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SECOND REPORT ON CROATIA

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Foreword

The European Commission against Racism and Intolerance (ECRI) is a body of the Council of Europe, composed of independent members. Its aim is to combat racism, xenophobia, antisemitism and intolerance at a pan-European level and from the angle of the protection of human rights.

One of the pillars of ECRI's work programme is its country-by-country approach, whereby it analyses the situation as regards racism and intolerance in each of the member States of the Council of Europe and makes suggestions and proposals as to how to tackle the problems identified.

At the end of 1998, ECRI finished the first round of its country-by-country reports for all member States. ECRI's first report on Croatia is dated 16 October 1998 (published on 9 November 1999). The second stage of the country-by-country work, initiated in January 1999, involves the preparation of a second report on each member State. The aim of these second reports is to follow-up the proposals made in the first reports, to update the information contained therein, and to provide a more in-depth analysis of certain issues of particular interest in the country in question.

An important stage in ECRI's country-by-country work is a process of confidential dialogue with the national authorities of the country in question before the final adoption of the report. A new procedure in the second round of country reports is the organisation of a contact visit for the ECRI rapporteurs prior to the drafting of the second report.

The contact visit to Croatia took place on 5-8 September 2000. During this visit, the rapporteurs met with representatives of various ministries and public administrations responsible for issues relating to ECRI's mandate. ECRI warmly thanks the Croatian national authorities for their wholehearted co-operation in the organisation of the contact visit, and in particular would like to thank all the persons who met its delegation each of whom provided much valuable information on their own field of competence. ECRI would also like to thank the Croatian national liaison officer whose efficiency and collaboration were much appreciated by ECRI's rapporteurs.

Furthermore, ECRI would like to thank all the representatives of non-governmental organisations with whom its rapporteurs met during the contact visit for the very useful contribution they made to the exercise.

The following report was drawn up by ECRI under its own responsibility. It covers the situation as of 15 December 2000 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposals made by ECRI.

Executive summary

Despite a period of difficult political, economic and social change, the Republic of Croatia has made considerable progress in addressing issues related to racism, antisemitism, discrimination and intolerance, particularly in the framework of the democratisation process following the parliamentary and presidential elections held in early 2000. Alongside a wide ratification of international legal instruments, it is undertaking serious efforts to improve domestic legislation in the area and its implementation. The national authorities have also expressed their commitment to the return of refugees and displaced persons of all ethnic groups.

Nevertheless, serious problems of ethnic and national discrimination and intolerance persist in many key fields of life in Croatia, particularly concerning Serbs, but also Roma/Gypsy communities. Despite good will on the part of the national authorities, effective remedies for these problems have not yet been developed. Of deep concern is the situation at the local level, particularly in regions affected by war, where there is ill-will and discrimination on the part of some local authorities. Furthermore, efforts at reconciliation and confidence-building aimed at improving the climate of tension underlying current problems have been insufficient on the part of all concerned parties. The situation is exacerbated by the generally difficult economic climate and the need to reconstruct the ruined infrastructure of the territories directly affected by the war.

In the following report, ECRI recommends to the Croatian authorities that further action be taken to combat racism, discrimination and intolerance in a number of areas. These recommendations cover, *inter alia*, the need to ensure that the legal framework aimed at combating these phenomena is adequate and effectively implemented; the need to take measures to address problems of discrimination at the local level; the need to take further measures to facilitate the return of refugees and displaced persons and the need to undertake special measures to stimulate a process of reconciliation and confidence-building, including wide-ranging educative and awareness-raising measures.

SECTION I: OVERVIEW OF THE SITUATION

A. International legal instruments

1. Croatia has signed and ratified a large number of international legal instruments relevant in the field of combating racism and intolerance. The Croatian authorities are considering the question of accepting Article 14 of the Convention for the Elimination of All Forms of Racial Discrimination, which would allow the possibility for individuals and groups of individuals to file petitions before the Committee on the Elimination of Racial Discrimination. ECRI hopes for a swift and successful conclusion of this process. In its first report ECRI also expressed its hope that Croatia would ratify the European Social Charter. ECRI has been informed by the Croatian authorities that preparations for ratification are underway and encourages a rapid finalisation of this process. ECRI furthermore encourages the Croatian authorities to sign and ratify the European Convention on Nationality, the Revised European Social Charter, the European Convention on the Legal Status of Migrant Workers and the European Convention for the Participation of Foreigners in Public Life at Local Level. ECRI is pleased to learn that signature of the Additional Protocol N° 12 to the European Convention on Human Rights is expected to take place shortly and that the procedure for its ratification is planned to commence immediately after such signature.

