with the country because they have always lived there or used to live there for considerable periods of time².
11. Ethnic Croats only have to meet one of the five conditions that all others have to fulfil, namely attachment to the legal system and customs of Croatia. Thus not only do ethnic Croats benefit from simplified procedures to obtain citizenship, they may also retain any other nationality. ECRI considers this a clear case of unequal treatment based on ethnic origin and regrets that the authorities did not take the opportunity to change these discriminatory provisions during the recent amendments.
12. ECRI takes note of two positive elements in the new law. Firstly, persons over the age of 60 are exempt from the requirement of proficiency in the Croatian language and Latin script and knowledge of Croatian culture and social structure and the associated test. This will benefit in particular elderly members of the Roma population, many of whom are illiterate.
13. Other Roma, on the other hand, could experience greater difficulties acquiring citizenship than before. While it remains to be seen how the provisions on language and culture will be applied in practice, ECRI has been assured by the authorities that, under the previous system and since August 2007, no application

¹ See Advisory Committee on the Framework Convention for the Protection of National Minorities, Third Opinion on Croatia, adopted on 27 May 2010, ACFC/OP/III(2010)005.

² Ibid, §§ 79 and 82.

for citizenship by Roma has been rejected on the grounds of not possessing knowledge of the Croatian language and Latin script.

14. ECRI encourages the authorities to ensure that the new provisions of the Law on Citizenship relating to proficiency in the Croatian language and Latin script and knowledge of Croatian culture and social structure do not unfairly disadvantage the Roma population.
15. Secondly, ECRI welcomes the new provisions that deem persons who, on 8 October 1991 had their habitual residence in Croatia and who have been granted permanent residence, to fulfil the required residence conditions for acquiring Croatian citizenship. This should ease the situation for returnees since, according to Article 94 of the new Law on Foreigners, which also entered into force on 1 January 2012, permanent residence may be granted to returnees who had residence in Croatia on 8 October 1991. They will therefore be able to apply for citizenship rapidly, as long as the other conditions set by Article 8 are met. ECRI commends these two parallel developments which will have important effects in other areas, such as access to social welfare services.
16. In its third report, ECRI recommended that, among the measures that could be taken to make it easier for long-term residents to acquire Croatian nationality, the Croatian authorities include information campaigns, particularly for those sections of the population who have the most difficulties, such as Roma, Bosniaks, Serbs and other minority groups.
17. ECRI is not aware of any such campaigns being carried out. Since the provisions of the Law on Citizenship and the Law on Foreigners have very recently been amended to the advantage of certain groups of persons, namely returnees and elderly Roma, ECRI considers that it would be important to reiterate its previous recommendation.
18. ECRI recommends again that the Croatian authorities ensure that the new rules on acquiring Croatian citizenship are made known to the public, especially to returnees and elderly Roma, through information campaigns.

Criminal law provisions

19. In its third report, ECRI made a number of recommendations related to criminal law. It encouraged the authorities to take account of the sections on criminal law provisions contained in its General Policy Recommendation No. 7 as part of the current revision of the Criminal Code. In particular, the law should make it a criminal offence to create or lead a group which promotes racism³ and should provide that racist motives constitute an aggravating factor in ordinary offences. ECRI recommended that the authorities duly implement the new provisions of Article 174 of the Criminal Code aimed at strengthening action against racism and encouraged them to mount an information campaign aimed at members of the judiciary and the general public about these new provisions.
20. A number of changes have occurred in the area of criminal law since ECRI's third report. Firstly, in 2006, Croatia amended the Criminal Code and introduced the concept of hate crime. Article 89 defines this as "any criminal act according to the Criminal Code, committed by reasons of hatred towards a person on the basis of his/her race, skin colour, sex, sexual orientation, language, religion, political or other belief, national or social background, property, birth, education, social

³ According to General Policy Recommendation No. 7, racism is the belief that a ground such as "race", colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons or the notion of superiority of a person or a group of persons.

status, age, medical status or any other characteristics". ECRI notes that citizenship⁴ is missing from this list. A hate crime in the Croatian legal system is not a criminal offence in itself; Article 89 can only be invoked in conjunction with another offence. According to the authorities, this provision allows for hate motivation on one of the above-mentioned grounds to be taken into account as an aggravating circumstance for the determination of the penalty.

21. Secondly, Article 174 of the Criminal Code on "racial and other discrimination" has been amended several times, most recently in 2008 when the minimum penalty of imprisonment for dissemination or making accessible to the public through a computer system material in which genocide or crimes against humanity are denied, diminished, approved or justified was raised from three months to six months.
22. Thirdly, a new Criminal Code was adopted on 21 October 2011 and will come into force on 1 January 2013. The authorities informed ECRI that the EU Council Framework Decision 2008/913/JHA, the United Nations Convention on the Elimination of All Forms of Racial Discrimination and the Council of Europe's Additional Protocol to the Convention on Cybercrime, as well as the recommendations made by ECRI in its third report, were all taken into account in the drafting of the relevant criminal law provisions. Moreover, the process involved an open consultation with the public via an Internet site and with civil society organisations.
23. Article 87 of the new Criminal Code defines a hate crime as "a criminal offence committed on account of the race, colour, religion, national or ethnic origin, disability, gender, sexual orientation or gender identity of another person". The list of grounds is more limited than under the previous Article 89 (see above) and again does not include citizenship. The provision stipulates that unless a more severe penalty is explicitly prescribed for the criminal offence in question in the new Criminal Code, such conduct shall be considered as an aggravating circumstance. ECRI is unsure how this will work in practice as it considers that racist motivation should always be taken into account as an aggravating circumstance in the commission of any criminal offence.
24. The new legislation also contains other provisions related to ECRI's mandate, such as "violation of equality" (Article 125) and "public incitement to violence and hatred" (Article 325). ECRI notes that neither of these articles refers to citizenship in their list of grounds.
25. ECRI regrets one other element which has not been reflected in the new Criminal Code. Although Article 328 prohibits the organisation or direction of a criminal association, the law does not explicitly make it a criminal offence to create or lead a group which promotes racism (see ECRI's General Policy Recommendation No. 7, paragraph 18 g)).
26. ECRI recommends that the Croatian authorities amend the new Criminal Code to include citizenship as a ground in all the relevant articles and to make it an offence to create or lead a group which promotes racism, as in paragraph 18 g) of its General Policy Recommendation No. 7.

⁴ ECRI understands the term "citizenship" in the same way as "nationality", as defined in Article 2 a) of the European Convention on Nationality: "nationality means the legal bond between a person and a State and does not indicate the person's ethnic origin" (see § 6 of the explanatory memorandum to ECRI's General Policy Recommendation No. 7).

27. In general, however, ECRI commends Croatia's considerable efforts to establish comprehensive criminal law provisions against racism and racial discrimination.⁵ As these have only recently been adopted and will not enter into force for some time, ECRI cannot comment on how they will be applied in practice.
28. Finally, ECRI notes that the Anti-Discrimination Act (see below) contains a number of misdemeanour offences which are sanctioned by fines. These include hurting a person's dignity with the aim of intimidating or creating a hostile, degrading or offensive environment on the grounds of a difference in, among others, race, ethnic affiliation, colour, language and religion, and placing in a less favourable position a person who reported discrimination or who participated in proceedings based on discrimination.

Civil and administrative law provisions

29. In its third report, ECRI recommended that the Croatian authorities continue tightening their civil and administrative law to combat racial discrimination. It also emphasised that the prohibition of direct and indirect racial discrimination must apply to all public authorities and to all individuals and corporations, whether in the public sector or private sector, not only in employment but also in other areas such as education, training, housing, health, social protection, public goods and services, public places and the pursuit of economic activity.
30. ECRI welcomes the adoption by Croatia of the Anti-Discrimination Act in July 2008, which entered into force on 1 January 2009. This reflects the standards set in the Racial Equality Directive (2000/43/EC) and the Employment Equality Directive (2000/78/EC) and provides a clear legal basis for the protection against direct and indirect discrimination on racial, ethnic, national or religious grounds, among others. The list does not include citizenship as a ground; while this is not required by the above directives, ECRI considers it an important ground. The Act applies to the actions of all State bodies, bodies of local and regional self-government units, legal persons vested with public authority and all natural and legal persons. It provides for civil, criminal and misdemeanour liability.
31. The Act covers many of the elements set out in ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination. ECRI is pleased to note that the law contains provisions on segregation and harassment and on sharing the burden of proof in civil proceedings. There is also a provision on "positive actions" (Article 9) by which "the placing in a less favourable position shall not be deemed to be discrimination" where the aim is to improve the status of ethnic, religious, language or other minorities. Article 11 provides for the entitlement to compensation for victims of discrimination for both pecuniary and non-pecuniary damages. Moreover, NGOs and other bodies with a legitimate interest in combating racism and racial discrimination are entitled to intervene as third parties, with the plaintiff's consent. However, unlike in ECRI's GPR No. 7, they may only initiate civil cases in legal actions concerning the collective interests of a certain group, where "the defendant's conduct has violated the right to equal treatment of a larger number of persons who predominantly belong to the group" (Article 24); they cannot initiate a legal action in the case of violation of equality of a single individual.

⁵ According to General Policy Recommendation No. 7, racial discrimination is any differential treatment based on a ground such as "race", colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification.

32. ECRI recommends that the authorities amend the Anti-Discrimination Act to include citizenship as a ground and to allow NGOs and other bodies with a legitimate interest in combating racism and racial discrimination to bring civil cases, as in ECRI's General Policy Recommendation No. 7.
33. The Ombudsman's 2009 Activity Report noted a negligible number of court proceedings under the Anti-Discrimination Act, which makes it difficult to draw conclusions on the impact of this law so far (see below). Although steps have been taken to raise awareness of the law (see *Education and awareness raising*), ECRI considers that the slow pace of application could be due to lack of sufficient education of legal professionals on the provisions of the Anti-Discrimination Act and in particular deficiencies in recognising discriminatory practices. ECRI has issued a recommendation in the section below related to training.