B. Constitutional provisions and other basic provisions

2. Article 14 of the Croatian Constitution establishes the fundamental principle of equality before the law as well as the right of every individual to enjoy all rights and freedoms regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, education, social status or other characteristics. ECRI regrets that association with a national minority does not explicitly appear among the prohibited grounds of discrimination.¹
3. The Croatian Constitution also guarantees to members of all nations and minorities the freedom to express their nationality, the freedom to use their language and script as well as their cultural autonomy (Article 15). ECRI notes that new paragraphs 2 and 3 have been added to Article 15 of the Constitution and read: "Equality and protection of national minorities are governed by the Constitution Law adopted according to the procedure for adopting organic laws. In addition to the general suffrage, the Law may provide, to the members of national minorities, the right to elect their own representatives to the Croatian Parliament."
4. ECRI welcomes the adoption by the Croatian Parliament in May 2000 of the Law on the Use of Languages and Script of National Minorities in the Republic of Croatia as well as the Law on Education in the Language and Script of National Minorities. ECRI notes furthermore that the Law on the Electoral Procedure, the Law on Local Self-Government and the Law on Associations are

¹ Article 14 of the European Convention on Human Rights, which is directly applicable by virtue of Article 134 of the Constitution of Croatia, contains association with a national minority as a ground of discrimination. However, the scope of Article 14 of the European Convention on Human Rights is limited to the rights set forth therein.

being prepared and are to elaborate certain aspects included in the Constitutional Law on National Minorities.

5. Furthermore Article 39 of the Constitution stipulates that any call for or incitement to national, racial or religious hatred or any form of intolerance shall be prohibited and punishable. Article 40 guarantees the freedom of conscience and religion and free public profession of religion and other convictions.
6. As noted by ECRI in its first report, the Preamble to the Constitution leaves Slovenians and Bosnians out of the list of enumerated autochthonous national minorities despite their numeric importance. Besides the symbolic importance of this list, certain benefits, such as guaranteed representation in the Croatian Parliament (Sabor), flow to minorities who are mentioned. In this respect, ECRI notes that a new Draft Constitutional Law on National Minorities is currently being drafted with the participation of representatives of national minorities and in consultation with the Venice Commission of the Council of Europe. ECRI suggests that once a solution satisfactory to all parties is found as regards the question of the list of national minorities contained in this Draft Law, consideration could be given to bringing the reference to national minorities contained in the Preamble to the Constitution into line with this new Constitutional Law on National Minorities.
7. The Constitutional Law on Human Rights and Freedoms and the Rights of Ethnic and National Communities or Minorities in the Republic of Croatia of 1991 (Constitutional Law of Human Rights) provides extensive guarantees of minority rights in key fields of life including *inter alia* education, use of language, culture and media. Furthermore, this law addresses the issue of minority participation in public affairs and minority representation at state and local levels, including special administrative arrangements in areas where national minorities constitute a considerable proportion of the population.
8. ECRI drew attention in its first report to the suspension by the Croatian authorities of provisions of this law granting a special status to certain districts with a majority of ethnic minority members (Serb districts) on the basis of the demographic changes in the population produced by the war. ECRI stressed that the Constitutional Law of Human Rights without these provisions is inadequate in the Croatian context. In a recent amendment to this law adopted by the Sabor on 11 May 2000 the previously suspended provisions were abolished. The Venice Commission of the Council of Europe noted that this solution conflicts with its proposals and recalled that the suspension and subsequent abolition of the special status provisions could have a discouraging psychological effect on minorities and displaced populations who would like to remain in or return to Croatia. ECRI notes that the Croatian authorities are in the process of drafting a new constitutional law on the rights of minorities in consultation with the Venice Commission (see paragraph 6 above)² and strongly encourages the authorities to find a solution which would be satisfactory to all groups concerned, including with respect to special

² *Despite adopting amendments to this Law on 11 May 2000, the Sabor nonetheless instructed the Government to prepare a new draft of this Law to be introduced before Parliament within six months. This time period seems to have been extended to allow the authorities more time to prepare the draft.*

administrative arrangements and questions of representation and participation in public affairs. ECRI encourages the Croatian authorities to continue their current close co-operation with the Venice Commission and again emphasises the paramount role which solutions recommended in this field can play in restoring a climate of confidence and security.

- ***Citizenship Law***

9. As mentioned by ECRI in its first report, the Law on Croatian Citizenship has had a discriminatory effect on some segments of the population, particularly some Serbs, Roma/Gypsies and Bosniaks, however also upon members of other minority groups. This law has left without Croatian citizenship individuals who have been long-term or life-long residents of what is today the Republic of Croatia due to the conditions for acquiring citizenship established by this law. Such individuals have faced difficulties in accessing basic rights such as the right to repossess their property or receive reconstruction assistance, the right to work, the right to receive social benefits and, for those displaced outside Croatia's borders, the right to return. This problem arises both from the provisions of the law and its application.
10. Article 30 of the Law on Croatian citizenship provides in its paragraph 1 that a Croatian citizen is every person who acquired Croatian citizenship according to the regulations applicable on the day of entry into force of the Law. This included individuals who held citizenship of the Socialist Republic of Croatia in the former Socialist Federal Republic of Yugoslavia (SFRY) (at that time a republican citizenship that had little or no practical effect). For those who did not acquire citizenship automatically, the Law sets out in Article 30, paragraph 2 a facilitated procedure for the acquisition of Croatian citizenship for members of the "Croatian people" (acquisition of citizenship according to the principle of *jus sanguinis*), who are eligible for citizenship in the Republic of Croatia as long as they submit a written statement that they consider themselves Croatian citizens. Other individuals must go through a more lengthy process of naturalisation in order to obtain Croatian citizenship and fulfil the more stringent requirements established for naturalisation. These include inter alia: possession of a registered place of residence for a period of not less than five years constantly on the territory of the Republic of Croatia before the filing of the petition (Article 8(3)); proficiency in the Croatian language and Latin script (Article 8(4)); the possibility for a conclusion to be derived from the applicant's conduct that he or she is attached to the legal system and customs persisting in the Republic of Croatia and that he or she accepts the Croatian culture (Article 8(5)). Those born on the territory of the Republic of Croatia are exempted from some requirements, however they must still meet the conditions under Articles 8(3) and 8(5).

11. The requirement of five years of continuous residency under Article 8(3) effectively denies displaced persons and refugees the ability to acquire Croatian citizenship. ECRI is pleased to learn that, in the context of the Return Programme³, the government has taken an administrative decision whereby refugees who left the country will be considered to have done so for justified reason and thus be exempted from application of this condition. Nonetheless ECRI is concerned that this administrative decision is not uniformly applied at the local level, where there continue to be reports of a lack of cooperation on the part of local government officials. ECRI is also concerned that the nature of Articles 8(4) and 8(5) lend themselves to arbitrary and discriminatory application. Language proficiency is tested in a local police station, and ECRI is aware that certain non-ethnic Croats, and in particular Roma/Gypsies, have been denied citizenship on the basis of this condition.
12. Administrative obstacles reportedly also continue to provide additional difficulties to persons seeking Croatian citizenship through the normal naturalisation procedure. For instance, individuals encounter difficulties paying the administrative fee of 1500 kuna (198 €) and procuring the necessary documentation – a particular problem for those who have been displaced, which has been compounded by the loss or destruction of documents.
13. ECRI is pleased to learn that the national authorities are aware of these problems and taking measures to address them, including considering a new draft law in this regard. ECRI supports the national authorities in these efforts and stresses the importance of ensuring that the naturalisation requirements do not impede long-term residents from acquiring citizenship. In this regard, ECRI draws the attention of the national authorities to international legal standards in this field, including the European Convention on Nationality. It is furthermore felt that a simplified procedure for naturalisation should be set up for those people who were citizens of the former SFRY and who were residing in Croatia at the time of independence. ECRI also encourages the authorities to ensure that naturalisation procedures are seen to be easy to understand and their implementation at all levels fair and transparent, particularly as regards the reasons for rejection in any given case.

C. Criminal law provisions

14. As noted by ECRI in its first report, there are several important provisions aimed at combating racism and intolerance in the new Criminal Code of Croatia, which entered into force on 1 January 1998. Article 106 penalises the denial or restriction of human rights and freedoms specified in the Constitution, law or other regulation on the basis of nationality, race, colour, gender, language, religion, political or other creed, national or social origin, property, birth, education, social status or other properties, or based on belonging to an ethnic or national minority in the Republic of Croatia. The same article punishes offenders who deny or restrict the rights of citizens to express their national identity and cultural autonomy or to use their language and script.