Data on application of the criminal, civil and administrative law provisions

34. According to the Ministry of Interior's 2009 statistics on hate crime, there were 17 ethnically motivated cases in that year, out of a total of 32 cases of hate crime recorded by the police (OSCE Office for Democratic Institutions and Human Rights, *Hate Crimes in the OSCE Region: Incidents and Responses, Annual Report for 2010*). In eight cases, the victims were Serbs, in five they were Croats, in two Roma, in one case Bosniak and in one case Montenegrin.
35. In April 2011, the Government adopted a "Hate Crime Protocol" that defines the roles that the civil service and justice system play in gathering and handling data on hate crime. The "Track Record System" was developed to monitor hate crime, based on a form listing all the grounds covered under Article 89 of the Criminal Code. All prosecution offices were instructed to monitor offences which could be considered as hate crime and police must record outcomes at all stages of the procedure from initial investigation to final judgment. ECRI welcomes these developments which should result in a better understanding of and response to hate crime.
36. Thus, it is possible to ascertain that, since the Ministry's protocol became operative and up until June 2011, 13 persons have been charged in connection with hate crime (none on grounds within ECRI's mandate). On 1 December 2011, a court in Split issued the first guilty verdict in relation to hate offences committed during the Gay Pride parade earlier in the year. The perpetrator received a suspended sentence of one year. At the time of writing this report, all other cases were still pending.
37. As for Article 174 of the Criminal Code, according to information provided by the Ministry of Justice, in 2009 three persons were charged and one was convicted under this article; in 2010, five were charged and three were convicted.
38. Regarding the Anti-Discrimination Act, ECRI is pleased to note that the Track Record System mentioned above is also used to record data relating to the application of the anti-discrimination legislation. According to information provided by the authorities, since the entry into force of the Act on 1 January 2009, there have been 49 civil proceedings thereunder with eight final judgments delivered so far and 24 misdemeanor proceedings with 11 final judgments. Civil society organisations have different data. According to some of these, only three criminal actions have been initiated under the law and no civil actions for damages.

Training on the criminal, civil and administrative law provisions

39. In its third report, ECRI recommended that the Croatian authorities strengthen their efforts to provide police officers, lawyers, prosecutors and judges with training in the application of the laws on racism and racial discrimination. It wished to place particular emphasis on the need to incorporate courses on human rights and on the importance of combating racism and racial discrimination into the initial and further training of all those working in the judicial system.
40. Regarding police, the Croatian authorities, in cooperation with the Organisation for Security and Cooperation in Europe (OSCE), are running a project for law enforcement officers in combating hate crime, both at the level of basic training and through special courses at the Police Academy. Around 168 officers have been trained to recognise and respond appropriately to hate crime and use the new Track Record System (see above); these play the role of multipliers. Since 2009, around 7 000 police cadets and officers have been educated on issues of hate crime.
41. Furthermore, ECRI was informed that the Judicial Academy (see below) would work closely with the Police Academy to ensure training on the new Criminal Code and Criminal Procedure Code which had been amended in 2009. Indeed, the authorities informed ECRI that the long delay between the adoption of the new Criminal Code (21 October 2011) and its entry into force (1 January 2013) is because the considerable changes in law and procedure require a period of adaptation and training.
42. ECRI was informed that the Judicial Academy became independent from the State in 2010. It is responsible for initial and life-long training of judges and prosecutors, among others. From 1 January 2013, trainee judges will have to undergo a two-year programme as a pre-condition for appointment. Training in human rights and anti-discrimination has been on the programme for several years now. A Croatian NGO has also been active in providing theoretical and practical training to 200 judges, prosecutors and lawyers on the anti-discrimination legislation. Funding for this was provided by the State, the European Union and other organisations. The same NGO is also preparing guidelines to help legal professionals understand the new legislation.
43. Despite these considerable efforts, there is agreement that a great deal more training is required in general, in both the criminal and civil law fields, and in particular in respect of combating racism and racial discrimination.
44. ECRI recommends that the Croatian authorities increase their efforts to ensure appropriate initial and continuous training to judges, prosecutors, lawyers and police on applying the new Criminal Code provisions on combating racism and racial discrimination as well as the Anti-Discrimination Act.

Specialised bodies and national strategies

- *Ombudsman*

45. In its third report, ECRI strongly recommended that the authorities swiftly set up an independent body specialising in combating racism and racial discrimination, in particular to help victims in obtaining compensation for violations committed by the authorities or private individuals. Such a body could be part of an existing structure or be completely separate, provided it follows the recommendations made by ECRI in its General Policy Recommendations No. 2 and No. 7.

46. ECRI welcomes, through the entry into force of the Anti-Discrimination Act, the establishment of the Ombudsman as the “central body for the suppression of discrimination” (equality body). ECRI is pleased to note that the list of powers granted to the Ombudsman in this capacity, as set out in Article 12 of the Act, corresponds to that of ECRI’s General Policy Recommendation No. 7; it includes the possibility of initiating civil proceedings and filing criminal charges.
47. However, although the Ombudsman, when acting as the equality body, has powers in both the public and private spheres, Article 27 of the Anti-Discrimination Act permits the imposition of penalties in the form of fines only on public bodies or local and regional self-government units which do not comply with a request by the Ombudsman to submit statements, data or documents related to a discrimination case.
48. ECRI recommends that the Croatian authorities take all necessary steps to ensure that the Ombudsman has appropriate powers to obtain evidence and information related to a discrimination case when addressing the private sector, as in ECRI’s General Policy Recommendation No. 2.
49. According to its 2010 Activity Report, the Ombudsman’s Office received 1 823 written complaints in 2010, of which 144 concerned discrimination. Of these, 60 (41%) related to discrimination on grounds of “race, ethnic affiliation, colour of skin or national origin”. This is an increase from 2009, when 31% of discrimination complaints related to these grounds. 57 complaints related to the area of labour (see also *Vulnerable/Target Groups – National/ethnic minorities – Serbs*).
50. In its third report, ECRI recommended that the Croatian authorities provide the Ombudsman’s Office with the human and financial resources it needs to perform its tasks successfully.
51. ECRI is concerned to note that the Ombudsman’s Office has not been granted additional funds to implement the Anti-Discrimination Act; it is working with the same budget and staff as before. Several international bodies have commented on the lack of adequate funding in relation to all the new tasks the Office has to perform under the law.
52. ECRI recommends again that the authorities strengthen the authority of the Ombudsman’s Office by ensuring that it is provided with the financial and human resources necessary to carry out its work properly.
- *National Programme for Human Rights*
53. In its third report, ECRI encouraged the authorities to devise a national policy to combat racism.
54. The National Programme for Human Rights 2008-2011 follows on from the 2005-2008 programme mentioned in ECRI’s third report. It encompasses protection and promotion of human rights at all levels (local, regional, national and international), highlights the importance of human rights education, identifies priority areas and sets out objectives and measures to be undertaken by the Croatian Government over the four-year period.
55. ECRI is pleased to note that the first priority area for the improvement of human rights in Croatia is the “elimination of racial and other forms of discrimination”. The list of objectives and measures includes securing effective legal protection against discrimination, establishing a unified antidiscrimination body, implementing public campaigns aimed at increasing awareness of discrimination

and securing a system for monitoring and documenting discrimination. ECRI notes that some of these objectives have been achieved.

56. Implementation, monitoring and evaluation of the programme are the responsibility of the Government's Office for Human Rights. Two reports have been adopted reviewing achievements and the final evaluation on completion of the programme was under preparation at the end of 2011.
57. ECRI was informed that a new National Programme for Human Rights is being considered for the period 2012-2015. ECRI encourages the authorities once again to put a strong emphasis on combating racism and racial discrimination, in particular through effective application of the various legal provisions in this area.
 - *National Anti-Discrimination Plan*
58. In August 2008, the National Anti-Discrimination Plan for the period 2008 to 2013 was adopted along with an action plan for its implementation. Goals were set for resolving problems faced by ethnic Serb returnees, monitoring of representation of national minorities, training of civil servants on the rights of national minorities and prohibition of discrimination, as well as specific measures targeting the Roma population.

II. Discrimination in Various Fields

Education

- *Access to education for Roma children*
59. In its third report, ECRI made a number of recommendations concerning the education of Roma children: (i) take measures without delay to improve equal opportunities for Roma children in education, stressing the paramount importance of elaborating a short-, medium- and long-term policy in the matter and providing sufficient funds and other resources to implement this policy; (ii) make it easier for Roma children to learn Croatian while also allowing those who so wish to be taught their Romani dialect and Roma culture; (iii) conduct an in-depth investigation into the allegations that segregation is practised between Roma and non-Roma children in some schools and rapidly take all the necessary measures, where appropriate, to put an end to such situations; (iv) carry out a study on the influence of stereotyping and prejudices among teachers, which may lead to low expectations of Roma children and take measures designed to educate teachers about Roma culture.
 60. ECRI notes that the National Programme for Roma and the Decade of Roma Inclusion 2005-2015 (of which Croatia will hold the presidency from 1 July 2012) have both dealt with education and are widely seen as representing good efforts to address inequalities in the education of Roma children. The authorities have stressed that an inclusive educational policy towards representatives of the Roma national minority is among the Croatian priorities. The focus in recent years has been on encouraging Roma children to continue their education through grants for all those who attend secondary school or university, access to free food at school, out of school educational support, clubs and similar activities, and by providing advice to parents on responsible-parenting. As a result of these efforts, progress is tangible; an increase has been noted in pre-school, primary school and university enrolment.
 61. Regarding pre-school, the authorities informed ECRI that since 2009, every Roma child has had the possibility of attending a pre-school institution. For those who do not attend, a special one-year programme has been established in certain areas for the year preceding entry into primary school. Transport and food

are provided free of charge. In Medimurje County, all Roma children have been included in this programme. In other counties, the programme is run in response to needs. According to the authorities, the results have been good.

62. In 2009, the Government Office for National Minorities reported that the number of Roma enrolled in primary schools (ages six to 15) had tripled since the introduction of the Action Plan on the Decade of Roma Inclusion in 2005. According to the authorities, there is now a four-fold increase in enrolment of Roma in primary schools. In the school year 2009-10, there were 4 186 children enrolled at primary school; in the school year 2010-11, there were 4 435; in the current year 2011-12, the number rose to 4 915.
63. While ECRI is pleased that more Roma are enrolling for school and that, according to one NGO, the trend is moving towards the majority of Roma children finishing compulsory primary education, it is nevertheless aware that many Roma children drop out before achieving this. In certain areas, such as Medimurje County, the drop out rate of Roma pupils before completing primary school is as high as 84%⁶. The authorities have indicated that targeted measures have been introduced to address this issue, such as extended school stay to provide practical help for children with learning difficulties and additional Croatian language lessons. However, ECRI encourages further efforts to reduce early drop out which is clearly detrimental to the future of the children concerned and perpetuates the link between poor educational achievement and poverty.
64. As for secondary education (ages 16 to 18), ECRI notes that in the school year 2009-10, there were 304 Roma enrolled; in the school year 2010-11, there were 420. While the increase is commendable, the figures clearly show the dramatic drop in numbers of Roma children who continue into secondary education. The authorities have informed ECRI that scholarships of approximately 60 Euros per month are now provided to all Roma secondary school pupils (425 in the current school year 2011-12). Although this is commendable, in ECRI's view, more needs to be done to encourage Roma children to stay on at school and emphasise the importance of education.
65. As far as higher education is concerned, ECRI notes that there are currently 28 Roma studying at universities in Croatia.
66. ECRI recommends that the authorities continue and strengthen their efforts to increase Roma children's participation in all levels of education, but especially at secondary school, by maintaining and possibly reinforcing the financial support measures and by raising parents' awareness of the importance of sending their children to school.
67. The question of separate classes for Roma children has been an issue of concern for many years and was highlighted in ECRI's third report. The authorities had justified the creation of separate classes for Roma children on account of these pupils' inadequate knowledge of the Croatian language at the time of entry into primary school. This policy resulted, in some areas, in over 80% of all Roma children being placed in such classes. The curriculum in these classes was reduced by up to 30 % in comparison with the full standard curriculum (which is permissible under national law in respect of any primary school class and not reserved for Roma-only classes). Thus, the children concerned received lower quality education.

⁶ This figure is cited in §176 of the Grand Chamber Judgment in the case of Oršuš and Others v. Croatia, Application no. 15766/03, judgment of 16 March 2010.

68. This practice has been condemned by the landmark judgment of the Grand Chamber of the European Court for Human Rights in March 2010 in the case of *Oršuš and Others v. Croatia*⁷. The applicants were 14 Roma who, as schoolchildren in mainstream primary schools in several towns in Medimurje County, had been assigned to separate classes with only Roma pupils. Some applicants had remained in Roma-only classes for the entire eight years of their primary schooling. Tests for assignment to Roma-only classes did not address the children's command of the Croatian language and, once assigned to a Roma-only class, no procedure was established to monitor their progress with a view to transferring them to mixed classes with other children, leaving a lot of room for arbitrariness. While most of them had been provided with additional classes in Croatian for a part of their primary education, three of them had not. Furthermore, in the Roma-only classes they had been taught the reduced curriculum mentioned above. Thus, they complained that they had been denied their right to education and suffered discrimination in this respect on the basis of ethnic criteria.
69. The Court held that, while there was no proof of a general policy automatically to place Roma children in separate classes, the fact that such placement was applied exclusively to members of a single ethnic group, for the reason of language deficiencies, constituted indirect discrimination, lacked objective and reasonable justification, was not accompanied by sufficient safeguards and thus violated the prohibition of discrimination (Article 14 ECHR) taken together with the right to education (Article 2 of Protocol No. 1).
70. The Committee of Ministers of the Council of Europe is currently supervising the execution of the judgment. It required the Government to enact legislation or regulations relating to placement and testing, curriculum, monitoring, as well as high drop out rates. Placing children in separate classes on account of inadequate command of the Croatian language should take place only when absolutely necessary and always on the basis of consistent, objective and comprehensive tests. It should be for a limited period only and should be aimed at bringing the children's command of the Croatian language to an adequate level, resulting in their automatic transfer to a mixed class. The Ministry of Education and Sport transmitted to the Committee of Ministers a specific plan for the effective implementation of the judgment.
71. In July 2010, Parliament amended the Law on Primary and Secondary School Education. Article 43-1 states that schools are under an obligation to provide special assistance to children with insufficient command of the Croatian language. The legislation provides the legal basis for introducing tests specifically designed to evaluate command of the Croatian language. A panel of experts proposes the appropriate form of assistance and the curriculum to be followed for each child, which is submitted for final decision to the regional education authority.
72. The Croatian authorities declared that special, separate Roma-only classes will cease to exist as a consequence of these measures. They will be replaced, for those whose command of the Croatian language does not allow them to follow any classes, by special language classes at the beginning of the school day followed by attendance of mainstream classes for the rest of the day, while those children with a better command of the Croatian language will be given additional language lessons. The objective is to integrate Roma pupils into mixed classes as soon as possible.

⁷ Grand Chamber Judgment in the case of *Oršuš and Others v. Croatia*, Application no. 15766/03, judgment of 16 March 2010.

73. A task force in charge of monitoring the implementation of the programme for learning Croatian in respect of the Roma minority was set up in January 2011. According to this, more than 800 Roma children in nine counties have so far received assistance to learn Croatian.
74. ECRI welcomes the steps taken so far by Croatia to remedy the failings highlighted in the *Oršuš* judgment and encourages the authorities to pursue these efforts. The elimination of discrimination against Roma children in the school environment and the provision of assistance tailored to their needs will have a positive impact on their progress in education as well as their situation in general.
75. In ECRI's view, much depends on teachers' ability to teach Croatian as a second language and the authorities acknowledge that the competence of teachers needs to be improved. The greatest challenge is for teachers of the first four grades of primary school, who are required to teach all subjects. As they are not specialised in language teaching, they will have to acquire additional skills if the new measures are to be a success. The authorities informed ECRI that several seminars have been organised on good practice for teachers who teach Roma children. ECRI encourages the authorities to promote such activities which can be very beneficial for teachers and, consequently, their pupils.
76. ECRI recommends that the authorities invest substantially in training serving teachers who are required to teach Croatian as a second language and ensure that all teacher-training thoroughly covers teaching Croatian as a second language. ECRI also encourages the promotion of seminars on good practice for teachers who teach Roma children.
77. ECRI notes that there are 25 Roma assistants in Croatia. They help Roma children adapt to the school environment and overcome language difficulties, but also create a link between the child, the family, the school and the community. Although the authorities have informed ECRI that the Ministry of Education and Sport encourages local authorities to help finance Roma assistants in schools and that two have been employed in this way, ECRI considers that, given the figures quoted above on the number of Roma children in schools, the number of Roma assistants is not sufficient. ECRI therefore encourages the authorities to develop further this important aid for both teachers and pupils and to invest in the promotion and training of greater numbers of such assistants. They should take all necessary steps to promote this career option, especially among Roma. ECRI is convinced that the teaching support provided by educated Roma adults, who act also as role-models, must have a significant impact on the Roma children concerned.
78. ECRI strongly encourages the authorities to continue their efforts to support the training and recruitment of Roma assistants and increase their numbers.
79. As far as Roma culture is concerned, ECRI takes note that the new National Curriculum Framework published in July 2010, while it does include a reference to "the concept of minority rights", makes no specific mention of Roma history, culture or language. Introducing such a subject could help all children to appreciate the diversity of Croatian society and might help Roma children to feel valued and, consequently, more integrated in the education environment.
80. ECRI recommends that the authorities encourage the teaching of Roma history and culture as part of the curriculum for all pupils in Croatia. The teacher training syllabus should also include this component.

81. Finally, ECRI recalls its General Policy Recommendation No. 13 on combating anti-Gypsyism and discrimination against Roma, which provides guidance on education for Roma children.

Employment

82. Discrimination in employment is addressed below in *Administration of justice* and in the section on *Vulnerable/Target Groups – National/ethnic minorities*.

Housing

83. ECRI deals with this issue under *Vulnerable/Target Groups – Returnees and Roma*.

Administration of justice

84. In its third report, ECRI strongly encouraged the Croatian authorities to pursue their efforts to reform and improve the judicial system in order to ensure that all victims of racism, intolerance and/or racial discrimination have access to a swift and effective remedy.
85. ECRI has addressed various legislative reforms in the section above on *Existence and Application of Legal Provisions*.
86. In its third report, ECRI encouraged the authorities to ensure that, as part of the planned reform of the judicial system, members of minority groups, including non-citizens, have effective access to free legal aid if they meet the requirements for it. In this respect, ECRI stressed the importance of ensuring free access to a professional interpreter in all judicial proceedings, where this proves necessary.
87. The Law on Free Legal Aid was adopted in May 2008 and entered into force in February 2009. The law aims to enable low-earners and welfare beneficiaries to have their rights and interests protected before courts or public bodies in civil or administrative matters, with professional assistance that is fully or partly financed by the State. All lawyers are required by law to provide legal aid although some exceptions are permitted. Other categories of authorised legal aid providers include associations, unions and institutions of higher education. So far 30 associations, one union and two law clinics (the Faculties of Law of the University of Split and the University of Zagreb) have been registered.
88. The introduction of the Law on Free Legal Aid was widely seen as a very important step towards restoring confidence in the legal system in Croatia. The reality, however, did not live up to expectations. Many reports indicated that the application procedure for legal aid was extremely complicated and the level of aid provided was low, the provisions of law were interpreted narrowly and were not enforced uniformly among the twenty county offices responsible for their application. As a result, the most vulnerable persons in Croatian society most in need of legal aid were rarely able to obtain it.
89. Following a decision of the Constitutional Court of 6 April 2011 annulling some of its articles, amendments were made to the law. These entered into force on 15 July 2011. They involved mostly operational changes to improve its application, including increasing the fees for lawyers to 50% of the usual fee, making a list of lawyers prepared to take cases and simplifying the forms to be filled in by applicants.
90. Article 8 sets out the conditions for obtaining free legal aid, which primarily relate to the financial status of the applicant as well as all members of his/her household. Only those with extremely low income and no property (including ownership rights, savings, shares), except for the flat or house they live in, are

eligible. The law excludes persons of unregulated legal status and those who are stateless, thus hindering the access of many Roma to free legal aid (see also § 179).