³ See below, *Reception and status of displaced persons and non-citizens, Return of displaced persons*

15. Article 174 penalises the violation of basic human rights and freedoms recognised by the international community based on differences in race, gender, skin colour or national or ethnic origin. It also penalises the dissemination of ideas claiming the superiority of one race over another as well as the promotion of racial hatred and the incitement to racial discrimination. In its first report, ECRI expressed serious concern at the failure to include in the new Criminal Code the previous Article 240 establishing the crime of incitement to national, racial or religious hatred or intolerance. ECRI is pleased to learn that the Law on the Amendments to the Criminal Code, which entered into force in December 2000, amended Article 174 paragraph 1 to prohibit additionally the violation of human rights and freedoms on the grounds of differences in religion, language, political or other creed, property, education, social position or other characteristics. Furthermore, Article 174 paragraph 3 has been amended to sanction public presentation or dissemination of ideas claiming superiority or inferiority of race, ethnic or religious community, sex, nation, as well as the idea of superiority or inferiority based on colour aimed at the promotion of racial, religious, gender, national or ethnic hatred or hatred based on colour or aimed at derision.
16. ECRI is of the opinion that it is of great importance that the Croatian authorities send a message that racist crime will not be tolerated. In this respect ECRI recalls its general policy recommendation N° 1 in which it suggests defining racially motivated offences as specific offences or explicitly providing for racial motivation to be taken into account as an aggravating factor by the courts. While noting that the Croatian courts are prescribed to take into consideration any extenuating or aggravating circumstances, including the motivation for the offence, when sentencing, ECRI urges the Croatian authorities to consider the introduction of a specific provision in the sense of its general policy Recommendation No 1. ECRI has learned that the Croatian authorities are considering introducing a provision prohibiting organisations which promote and incite discrimination on the basis of race, ethnic origin or nationality. ECRI would welcome such a provision.
17. Furthermore ECRI stresses that priority should be given to the full implementation of provisions aimed at combating racism and discrimination, and that implementation should be carried out in a non-discriminatory manner. The Croatian authorities are encouraged to examine current implementation more closely (for example by monitoring the number of cases reported, the action taken by the authorities and the outcomes) in order to undertake effective measures to improve the application of laws in this area.

D. Civil and administrative law provisions

18. As ECRI noted in its first report, Croatia's Labour Law contains a very full list of grounds of prohibited discrimination in the field of employment. However, ethnic origin and association with a national minority do not figure amongst the listed grounds. ECRI encourages the Croatian authorities to add these grounds to those enumerated.

19. Croatia lacks civil and administrative legislation relating to discrimination in other key fields of life, such as housing, health, education, social security and the provision of goods and services, although members of ethnic and national minority groups may face discrimination in all of these fields. ECRI believes that such legislation not only provides an avenue of redress for individuals who are victims of discrimination, but it may also serve an important educative and awareness-raising function. In some countries, the introduction of a single body of anti-discrimination legislation covering discrimination in several fields of life, and providing for effective enforcement, has proved a valuable tool. ECRI therefore encourages the Croatian authorities to consider the possible introduction of such a body of legislation and to ensure that more effective judicial and administrative means of redress are established.

- ***Law on Convalidation***

20. Adopted by the Sabor in October 1997, the Law on Convalidation is intended to permit the validation of official documents issued by "*Republika Srpska Krajina*" (RSK) authorities to Croatian Serbs who were subject to its authority. Local non-governmental organisations report that this law is inadequately implemented, affecting in particular, key areas of life such as receipt of pensions and unemployment benefits. ECRI notes that the Croatian authorities are investigating these issues and urges them to address the difficulties in the application of this law at the local level.

E. Administration of Justice

21. Croatia's judicial system is impeded by an enormous backlog of cases estimated at over one million. There is also a problem with the enforcement of court decisions, with many complaints concerning orders calling for the eviction of persons occupying other people's property. This situation affects the application of legislation in the area of racism and discrimination, as it does legislation in other areas. ECRI is pleased to learn that the Croatian authorities are aware of these problems and examining measures to address them, including legal amendments and training for the judiciary.
22. Furthermore, ECRI is concerned that individuals who are not ethnic Croats were dismissed from the judiciary during the war and the subsequent years. ECRI encourages the Croatian authorities to take measures to address this situation and increase the ethnic diversity of the judiciary.
23. The fairness of trials accusing ethnic Serbs of committing war crimes, while hesitating to try ethnic Croats for such crimes has been a matter of concern for the international community. ECRI welcomes the efforts of the Croatian authorities to address this issue and to co-operate with the International Criminal Tribunal for the Former Yugoslavia.