91. According to a report produced by a group of 15 Croatian civil society organisations⁸, the entire Law on Free Legal Aid requires urgent and comprehensive revision on account of its overarching implementation problems. The authorities have stated that this will not be done, since they consider that the law, as modified, has been sufficiently improved. They have, nevertheless, conceded that procedures could be further simplified and made more accessible without the need to amend the legislation. In this connection they informed ECRI that training courses are organised on a regular basis for those involved in the legal aid procedure. They declared their willingness to explore with all stakeholders ways to improve further the application of the law.
92. ECRI recalls that, while there is no right under the ECHR to free legal aid in civil matters, the case law of the European Court of Human Rights has established that the State may sometimes be compelled to provide legal aid when such assistance proves indispensable for an effective access to court, either because legal representation is compulsory or by reason of the complexity of the procedure or of the case.⁹ Procedures and costs must not present an actual barrier to effective access to courts.
93. ECRI strongly recommends that the authorities improve the Law on Free Legal Aid, in close dialogue with all stakeholders, so that vulnerable groups are not denied access to justice on account of complex procedures and prohibitive costs.
94. As regards free access to a professional interpreter in judicial proceedings, the authorities have stated that this is always granted where necessary, in accordance with special provisions of the Civil Procedure Act.
95. In its third report, ECRI strongly encouraged the Croatian authorities to take all the necessary measures to ensure that the composition of judicial bodies reflects the ethnic diversity of the population as a whole, by implementing without delay Article 22 of the Constitutional Law on the Rights of National Minorities. It also recommended that the Croatian authorities investigate any allegations of racial discrimination concerning access to posts on judicial bodies, especially against ethnic Serbs, and take the necessary measures to put an end to any discriminatory practices identified.
96. Article 22 §2 of the Constitutional Law on the Rights of National Minorities provides for the representation of national minority members in public administration and the courts by taking into account the share of national minority members in the total population where any such public agency or court has been established. Despite this, a number of reports express concern over the worsening situation of under-representation of persons belonging to national minorities, particularly in the judiciary.
97. ECRI is pleased to note that the authorities have taken a number of steps to try to counter this situation. Firstly, they have expressed a strong commitment to ensuring that Article 22 §4 of the Constitutional Law on the Rights of National Minorities, which provides for the right of preference under the same conditions

⁸ Joint Opinion of Croatian Civil Society Organizations on the Progress regarding the Readiness of the Republic of Croatia to Close Negotiations in Chapter 23 – Judiciary and Fundamental Rights, Zagreb, May 10, 2011.

⁹ European Court of Human Rights case of Airey v. Ireland, Application no. 6289/73, judgment of 9 October 1979, § 26.

for representatives of national minorities as regards representation in public administration and the courts, is applied in practice. For example, it is now standard practice that the possibility of exercising this right is stated in all vacancy announcements for legal posts and clearly indicated that candidates are required to invoke this right explicitly when applying. The authorities have informed ECRI that no evidence of ethnicity is required. They are satisfied that the right or preference is sufficiently well publicised and respected by all State bodies.

98. Secondly, the Action Plan for the Implementation of the Constitutional Law on the Rights of National Minorities, covering the years 2011 to 2014, focuses special attention on better representation of national minorities in Government and judicial bodies. Concrete goals have been established within specified time frames.
99. Thirdly, the Ministry of Public Administration has been systematically monitoring the representation of national minority members in the judicial sector and in the civil service. In December 2010 an analysis was conducted which showed that 3.92% of employees in these sectors were members of national minorities (while according to the 2001 census, national minorities make up 7.4% of the total population). Following this, five round tables were organised in the places where under-representation was the most serious, targeting young national minority members entering the various legal professions.
100. ECRI understands that it is not an easy matter for the authorities to ensure that the ethnic diversity of the population is reflected in the composition of judicial bodies and that it will take time to achieve this goal. ECRI can only encourage them to continue with the efforts they are currently making and promote openness and fairness in all cases regarding access to posts and when appointments are made.
101. In its third report, ECRI strongly recommended that the Croatian authorities pursue their efforts to restore fairness in the administration of justice in respect of all persons who are not ethnic Croats, especially ethnic Serbs, when it comes to prosecuting them for war crimes. It also drew special attention to the need to ensure these persons' legal security by refraining from trying them *in absentia* and by applying the amnesty law properly. ECRI encouraged the Croatian authorities to introduce a code of ethics and training courses for members of the judicial service.
102. ECRI notes that Croatia has been very active in prosecuting war crimes. More than 600 people have been convicted, another 600 have been indicted and several hundreds more are under investigation.
103. According to OSCE reports, until recent years Croatia's war crimes prosecution was driven almost exclusively by the ethnicity of the victims and suspects, rather than the type of crimes committed. More recently, efforts have focused on the nature of the crimes committed. Old cases primarily against Serbs are being reviewed so as to pursue only those that are substantiated. Increased efforts have been undertaken to prosecute members of the Croatian armed forces for serious crimes against Serb victims. According to figures provided by the Ministry of Justice, the proportion of convicted members of the Croatian armed forces now stands at 42% of all convictions for war crimes. Many international and civil society organisations attest to substantial progress and a more balanced and impartial approach to the investigation and prosecution of war crimes regardless of the ethnicity of the perpetrators.

104. ECRI notes with satisfaction some of the steps taken to improve the quality of war crimes trials. The Croatian Bar Association and the Ministry of Justice have organised training sessions for lawyers and a list of counsel experienced in defending war crimes suspects has been published and is regularly updated. The Code of Judicial Ethics, which was adopted in 2006, forms part of the training of all judges. In May 2011, it was established by law that the prosecution of war crimes would be within the exclusive competence of four specialised county courts in Osijek, Rijeka, Split and Zagreb.
105. A particularity of Croatia's war crimes prosecution was the large-scale use of proceedings held *in absentia*, as a result of which more than 464 people - nearly all Serbs (93%) - were convicted. In October 2008, in response to claims of bias against Croatian Serbs, the State Prosecutor's Office prescribed instructions for county prosecutors for the prosecution of war crimes cases. These included a complete re-examination of all verdicts delivered during *in absentia* proceedings, upon the presentation of new evidence and without the need for the convicted person to return to Croatia. The State Prosecutor's Office has reopened trials against 94 individuals convicted in their absence. Out of these, 70 convictions were overturned. According to information provided by the authorities, the revision of *in absentia* cases is, in principle, considered to be completed. However, the State Prosecutor will continue to file requests for revision if the grounds to do so arise.
106. It has also been observed that when ethnic Croats are tried for war crimes, factors such as service in the Croatian army or police and role in defending the homeland are taken in consideration. ECRI encourages the authorities to do their utmost to resolve issues of impunity which suggest ethnic bias.
107. Finally, in this context, ECRI wishes to express its concern over the adoption in October 2011 of legislation to nullify indictments against several prominent Croatian politicians and around 40 veterans of the Croatian war of independence accused of war crimes. However, it welcomes the recent initiative of the President of the Republic to lodge a request to the Constitutional Court challenging the constitutionality of the law.

III. Racism in Public Discourse

Climate of opinion

108. In its third report, ECRI strongly recommended that the Croatian authorities closely monitor the climate of opinion and interethnic relations, especially in the areas affected by war. Steps must be taken to foster mutual respect and dialogue in order to prevent hostility or indifference between ethnic communities.
109. ECRI notes that racism in Croatia is linked to ethnicity and the overall climate is still very much influenced by the events of the 1990s and the consequences of armed conflicts in the region. While the situation has improved since ECRI's third report, most people agree that there are still tensions under the surface and that overcoming the past remains a challenge. This is evidenced by the public reaction to the June 2011 verdicts of The Hague International War Crimes Tribunal against two Croatian commanders, Ante Gotovina and Mladen Markač. Their convictions for war crimes and lengthy prison sentences were met with outrage throughout Croatia, where Gotovina is widely considered a national hero whose actions during Operation Storm secured Croatia's independence.
110. On the other hand, xenophobia does not appear to be a problem in Croatia, as there are still relatively few foreigners. This situation might be changing. ECRI notes that there are already exaggerated fears that, following EU accession,

there will be a huge influx of migrants and asylum seekers in the country. The authorities are advised to take steps to prepare for any consequences that accession may have on immigration. This will help them prevent the possibility of xenophobia rising (see *Vulnerable/Target Groups – Asylum seekers and refugees and Other non-nationals*).

Political discourse

111. Although inflammatory speech has not been part of the political scene for some time, occasional incidents do occur. One of the most shocking in recent years was the blatantly anti-Serb statements made on television by the Mayor of Split.¹⁰ ECRI was informed that other politicians preferred to ignore the comments rather than give them prominence by reacting to them.
112. ECRI is concerned by the response of leading politicians to the judgments delivered against the two Croatian commanders mentioned above. The Prime Minister declared the verdicts “unacceptable” and the President described them as “shocking”.
113. Furthermore, in August 2011, at the celebration of the 16th anniversary of Operation Storm which marks Victory and Homeland Thanksgiving Day and War Veterans’ Day, the Prime Minister sent special greetings to the same generals in The Hague, underlining that Operation Storm was a victorious, just and honourable struggle for Croatia’s liberation. ECRI regrets that the highest political leaders commented negatively on the findings of the Tribunal, casting doubt on its authority and stirring up nationalism. The rhetoric of glorifying persons who were sentenced for war crimes is counterproductive to the process of bringing perpetrators to justice as well as to reconciliation and good relations in the region.
114. ECRI notes that during the December 2011 parliamentary elections, Branimir Glavaš, a general who is currently serving an eight-year prison sentence for war crimes against Serb civilians in 1991, was proposed as head of the party list of the Croat Democratic Council for Slavonia and Baranja (HDSSB). This was approved by the State Electoral Committee, but the Constitutional Court ruled that he could not run for Parliament.
115. On the other hand, ECRI is pleased to note that in October 2010, the President unveiled a memorial plaque in Varivode to honour nine Serb villagers killed there in September 1995. The names on the plaque are written in both Latin and Cyrillic script. Wreaths were also laid on behalf of the Government in homage to the Serb civilians “killed after war operations had ended ... innocent victims of revenge”. This is the first such monument to Serbs killed in Croatia in the 1991-1995 war and, in ECRI’s view, marks a very important development in inter-ethnic reconciliation.
116. Finally, ECRI notes a continued nostalgia in some sectors of Croatian society about the Ustasha past. Church services in memory of Ante Pavelić are regularly celebrated in Zagreb and in Split. A government delegation headed by the Prime Minister visited the Austrian town of Bleiburg on 10 May 2010 to pay tribute to pro-Nazi Croatian soldiers and civilians killed there at the end of the Second World War. At the same time the Prime Minister condemned people who appear in fascist uniforms at memorial sites. ECRI considers that the mixed messages being sent are confusing for the public and undermine attempts to overcome the past.