F. Special government initiatives to promote tolerance and equality

- *Specialised bodies and other institutions*

24. The Croatian Ombudsman is charged with ensuring that the legal and constitutional rights of citizens are not violated by organs of the state administration or other public bodies or agencies. The Ombudsman, whose role was consolidated in a Constitutional amendment of November 2000 (Article 93, paragraph 4), may act on individual complaints or on his or her own initiative. Besides seeking action directly from the concerned body, the Ombudsman submits an annual report to the Croatian Parliament and may release his or her findings and proposals to the media. ECRI reiterates its opinion that it is important to further enhance the role of this institution in public life, through, inter alia, increased publicity, better training of staff, and an extension of contacts with national institutions in other countries as well as with international organisations and local non-governmental organisations.
25. Although ECRI values this institution, it stresses the desirability of an independent specialised body charged specifically with competence to deal with cases of racial discrimination and intolerance. It encourages the Croatian authorities to draw inspiration from ECRI's policy recommendation No 2 on the establishment of specialised bodies at national level for combating racism and intolerance, in order to set up such a body or to create a special competence in this field within the existing office of the Ombudsman.

G. Reception and status of refugees, displaced persons and non-citizens

- *Return of refugees and displaced persons*

26. ECRI welcomes the attitude expressed by the new government towards the issue of return of ethnic Serbs who left their homes during the period of conflict and particularly following the Croatian military operations in the summer of 1995. Nonetheless, despite an increase of Serbs returning since the elections both spontaneously and under the Programme for the Return and Accommodation of Displaced Persons, Refugees and Exiled Persons (Return Programme), these numbers remain relatively low and consist largely of elderly people. A number of obstacles deter Serbs from returning to the Republic of Croatia. These include: long waits and difficulties in obtaining the requisite citizenship and travel documents; insecurity in the regions of return (including harassment and intimidation directed at the returnees)⁴; inability to reoccupy their own homes; lack of appropriate alternative accommodation⁵; unemployment⁶; confusion surrounding the extent of the amnesty law⁷; and a hostile climate at the local level in former areas of conflict⁸. In this context

⁴ See below, *Vulnerable groups, Serbs*

⁵ See below, *Access to public services, Access to housing*

⁶ See below, *Employment*

⁷ See below, *Vulnerable groups, Serbs*

⁸ See below, *Issues of Particular Concern, Local authorities*

displaced persons of Croat ethnicity may also face certain problems in municipalities where Serbs are in the majority. Most returns have been to the areas under special state care, in which housing, utilities, social facilities and the economy were devastated during the war, thus further complicating the task of addressing such problems.

27. Many of these issues are discussed in other areas of this report, however ECRI would like to note here that the resolution of these connected issues is vital to the process of return⁹. In this respect, ECRI notes that efforts are being made to simplify and clarify return and restitution procedures. As concerns the issue of travel and citizenship documents, ECRI encourages the Croatian authorities to continue their cooperation with the United Nations High Commissioner for Refugees. It should also be ensured that Croatian consulates and embassies in neighbouring countries as well as the Office for Displaced Persons and Refugees have sufficient resources and clear instructions enabling them to process applications as speedily as possible. ECRI also believes that the international community should offer sufficient aid to Croatia to support the process of return.
28. Furthermore ECRI highlights that the problem of return does not depend exclusively on the good will of the Croatian authorities, but also involves other factors such as the cooperation of the Serb minority, the cooperation of neighbouring countries, where ethnic Croats previously lived and encounter difficulties returning, as well as stability in the region. In this context, ECRI welcomes efforts to facilitate the return process through multilateral cooperation.
29. An unknown number of Roma also fled to the Federal Republic of Yugoslavia due to anti-Romani violence in Eastern Slavonia following the reintegration of the region into the Republic of Croatia. ECRI encourages the Croatian authorities to investigate this situation and ensure that the Roma who left are able to return to their homes.