¹⁰ He stated that he would never agree to a Serbian son-in-law and that companies from Serbia should not try to invest in Croatia.

117. ECRI recommends that politicians are encouraged to take the utmost care to avoid perpetuating hostility on ethnic grounds. Political leaders on all sides should take a firm and public stance against the expression of racist attitudes.

Media

118. In its third report, ECRI recommended that the Croatian authorities raise awareness of the dangers of racism and intolerance among media professionals and their organisations. In cases where racist articles are published, it strongly encouraged the Croatian authorities to make every effort to prosecute and punish those responsible.
119. According to some NGOs, while there has been an improvement since ECRI's third report, local media outlets, particularly those targeting the population close to or within former areas of conflict, still tend towards unacceptable remarks, language and misrepresentation of facts. Although, over the last few years, the number of such media has decreased, there is a need for change in the vocabulary used by public media, especially television.
120. According to one NGO, there is a lot of negative media coverage of Roma. Only bad events are reported in the press and never positive developments. Private TV channels regularly ridicule the Roma.
121. The Law on Electronic Media of 2003 was amended in 2009 to ensure full compliance with EU acquis. Article 12 states: "In audio and/or audiovisual services it shall be prohibited to promote, favour the promotion of and spreading of hatred or discrimination based on race or ethnic affiliation or colour, gender, language, religion, political or other belief, national or social origin, property, trade union membership, education, social status, marital or family status, age, health condition, disability, genetic heritage, native identity, expression or sexual orientation, as well as anti-Semitism and xenophobia, ideas of the fascist, nationalist, communist and other totalitarian regimes".
122. The Council for Electronic Media, established under the Law on Electronic Media as an independent seven-member regulatory body, has been given the task of supervising the activities of radio and television broadcasters for compliance with the law and has been given the right to revoke a license or to start judicial proceedings in cases of alleged breaches of impartiality or hate speech.
123. ECRI is pleased to note that the Code of Ethics of the Croatian Journalists' Association, which is overseen by an Ethics Council, contains specific provisions against racism and intolerance.

IV. Racist Violence

124. In its third report, ECRI strongly recommended that the authorities ensure that the Government's stated political commitment to tackling racist violence leads to genuine improvements in the practices of those responsible for law enforcement, such as police officers, prosecutors and judges. It considered that the authorities should continue to monitor closely and combat the activities of the skinhead movement and ensure that anyone involved in illegal activities in this context is brought to justice.
125. The response of the law enforcement authorities and legal professionals to racist violence has been addressed in other parts of this report (see in particular *Existence and Application of Legal Provisions – Criminal law provisions*).

126. ECRI considers that officially reported figures concerning racially motivated violence seldom reflect the true picture and should be treated with caution. It is said that many cases of attacks against ethnic Serbs and Roma go unreported due to basic lack of trust in the police and the judicial system. ECRI has made a recommendation in §166 on the importance of ensuring an adequate representation of national/ethnic minorities in the police in order to establish trust.
127. ECRI notes that security issues are no longer considered an obstacle to return. However, sporadic ethnically motivated incidents of violence against Serbs continue to be reported in some parts of Croatia. The authorities have taken steps to address this by appointing two advisers to the Minister of Interior to work primarily on security issues in the Areas of Special State Concern (the war affected areas), in Zadar and Vukovar.
128. Racially motivated violence against Roma also remains an issue of concern. ECRI notes a number of cases involving racist attacks against Roma in which the European Court of Human Rights has found a failure by Croatia to fulfil its positive obligations under Article 3 ECHR, namely to carry out effective investigations¹¹. The failure to bring perpetrators of such violence promptly to justice suggests that there is an ongoing reluctance by the authorities to take violence against Roma seriously.
129. ECRI strongly recommends that the Croatian authorities ensure that all acts of racist violence are promptly and thoroughly investigated with a view to prosecution of the perpetrators.
130. As regards the skinhead movement, ECRI has been informed that this has significantly diminished in recent years and its activities seem to be limited to manifestations of violence at football matches. Groups like the skinheads have almost disappeared from the local urban scenes.

V. Vulnerable/Target Groups

Returnees

131. In its third report, ECRI strongly recommended that the Croatian authorities pursue and strengthen their efforts to ensure the voluntary, definitive and unanimously accepted return of refugees and displaced persons in the best possible conditions. ECRI underlined the importance of ensuring that this is followed by practical implementing measures and, above all, that it is reflected at local level. When it comes to improving the economic situation of war torn areas, the authorities should ensure that the measures taken to facilitate access to employment, public services and basic infrastructure facilities benefit everyone equally, without distinction as to ethnic origin.
132. At 31 December 2010, 389 368 refugees and internally displaced persons had returned to and within Croatia. Of these, 132 872 are Serb minority returnees, mostly elderly, representing more than half of those who fled the country during the conflict of 1991-1995. Most returns took place before 2005 and only a few hundred per year after that.
133. In January 2005, representatives of Croatia, Bosnia and Herzegovina and Serbia and Montenegro signed the Sarajevo Declaration on identifying and resolving all obstacles in the return and reintegration of displaced populations in the region.

¹¹ Šečić v. Croatia, judgment of 31 May 2007; Sandra Janković v. Croatia, judgment of 5 March 2009; Beganović v. Croatia, judgment of 25 June 2009; Durdevič v. Croatia, judgment of 19 July 2007.

Assisted by the EU, the UNHCR and the OSCE, the Sarajevo process brought positive results, but soon came to a halt.

134. While it is estimated (at 30 September 2011) that there are still some 60 000 registered refugees from Croatia in neighbouring Serbia, Bosnia and Herzegovina and Montenegro, the process of return to Croatia is considered to be almost at an end. It appears that all those who wished to return to Croatia have done so already. Of the 60 000 mentioned above, the vast majority have already found a durable solution elsewhere or have acquired a new citizenship.
135. On 25 March 2010, the Regional Ministerial Conference on Durable Solutions was held in Belgrade. The key participants were the Ministers of Foreign Affairs of Bosnia and Herzegovina, Croatia, Montenegro and Serbia, as well as representatives of the EU, the UNHCR, the OSCE and the Council of Europe. The Foreign Ministers highlighted the need to intensify regional dialogue on refugee issues, in order to close the refugee chapter alongside the countries' path to the EU. They adopted a Joint Communiqué, which proposes concrete follow-up steps, including a meeting of national experts' services twice a year, the resolution of problems of refugees still in collective centres and the organisation of a donor conference.
136. On the national level, the Croatian authorities have informed ECRI that more than five billion Euros have been invested in the Areas of Special State Concern to assist the return of displaced persons, reconstruct damaged or destroyed houses and provide accommodation in the form of "housing care", as well as numerous local authority development projects.
137. Nevertheless, every year, the Ombudsman receives about 150 to 200 new complaints regarding problems of returnees, including those related to reconstruction of houses, the return of seized property, permanent residence and citizenship.
 - *Reconstruction of houses*
138. In its third report, ECRI encouraged the authorities to pursue their efforts to find resources to rebuild destroyed housing and invariably ensure that all affected persons can benefit from this assistance, regardless of their ethnic origin.
139. ECRI notes that the estimated overall number of damaged houses is 195 000. Just over 148 000 family houses have been rebuilt since 1995 under the State reconstruction programme. 35% have been for Croatian Serb returnees. The date for completion of the process has been postponed. Appeals are pending in 90 cases and around 1 400 cases are awaiting implementation.
140. There have been claims that ethnic Croats have had priority. The authorities deny any intentional discrimination in favour of Croats, in spite of the fact that the majority of ethnic Croats' homes were reconstructed before those of ethnic Serbs. They explained that the deadline for applying was set at 15 October 1997 and was missed by most of the ethnic Serbs who had fled the country. The deadline was then reset twice following which almost all applications filed were by ethnic Serbs.
 - *Repossession of occupied property*
141. In its third report, ECRI recommended that the Croatian authorities speed up and improve the process for returning property belonging to refugees and displaced persons. It also strongly recommended that the authorities make every effort to prevent occupants who are obliged to relinquish property from looting and

damaging it, by taking effective measures with regard to prevention, compensation and punishment.

142. ECRI is pleased to note that the repossession process of occupied private property is now near its end. Out of 19 280 private homes that were occupied, almost all (19 269) have been reposessed by returnees. Only 16 cases are pending before domestic courts.

143. There remains a small number of problematic cases, particularly those involving unsolicited investments where compensation is claimed against owners (returnees) for investments made during temporary residence. All these cases had been decided in favour of the temporary occupants and returnees were unable to pay the amounts awarded in damages. Consequently, in many cases, the houses were put on public auction. However, ECRI is pleased to learn that, according to legislation adopted in June 2011, the State is now responsible for settling such claims by temporary occupants. ECRI encourages the authorities to resolve the remaining 13 cases equitably.

- *Occupancy/tenancy right holders*

144. In its third report, ECRI strongly recommended that the Croatian authorities implement without delay the programmes for providing alternative housing to former holders of occupancy rights. A swift and satisfactory solution to this problem would help to facilitate the return of refugees and displaced persons to urban as well as rural areas.

145. 23 800 persons, mainly ethnic Serbs, had their occupancy/tenancy rights of socially owned flats terminated when they fled during the armed conflict. The Housing Care Programme was introduced in 2003, but has been implemented for minority returnees as of 2006, to offer alternative housing for rent or purchase to former holders of occupancy rights of all ethnicities who wished to return to Croatia. Of over 14 000 family applications for housing assistance filed, more than 8 000 have been decided positively and around 8 000 housing units have been allocated. It is estimated that some 2 750 housing units are still needed. 63% of the filed applications are from Croatian Serb returnees. 62% of positive decisions have been issued to Croatian Serb returnees. Of the housing units allocated, 59% have been allocated to Croatian Serb returnees.

146. ECRI notes that the above figures appear to demonstrate an unbiased approach to providing housing care. It also notes that the deadline for applications has been extended and finally removed altogether. Moreover, in April 2010, the Government decided to undertake a revision of all first instance negative decisions issued. Of the 3 000 relevant cases, around 1 100 have been re-examined so far. ECRI welcomes this progress and encourages the authorities to continue in this direction.

147. ECRI recommends that the authorities continue and reinforce their efforts to resolve all the remaining issues related to the reconstruction of houses, the repossession of occupied property and housing care for occupancy/tenancy right holders.

148. Lastly, as concerns the administration of justice in relation to housing, ECRI is aware that, while positive developments have taken place, there have been many complaints about the excessive duration of civil and administrative proceedings as well as in the context of enforcement. This appears to be a problem related more to the general functioning of the legal system in Croatia. Nevertheless, ECRI is concerned because it affects in particular vulnerable groups such as returnees. See also *Discrimination in Various Fields – Administration of justice*.

149. ECRI strongly recommends that the authorities step up their efforts aimed at improving the efficiency of the justice system in order for vulnerable groups, such as returnees, to benefit from prompt access to justice .

- *Law on Convalidation*

150. In its third report, ECRI reiterated its recommendation that the Croatian authorities take all the necessary measures to resolve the problems facing ethnic Serbs as regards the implementation of the 1997 Law on Convalidation.

151. As already observed, an important number of returnees are elderly people. Many were not able to receive their full pensions because their working years during the war in areas not controlled by the Croatian authorities had not been validated. The Law on Convalidation of 1997 allowed the validation of official documents issued by the “Republika Srpska Krajina” authorities, but set the deadline at April 1999 for applying.

152. ECRI welcomes the Government’s adoption of a decree in June 2008 removing the deadline for the processing of convalidation applications.

153. According to data provided by the Croatian Pension Fund (at June 2011), 24 330 claims for convalidation of working years were lodged. Of these, 23 026 have been decided (55% positive decisions; 44% negative) and 1 304 are still pending. As for convalidation of pensions, of 571 lodged claims, only 29 are still pending. 72% were positive decisions and 28% negative decisions.

154. ECRI notes that advances have been made. The Ombudsman received no complaints related to the matter in 2010 and, according to several sources, the question of convalidation has been resolved. Nevertheless, ECRI also notes the high number of negative decisions. In many cases the official records were destroyed during the war and people are not permitted to provide evidence in the form of statements related to their work experience. Reports also indicate that there are wide discrepancies between regional offices with average approval rates varying by as much as 50%, bringing into question the fairness of the system. ECRI encourages the authorities to deal with the remaining convalidation claims quickly and fairly.

- *Residence*

155. Under the Law on Foreigners in force until the end of December 2011, returnees were granted temporary residence on humanitarian grounds, which could be renewed on a yearly basis. Under this regime, they were not entitled to social welfare and had to pay for medical insurance. This created a major obstacle for people to return to Croatia and claim back their properties. Often, they continued to live and work outside Croatia while being registered as temporary residents in Croatia. If their absence was discovered during police checks, they risked revocation of their temporary residence status.

156. However, as pointed out in the section above on *Existence and Application of Legal Provisions - Constitutional and other fundamental provisions - Law on Citizenship*, the Law on Foreigners has recently been amended: as of 1 January 2012, those who had residence in Croatia on 8 October 1991, are beneficiaries of the programme of return, reconstruction or housing care, and who intend to live in Croatia permanently, may be granted permanent residence immediately. With this status comes entitlement to social welfare and health insurance, among others. It also opens the door to acquiring Croatian citizenship. ECRI welcomes this timely development.

National/ethnic minorities

157. As already noted, the Croatian Constitution now recognises the existence of 22 national minorities: Serbs, Czechs, Slovaks, Italians, Hungarians, Jews, Germans, Austrians, Ukrainians, Rusyns, Bosniaks, Slovenians, Montenegrins, Macedonians, Russians, Bulgarians, Poles, Roma, Romanians, Turks, Vlachs and Albanians¹².
158. ECRI notes that an action plan for the implementation of the Constitutional Law on the Rights of National Minorities was adopted on 26 June 2008. It envisages measures aimed at promoting mutual understanding, notably in the fields of education and in the media. The plan provides for the teaching of human rights and national minority rights in primary and secondary schools, and the inclusion in the curriculum of discussion topics relating to the identity and culture of national minorities.
159. A separate chapter of the action plan is devoted to developing tolerance to diversity and suppressing discrimination, mainly through public events and discussions of incidents motivated by national or religious hatred or intolerance. It also includes running campaigns and creating brochures aimed at combating prejudice, stereotypes and discrimination against national minorities.
- *Serbs*¹³
160. In its third report, ECRI strongly recommended that the Croatian authorities ensure that there is no discrimination against ethnic Serbs in access to public sector jobs. It encouraged the authorities to conduct investigations when there are allegations of discrimination and to take all the necessary measures if those allegations are confirmed. It also stressed the importance of implementing the constitutional and other provisions providing for representation of the members of national minorities, including ethnic Serbs, in public services such as the police, education and the judicial service.
161. As mentioned above, Article 22 of the Constitutional Law on the Rights of National Minorities provides for the representation of national minority members in public administration and the courts, taking into account the share of national minority members in the total population. ECRI notes that the effective application of these provisions is difficult to ascertain in practice, since there is no official recording of the ethnic affiliation of civil servants. Nevertheless, it is acknowledged that ethnic minority representation in the judiciary and administration is still below their proportion in the population as a whole.
162. The Government must report annually to Parliament on implementation of the Constitutional Law on the Rights of National Minorities. In May 2011, the National Civil Service Plan was adopted for the recruitment of persons belonging to national minorities. The aim is to reach an employment target of 5.5% of national minorities within four years; that is 802 persons altogether in different State bodies, with 727 at central level and 75 at county level.
163. In spite of the absence of official statistics, the authorities were able to provide some estimates as to the current level of national minorities employed in State administrative bodies: on 31 August 2011 these represented 3.7%, of which 2.4% were ethnic Serbs. According to the 2001 census, Serbs make up 4.54% of the total population of Croatia. As for the representation of national minorities

¹² This is the order in which they are listed in the Croatian Constitution.

¹³ Questions related to Serb returnees are dealt with in the section above on Vulnerable/Target Groups – Returnees.

employed in administrative bodies of local and regional self-government units, ECRI notes that the situation is slightly better at 4.58%.

164. According to the authorities, the lack of tangible improvement in the level of employment of national minorities in the civil service is due largely to the general recruitment ban as a result of the economic crisis (see also ECRI's comments in §§ 96-100). However, similar problems are encountered in other public sectors, such as teaching and nursing.
165. ECRI notes that, at the national level, the percentage of Serbs in the police is adequate at 5%. However, at local level, especially in the counties to which Serbs have returned and where a larger part of the population is Serb, there are very few Serbs in the police. ECRI considers that greater efforts should be made to ensure that ethnic Serbs are better represented in the police at local level. This would help to rebuild trust between the Serb community and the law enforcement authorities. In ECRI's view, it is important to ensure that the composition of the police reflects the diversity of the population. This is all the more crucial in areas where inter-ethnic conflicts have taken place.
166. ECRI strongly recommends that the authorities take steps to increase the recruitment of ethnic Serbs in all public sector employment and in particular the police, especially in areas where there is a significant proportion of Serbs in the population.
167. In its third report, ECRI strongly recommended that the Croatian authorities work out a solution that would enable children from the Serb minority to receive education in Serbian while maintaining contact with and mutual respect towards ethnic Croat children.
168. For issues related to minority language teaching, ECRI refers to the Report of the Committee of Experts of the European Charter for Regional or Minority Languages.¹⁴
- *Roma*
169. According to official statistics from the 2001 population census, there are 9 463 Roma in Croatia. Other estimates put the current figure at between 30 000 and 40 000. Following amendments to the Constitution adopted in 2010, Roma are now recognised as one of the country's 22 national minorities. They live mostly in the northern regions of the country, in Medimurje County and the City of Zagreb.
170. In its third report, ECRI made a number of recommendations to the Croatian authorities relating to the Roma population: to speed up the implementation of the National Programme for Roma and take steps to release the necessary funds to implement the programme; to ensure that the programme drawn up at national level is fully known and applied by local authorities, particularly in regions with a high concentration of Roma; to take practical measures to counter all forms of direct and indirect discrimination against members of the Roma community; to ensure that Roma have equal access to public services; to co-operate with representatives of the Roma population in identifying the part played by stereotyping and prejudice in order to combat them more effectively, particularly by training officials and carrying out an awareness campaign aimed at the general public.

¹⁴ European Charter for Regional or Minority Languages, Application of the Charter in Croatia, 4th Monitoring Cycle, 8 December 2010, ECRML (2010) 9.