- ***Asylum seekers and refugees***

30. The Croatian asylum system is operating according to ad hoc asylum procedures. Although article 33 of the Constitution provides for the right to obtain asylum, an organic law on asylum has not yet been enacted. ECRI is pleased to learn that the Croatian authorities are finalising a draft law in this area and are consulting with international organisations in this process, with a view to ensuring that the new law respects international human rights standards and the principles enshrined in the 1951 Geneva Convention Relating to the Status of Refugees and its 1967 Protocol, to which Croatia is party. The Croatian authorities should also ensure that border guards and officials who will be involved in the asylum procedure receive adequate training in human rights and relevant legislation in this field: ECRI notes in this respect that some

⁹ ECRI also calls attention in this connection to the *Issues of Particular Concern* section of this report where it discusses the problem of local authorities and the need for reconciliation and confidence-building measures.

training of police and border officers involved in the asylum procedure has already started.

- *Illegal migration*

31. There are a certain number of illegal migrants on Croatian territory. ECRI stresses the importance of ensuring that different categories of illegal migrants – economic migrants, asylum seekers and women being trafficked into prostitution - are each dealt with in a manner appropriate to their particular situation. The Croatian authorities should also ensure that all officials dealing with illegal migrants receive special training, including training in human rights, and that individuals caught in an illegal situation are not treated as criminals.

H. Access to public services

- *Access to social services such as social welfare, basic facilities and health care*

32. ECRI notes that, according to the Ministry of Labour and Social Policy, there is no discrimination in legislation in the field of social services. However, members of certain minority groups face difficulties and discrimination at the local level in obtaining such benefits as pensions, social welfare and health care. These problems most acutely affect those who are displaced, those who are having difficulties obtaining Croatian citizenship, and those who are unable to validate documents due to inadequate implementation of the Law on Convalidation. Serb returnees reportedly may also encounter discrimination at the local level in attempting to obtain basic facilities¹⁰. ECRI expresses its concern about discrimination members of minority groups may face, and encourages the Croatian authorities to undertake further measures to address these problems and ensure that individuals of all ethnic and national groups have equal access to basic facilities, social welfare, pensions, health care and other services in all areas of the country. ECRI highlights the importance of such efforts for the process of confidence building and reconciliation. ECRI also encourages the Croatian authorities to enact anti-discrimination legislation in these fields¹¹.
33. Attention is also drawn to the particularly bad living conditions faced by Roma/Gypsies. Several Roma villages lack basic facilities such as water and electricity. In some areas where there are rats, a lack of hygiene and drinkable water, children suffer from contagious diseases. ECRI strongly encourages the Croatian authorities to investigate this situation and resolve any problems identified, ensuring that Roma/Gypsies are treated in the same manner as other Croatian citizens.

¹⁰ *Discrimination by local authorities is dealt with in more detail in the Issues of Particular Concern Section of this report*

¹¹ *See above, Civil and administrative law provisions*

- ***Access to housing***

34. Access to housing continues to be a central problem in Croatia, as elsewhere in the region, following the period of conflict which caused hundreds of thousands of individuals to be uprooted from their homes. Although ethnic Croats were also uprooted, within the Republic of Croatia it is ethnic Serbs who are disproportionately affected by an inability to either regain, repossess or rebuild their former homes. Issues of housing are at the heart of continuing tensions between different ethnic groups and as such their resolution is vital to reconciliation and confidence-building. The inability to access housing is also a significant impediment to return. ECRI notes that the Croatian authorities are making efforts to simplify and facilitate procedures in this respect. It should also be noted in this context that multilateral cooperation, involving neighbouring countries to which refugees of Croatian ethnic origin want to return, is an important element for the resolution of problems existing in this field. The European and international community also have an important role to play in this area.

Occupancy rights:

35. ECRI reiterates its concern over the loss by many Serbs of the occupancy rights to their homes, without any form of compensation, during the process of privatisation. Prior to the break-up of the former SFRY, properties were state-owned, however tenants enjoyed so-called "occupancy rights", which were life-long and inheritable. During the process of privatisation a number of widely criticised discriminatory laws, providing for too short a deadline, and their discriminatory application deprived many Serbs of these occupancy rights. Although some of the most discriminatory legislation has now been repealed, the issue of lost property still needs to be adequately addressed. Although ECRI recognises the complexity of this issue and the financial constraints, it strongly encourages the Croatian authorities to consider means of either restoring lost occupancy rights or providing previous occupants with just and equitable compensation.