171. The National Programme for Roma was adopted in 2003. Its aim was to provide systematic and comprehensive help to the Roma, enabling them to improve their living conditions, become more involved in society and decision-making, and preserve their distinct identity, culture and traditions. The programme is implemented by the State, bodies of local and regional self-government, international organisations, domestic and foreign civil society organisations and Roma associations. ECRI was informed by the authorities that a new programme is under consideration for the period up to 2020 which will have a special focus on legal status (see § 176) and anti-discrimination.
172. Croatia is also one of the 12 participating countries in the Decade of Roma Inclusion 2005-2015. Its Action Plan focuses on education, healthcare, employment and housing. In 2008, it joined the Council of Europe's "Dosta" campaign which aims at bringing non-Roma closer to Roma citizens and breaking prejudices and stereotypes.
173. Through its pre-accession programmes, the EU has allocated four million Euros for the achievement of the Decade's main goals in Croatia. In addition, the State budget funds allocated for the implementation of assistance programmes for the Roma have recorded a 14-fold increase since the starting year and amount now to over five million Euros.
174. Thus, ECRI notes that significant financial resources have been invested in addressing inequalities faced by Roma in their day to day lives. Progress is reported to be most evident in the process of legalising housing, which is underway in many areas, constructing new housing for Roma, such as in Darda, and education (see section on *Discrimination in Various Fields - Education* above).
175. Nevertheless, despite the existence of a general programme to assist Roma and a legal framework against discrimination and for the protection of national minorities, Roma continue to be excluded from mainstream Croatian society and endure difficult living conditions.
176. One of the most serious problems for many Roma is their lack of personal documents. It is estimated that around 25% of the current Roma population do not have identity documents or certificates of citizenship from their country of origin. In some cases too, their birth has not been entered into the birth registry. According to the authorities, this phenomenon mostly affects Roma who came more recently to Croatia; the majority of Roma who traditionally lived in the country obtained citizenship during the 1990s. Adequate legal status is a prerequisite for access to social welfare, basic healthcare, employment and housing.
177. ECRI notes that some steps have been taken to resolve these issues. In particular, mobile teams comprising representatives of the healthcare, social welfare services and police have travelled to Roma settlements and offered advice and assistance on resolving legal status questions as well as other matters. ECRI understands that this project has been successful and considers that it should be further reinforced. Information and awareness raising campaigns on the importance of birth/civil registration could be effective. These should be accompanied by the removal of all administrative obstacles to registration and the procedures should be simple and accessible.
178. ECRI recommends that the authorities reinforce the deployment of mobile teams to areas where Roma live and provide assistance to resolve legal status issues. They should also take all possible steps to inform Roma about the importance of birth/civil registration and to ensure that such registration is facilitated in practice.

179. Furthermore, the UNHCR estimates that a significant number of Roma are stateless; 1 000 are de facto stateless and 2 000 are of unidentified citizenship at risk of statelessness. This situation seriously affects the enjoyment by these persons of vital civil, social and economic rights. ECRI has already recommended Croatia to ratify the Council of Europe Convention on Nationality (see § 4). It should also sign and ratify the Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession, which develops more detailed rules to be applied by States with a view to preventing, or at least reducing to the extent possible, cases of statelessness arising from State succession.
180. ECRI recommends that Croatia signs and ratifies the Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession. It should, in cooperation with neighbouring States and relevant international organisations, find a satisfactory solution for persons who are stateless or at risk of statelessness.
181. As far as housing is concerned, Roma in Croatia often live in segregated settlements illegally built on the outskirts of towns and municipalities. As a result, they not only lack access to public services, including refuse collection and telephone lines, but they are frequently also denied access to basic public utilities, such as electricity or running water.
182. ECRI notes that there have been some positive developments in this area. Legalisation of several Roma settlements in Medimurje County has been achieved. Infrastructure improvements have also been carried out, including connection to the water supply and electricity network and construction of roads. ECRI has been informed that there are also plans to build new housing for the Roma in several towns, such as Darda.
183. However, there are still illegal settlements, notably Struge outside Zagreb, which are made up of makeshift accommodation, with overcrowded, substandard and degrading living conditions. According to some reports, the housing situation in these places is not significantly better now than it was 20 years ago.
184. ECRI recommends that the authorities continue and reinforce their efforts to improve the housing situation of all Roma in Croatia, by legalising the remaining settlements and developing the infrastructure, or providing them with standard housing, thereby ensuring that Roma live in decent conditions.
185. ECRI is pleased to note that the committee monitoring the National Programme for Roma comprises nine Roma representatives from different regions out of a total of 27 members. Four out of the 14 members of the working group monitoring implementation of the Action Plan for the Decade of Roma Inclusion are Roma. ECRI always stresses the importance of including Roma at all stages of planning, implementing and evaluating programmes aimed at assisting them.
186. Finally, ECRI recalls its General Policy Recommendation No. 13 on combating anti-Gypsyism and discrimination against Roma, which provides guidance on the issues raised above, among others.
- *Bosniaks*
187. In its third report, ECRI recommended that the Croatian authorities make every effort to ensure that the issue of the denomination of persons belonging to the Bosniak minority is resolved as swiftly as possible in a spirit of respect for the principle of voluntary self-identification of one's ethnic origin.
188. This issue appears to have been resolved. As mentioned above, Bosniaks are now included in the Constitution as a national minority.

Refugees and asylum seekers

189. In its third report, ECRI encouraged the Croatian authorities to continue their efforts to improve the situation of asylum-seekers and refugees in Croatia, in particular as regards reception facilities and the legal and social assistance given to asylum-seekers.
190. Between 2004 and April 2012, 49 persons were granted international protection in Croatia; 31 were recognised as refugees and 18 were granted subsidiary protection. ECRI notes that the refugee recognition rate is very low; in 2010, only 4% of applicants were successful. However, according to the authorities, 75% of the applicants in that year explicitly or implicitly withdrew their applications for asylum; of those which were examined on the merits, 22.9% were successful.
191. Amendments to the Asylum Law of 2007, which entered into force in July 2010, have aligned Croatian legislation with the 1951 Geneva Convention and EU aquis. According to international bodies, the amendments represent significant progress and improved rights for asylum seekers and persons granted protection. Several sources have confirmed that the asylum system functions well and the procedure is fair.
192. The most significant change under the new legislation is that the Asylum Commission¹⁵ - the body responsible for decisions on asylum at second instance - was replaced, as of 1 January 2012, by an administrative court in Zagreb, which will deal with all asylum appeals. ECRI considers that the manner in which a country treats asylum seekers is an indication of how welcoming it is vis-à-vis non-nationals. It always stresses that asylum applicants should be able to appeal against asylum decisions before an independent and impartial judicial mechanism which is empowered to consider the merits of the case. Therefore, ECRI welcomes this development which represents an important safeguard in the asylum procedure.
193. Legal aid is not provided at first instance by the State, but it can be obtained through the NGO Croatian Law Centre and financed by the UNHCR. At second instance, as of 1 January 2012, under the Law on Asylum and the Ordinance on Free Legal Aid in Asylum Procedure, asylum seekers without sufficient means are entitled to free legal aid for the preparation of an appeal to and representation before the administrative court.
194. As regards reception facilities, there is one asylum centre in Kutina with a capacity to accommodate 96 persons. It is reported to be of a high standard. Its location is close to the town and local community. However, since there has been a 100% increase in asylum applications since 2010, it has become overcrowded; it currently holds around 200 persons. The authorities have opened another centre in Zagreb, which was formerly a hotel, and which has room for an additional 150 asylum seekers.
195. The main problem for refugees is integration in Croatia. Language classes are provided free of charge, but only at two licensed centres in Zagreb and Rijeka. It is very difficult for refugees to access the employment market; so far only two have found jobs. Although welfare assistance is granted on the same level as for Croatian citizens and accommodation is provided at the cost of the State for a maximum of two years, no State body deals with housing for refugees. As a result, most refugees remain in the reception centre in Kutina (which contributes further to its overcrowding) until accommodation is found in private housing.

¹⁵ The Asylum Commission is a State body composed of two judges, one NGO representative, one university academic and two representatives of the administration.

196. The above concerns affect a very small number of people (at the time of writing, nine persons had received protection in 2011). Accession to the EU might involve an increase in the numbers of asylum seekers and refugees. ECRI encourages the authorities to take steps to resolve the matters raised above in good time. It has made a recommendation in § 210.
197. In its third report, ECRI encouraged the Croatian authorities to take all proper measures to combat any prejudice or stereotypes concerning asylum seekers and refugees by making the public aware of the particular circumstances in which these individuals find themselves.
198. The authorities have informed ECRI that a number of initiatives have been taken to raise awareness in the local community in Kutina, such as open door days and workshops at the asylum reception centre and a presentation on Somalia at the town library with the participation of asylum seekers. Other initiatives involving the media include a fund raising television campaign for unaccompanied minors and asylum seekers.
199. ECRI encourages the authorities to continue their efforts to promote a positive image of asylum seekers and refugees and ensure that the need for international protection is understood and respected.
200. In its third report, ECRI encouraged the Croatian authorities to pursue and strengthen their efforts to provide training in the new law¹⁶, human rights and respect for diversity for all personnel in contact with asylum-seekers and refugees.
201. ECRI has been informed that there is a five-hour training module for border police on the Asylum Law and refugee rights at the Police Academy. In addition, there is also specialised training on dealing with vulnerable sub-groups, such as women and children. Training has also been provided through EU programmes, and workshops on refugee status determination have been organised by the UNHCR. Moreover, the Border Monitoring Project, financed by the Netherlands Ministry of Foreign Affairs and supported by the Ministry of Interior and the UNHCR and run by the Croatian Law Centre, provides training for border police so that they correctly distinguish asylum seekers from others attempting to cross the border illegally. ECRI welcomes these efforts.
202. In its third report, ECRI strongly recommended that the Croatian authorities move swiftly to find a long-term solution for persons from Bosnia and Herzegovina currently living in Croatia under the temporary protection regime.
203. According to figures provided by the UNHCR, there are still 773 persons from Bosnia and Herzegovina under temporary protection in Croatia. With this status, they have access to social and economic rights as well as employment. ECRI notes that the 2011 amendments to the Law on Foreigners provide for the granting of permanent residence after three years of temporary residence on humanitarian grounds. This opens the door to acquiring Croatian citizenship.
204. The authorities informed ECRI that they are trying to find solutions for those who wish to stay in the country. They stated, for instance, that the remaining refugee camps would be closed down shortly, as apartments are being provided for the last families living there. In addition, accommodation has been provided for around 100 Bosnians in two centres for the elderly and disabled. ECRI encourages the authorities to pursue their efforts to find satisfactory solutions for the remaining refugees from Bosnia and Herzegovina and to facilitate the

¹⁶ This refers to the Law on Asylum, adopted in 2003.

acquisition of citizenship for these people who have been in the country for more than 15 years.

Other non-nationals

205. In its third report, ECRI encouraged the Croatian authorities to monitor closely the situation as regards immigration and to formulate an immigration policy.
206. The Law on Foreigners of 2003, as amended several times, most recently in 2010, regulates all issues concerning non-nationals in Croatia.
207. Although Croatia is still not a destination country for immigration, it has seen an increase in the arrival of migrants in an irregular situation. In 2010, 1 948 persons were intercepted illegally crossing into Croatia, while in 2011 this figure almost doubled to 3 461. These migrants mostly come from Afghanistan, Pakistan, Bosnia and Herzegovina, Turkey and Kosovo¹⁷. If removal cannot be effected, the persons concerned are usually detained for as long as the law permits (under Articles 125 and 126 of the revised Law on Foreigners, this is a maximum of 18 months) and then released, with no follow-up or assistance provided.
208. ECRI notes that many undocumented migrants are minors. In 2010, 271 such minors arrived in Croatia and 811 in 2011. Concern has been expressed about the fate of unaccompanied minors who do not apply for asylum, as there is no system in place to deal with them. Currently they are accommodated at a centre for children with behavioural problems run by the social welfare services and the staff do not have the capacity or expertise to deal adequately with them. Even though a guardian is appointed in all cases, failings in the care of this particularly vulnerable group include lack of appropriate medical screening, age assessment testing, interpretation, recording and tracing. ECRI is concerned that, as a result, most of these children simply run away and disappear. The authorities have informed ECRI that a project has been submitted under the EU's Instrument for Pre-accession Assistance aiming at setting up an effective national referral mechanism for the identification, assistance and protection of unaccompanied minors.
209. ECRI considers that the authorities should prepare for further increases in the number of migrants coming to Croatia by resolving the problems highlighted above. In particular, they should develop a comprehensive strategy for the various groups of non-nationals, including asylum seekers and refugees (see above). The authorities have informed ECRI that they are working on drafting such a policy for the coming five-year period.
210. ECRI strongly recommends that the authorities adopt a comprehensive strategy for all migrants, including asylum seekers and refugees, paying particular attention to regulating the care of unaccompanied minors. This should be done in close consultation with the UNHCR and relevant NGOs.
211. In its third report, ECRI encouraged the authorities to continue their efforts as regards training for personnel who come into contact with illegal immigrants in Croatia, in order to ensure that such persons are treated with due regard for their fundamental rights.
212. ECRI notes that numerous training courses have been organised in this context, as described in § 201.

¹⁷ All reference to Kosovo, whether to the territory, institutions or population, in this report shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

VI. Antisemitism

213. In its third report, ECRI recommended that the Croatian authorities take all the necessary measures to combat antisemitism in Croatia.
214. There are around 2 500 Jews today in Croatia and ten separate Jewish communities. The country has four active synagogues and 56 Jewish cemeteries.
215. Although Jews have no complaints of discrimination in every day life, they observe that antisemitic sentiment on the Internet and graffiti are common. For example, in August 2010, a photograph was placed on Facebook of a man making a Nazi salute and a woman wearing a Hitler mask in front of the Jewish community building in Osijek. In November 2010, antisemitic graffiti appeared near the site of a planned golf course in Dubrovnik, whose investors were mostly Israeli citizens and Jews. ECRI considers that the authorities should take a vigorous stance against manifestations of antisemitism.
216. Jews in Croatia have expressed dissatisfaction about the lack of consultation with their communities on matters which concern them, including Holocaust education in schools, which they regard not only as inadequate but often also inaccurate, and the absence of instruction in Jewish culture and religion.
217. ECRI notes that the Jasenovac¹⁸ Memorial Museum was reopened in November 2006 along with an educational centre. A stone monument has been erected at the site and a train used to transport prisoners to the camp is on display. However, concerns have been raised over the exhibition's minimisation of the crimes that took place there and misrepresentation of the facts.
218. ECRI recommends that the authorities open and/or improve channels of dialogue with the Jewish communities on all matters that concern them. In particular, they should be consulted on Holocaust education in Croatia. ECRI draws the attention of the authorities to its General Policy Recommendation No. 9 on the fight against antisemitism.

VII. Conduct of law enforcement officials

219. In its third report, ECRI recommended that further steps be taken to recruit members of minority groups to the police.
220. ECRI has made a recommendation in § 166 on this subject.
221. In its third report, ECRI urged the Croatian authorities to take additional measures to ensure that the police do not engage in any reprehensible behaviour against members of minority groups. ECRI emphasised the importance of setting up an independent investigative body empowered to investigate allegations of reprehensible conduct by police and, where necessary, to ensure that the suspects are brought to justice.
222. Cases of police misconduct towards members of minority groups continue to be reported. Roma are the most frequent victims, as observed in the section on *Racist Violence*.
223. The Ministry of Interior has a Department for Internal Control which deals with disciplinary matters in respect of all employees of the Ministry, with or without police powers. It has supervisory, inspection and investigative powers. The Ombudsman has stated that this is insufficient and has called for the introduction

¹⁸ It is estimated that 80 000 to 600 000 Serbs, Jews, Roma, Croats and others were killed at the Jasenovac concentration camp during World War II under the Ustasha regime. The Jasenovac Memorial Museum maintains a list of individual victims currently comprising 80 914 names.

of an independent body authorised to investigate allegations of police misconduct.

224. ECRI understands that the new Police Law under preparation will provide for a civil oversight mechanism which will act upon complaints of police misconduct. It encourages the authorities to go ahead with this reform.

225. ECRI recommends again the setting up of a body fully independent of the police and prosecuting authorities empowered to investigate allegations of police misconduct, including racism or racially discriminatory behaviour, with a view to ensuring that suspects are brought to justice. Inspiration should be taken from ECRI's General Policy Recommendation No. 11 on combating racism and racial discrimination in policing.

VIII. Education and awareness raising

226. In its third report, ECRI recommended that the Croatian authorities pursue and strengthen their efforts to raise schoolchildren's and teachers' awareness of the need to combat racism and intolerance. It strongly encouraged all initiatives aimed at fostering mutual respect among children of all ethnic origins.

227. Education for human rights and democratic citizenship was introduced in the educational system in 1999 and has been applied ever since in an interdisciplinary manner, as an optional subject, through the entire curriculum and school syllabus. ECRI notes that the integration of education for human rights into colleges and at university level is underway throughout the country.

228. In its third report, ECRI recommended that broader and more systematic awareness-raising on the issues of racism and discrimination be provided to civil servants, elected representatives and politicians. ECRI also recommended that the Croatian authorities develop their awareness-raising activities among the general public, for example by mounting a national campaign against racism and intolerance, not only in the capital and the cities, but also and especially in local communities.

229. ECRI notes that, in cooperation with the Ombudsman's Office, the Government implemented the project Supporting the Implementation of the Anti-Discrimination Act in 2009 and 2010. This included training on combating discrimination organised for representatives of the media, civil society and employers, as well as a campaign to familiarise the public with the unacceptability of discriminatory behaviour, the rights resulting from the Act and the possibilities for protection against discrimination. The campaign was organised through giant posters and television and radio advertisements.

IX. Monitoring Racism and Racial Discrimination

230. In its third report, ECRI encouraged the Croatian authorities to consider ways of setting up a coherent and comprehensive data collection system to assess the situation of the various minority groups living in Croatia and the scale of manifestations of racism and racial discrimination.

231. The central office for the collection of data related to discrimination is the Ombudsman's Office. It has been given the task of developing a unified database to record incidents and case law. In addition, ECRI was informed that the Government Office for Human Rights is in the process of establishing an Equality Database, based on information gathered by the Ministry of Interior, the Ministry of Justice and the State Prosecutor's Office. ECRI considers, therefore, that good efforts are being made by the authorities to collect and record data on racism and racial discrimination.

232. A new population census was conducted in Croatia in April 2011, the final results of which are not yet available. ECRI is pleased to note that ethnicity and religion featured among the 45 questions contained in the census forms. The results will provide the data necessary for achieving full respect of the constitutional right of national minorities to proportionate representation in public administration and the courts.
233. Data collected through a one-off census will not, however, suffice for the authorities to be able to monitor racial discrimination in various fields (education, employment, health and housing). To achieve this, a system is required whereby each authority monitors, on a regular basis, the performance of each vulnerable group within its field of competence. The systematic collection of disaggregated data need not present a threat for human rights if the principles of anonymity, informed consent and voluntary self-identification are respected.
234. ECRI recommends that the authorities systematically collect disaggregated equality data in accordance with the principles of anonymity, informed consent and voluntary self-identification, taking inspiration from its General Policy Recommendation No. 1 on combating racism, xenophobia, antisemitism and intolerance.

INTERIM FOLLOW-UP RECOMMENDATIONS

The three specific recommendations for which ECRI requests priority implementation from the authorities of Croatia, are the following:

- ECRI recommends that the Croatian authorities increase their efforts to ensure appropriate initial and continuous training to judges, prosecutors, lawyers and police on applying the new Criminal Code provisions on combating racism and racial discrimination as well as the Anti-Discrimination Act.
- ECRI strongly recommends that the authorities improve the Law on Free Legal Aid, in close dialogue with all stakeholders, so that vulnerable groups are not denied access to justice on account of complex procedures and prohibitive costs.
- ECRI strongly recommends that the authorities adopt a comprehensive strategy for migrants, asylum seekers and refugees, paying particular attention to regulating the care of unaccompanied minors. This should be done in close consultation with the UNHCR and relevant NGOs.

A process of interim follow-up for these three recommendations will be conducted by ECRI no later than two years following the publication of this report.

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