Occupied property:

36. In cases where occupancy rights were not lost, displaced persons now wishing to reoccupy their former homes face the problem that these homes are often occupied by others. For instance, in Western Slavonia and the Knin region, in accordance with the Law on the Temporary Takeover of Specified Property of 1995 (now repealed), many homes belonging to Croat Serbs were placed under State administration and given over to Croats (often themselves displaced, either from parts of Croatia that were occupied by Serbs during the conflict or from neighbouring countries) who may not be dispossessed of the property until proper alternative accommodation is found.
37. Disputes between returnees wishing to repossess their property and temporary occupants are to be resolved on a case by case basis by Local Housing Commissions. There has been considerable criticism that these Commissions operate in a discriminatory manner in some localities, favouring ethnic Croats over ethnic Serbs. At present, there is also a great deal of confusion surrounding the legal status of these Commissions reportedly resulting in a very

low level of activity. Many instances have stressed that it is important that these Commissions are active and resolve local housing disputes in an effective, impartial and just manner. ECRI encourages the Croatian authorities to continue efforts to clarify the legal status of these Commissions and their mandate. It is also essential that clear guidelines are given to local authorities and that they are provided with appropriate training. Furthermore the Commissions should be given adequate funds, members of minority groups and displaced persons should have effective representation and appeal procedures should be expeditious.

38. In cases where houses were occupied illegally by displaced persons and refugees, these persons can be removed by court order evictions, provided alternative accommodation can be found. This remedy is impeded by the long delays in the courts discussed above¹². Some local courts have also been criticised for favouring ethnic Croats in the area of housing. Once decisions are made, either by courts or Housing Commissions, the cooperation of local authorities, such as the police, is necessary for these decisions to be effectively enforced. ECRI stresses the importance of establishing an effective and expeditious mechanism for resolving these problems and of addressing problems of discrimination at the local level¹³.
39. ECRI appreciates the complexity of these issues and welcomes the commitment of the new national Government to resolve these problems, already demonstrated through legislative amendments removing discriminatory legal provisions. It encourages the authorities to follow through on this commitment as rapidly as possible. ECRI notes that this process could be facilitated through multilateral efforts, involving neighbouring countries in which those refugees occupying others' houses previously lived.

Reconstruction:

40. According to the Croatian authorities, approximately 10% of the country's housing has been damaged or destroyed (particularly in war-affected areas). Ethnic Serbs have been unable to obtain national assistance in order to rebuild their damaged houses due to discriminatory legislation, especially the Law on Reconstruction. ECRI is pleased to learn that in June 2000 the Croatian Parliament adopted amendments to this law, which remove the discriminatory elements and thus equalise the rights of owners of war damaged property regardless of ethnic origin. However, ECRI is concerned about reports that the guidelines established in order to define priorities and offer guidance for implementing this Law might again result in discrimination on the basis of ethnic origin. ECRI recognises the sensitivity of this issue and financial constraints, nonetheless it encourages the national authorities to make special efforts in this area in order to ensure that all affected persons regardless of their ethnic origin benefit equally from reconstruction assistance.

¹² *Administration of justice*

¹³ *See below, Issues of Particular Concern, Local authorities*

- **Access to education**

41. Education of Roma/Gypsy children is a serious problem in Croatia. Many Roma/Gypsy children do not go to school, having either dropped out or having never attended. According to Roma/Gypsy representatives, there are regions where not a single Roma/Gypsy child attends school. ECRI understands that the reasons for this situation are complex, and there is no easy solution, however emphasises the need to increase the participation of Roma/Gypsy children at all levels of education. The Croatian authorities are encouraged to make special efforts in this regard.
42. ECRI wishes to draw attention to its General Policy Recommendation No. 3 on combating racism and intolerance against Roma/Gypsies where the existence of discrimination in explaining the process of social exclusion is highlighted. An investigation should be carried out into the role of stereotypes and prejudices of teachers, which may lead to low expectations for Roma/Gypsy children. ECRI recommends, in this respect, that training be offered to teachers, including information about the particular needs and expectations of Roma/Gypsies and the ability to use this knowledge effectively. As insufficient knowledge of the Croatian language upon entry to classes may also present an obstacle, ECRI emphasises the importance of preparatory classes, additional training in the Croatian language and increased opportunities to study the Roma language in the early years of schooling, which might assist Roma/Gypsy children in integrating into the education system. ECRI notes with interest initiatives such as the "Programme for Including Roma children in the Education System of the Republic of Croatia", launched in 1998, and encourages the authorities in their efforts to continue to develop and implement appropriate measures in co-operation with Roma associations. Roma/Gypsy organisations have highlighted the connection between poverty, poor living conditions and school attendance.¹⁴ The Croatian authorities might consider creating special assistance programmes for Roma/Gypsy and other children from extremely poor families who may find the costs of textbooks, other school materials and proper school dress prohibitive.
43. The recently adopted Law on Education in the Language and Script of National Minorities provides for the right of members of national minorities to receive education in their language and script at the preschool, primary and secondary levels. ECRI was very pleased to note that the final version of the text did not include provisions of the draft law upon which it had commented unfavourably concerning a compulsory statement of national identity and conditioning the possibility for ethnic Croatian children to attend such classes or schools upon the availability of rooms and the provision of Croatian language classes. The law provides that enrolment in such classes or schools will take place under the same terms as enrolment in schools teaching in the Croatian language and letter (Article 7(1)). Members of the national minority concerned will, however, have priority in the case that the number of applicants exceeds the number provided for by the terms of enrolment contest (Article 7(2)). While it understands that possibilities for such programmes are constrained by lack of

¹⁴ See above, *Access to public services, Access to social services such as social welfare, basic facilities and health care*

adequate resources, ECRI encourages the Croatian authorities to continue to take measures to apply this law, particularly in areas where there is a concentrated population of a given minority community. ECRI also believes that it is important that these programmes are coupled with measures to promote opportunities for interaction and communication between children of national minorities and ethnic Croatian children.

I. Employment

44. As ECRI noted in its first report, the catastrophic economic situation and high levels of unemployment in Western and Eastern Slavonia and the Knin region make life very difficult for all inhabitants, no matter what their ethnic background. However, members of minority groups continue to be disproportionately affected by such unemployment. Furthermore, a very large percentage of the Roma/Gypsy community in the Republic of Croatia is unable to find employment. ECRI believes that indirect and direct discrimination frequently play a large part in explaining this phenomenon. ECRI reiterates its belief that firm measures are needed to address these problems and that all possible efforts should be made to ensure that the existing anti-discrimination legislation in this field is efficiently implemented in practice.
45. Members of minority groups continue to be significantly under-represented within the public sector at national and local level, including such areas as public administration, the judiciary, the police force, medical practice and national education. This situation reflects not only difficulties in obtaining employment, but also the dismissal of members of minority groups from the public sector over the last decade. ECRI reiterates its belief that recruitment among members of minority groups should be encouraged. Furthermore ECRI urges the authorities to investigate past cases of dismissal from the public service and to provide effective mechanisms of redress.¹⁵ A public service more reflective of the diverse ethnic composition of the country is, ECRI feels, important for the process of confidence-building and reconciliation in the Republic of Croatia.

¹⁵

See below, Issues of Particular Concern, Reconciliation and Confidence-Building

J. Vulnerable groups

This section covers certain minority groups which may be particularly vulnerable to problems of racism, discrimination and intolerance in the country in question. It is not intended to provide an exhaustive overview of the situation of all minority groups in the country, nor to imply that groups not mentioned face no problems of racism and discrimination

- Bosniaks

46. The Bosniaks encounter difficulties in being recognised as a minority. ECRI encourages the Croatian authorities to include the Bosniaks in the list of minorities in the preamble to the Constitution, discussed above,¹⁶ as well as to include them as a separate group in the upcoming census. The Bosniaks have also encountered problems obtaining Croatian citizenship, which ECRI hopes will be resolved as speedily as possible.

- Jewish Community

47. There appears to be a certain degree of antisemitism in Croatia despite the small size of the remaining Jewish community. There are still certain antisemitic statements made in public fora. In addition, antisemitic publications, such as Croatian translations of Mein Kampf, are reportedly widely available. ECRI supports the efforts of the Croatian authorities to take legal and policy measures to address these issues.¹⁷ ECRI also stresses the role to be played by the various opinion leaders in society, be they politicians, religious groups, the media or civil society, in consistently speaking out against any manifestations of antisemitism.

- Roma/Gypsies

48. Roma/Gypsies experience a very poor living situation and encounter difficulties in most fields of life, as discussed throughout this report. The authorities are encouraged to undertake special initiatives directed to improving the situation of Roma/Gypsies. In this regard ECRI calls attention to its general policy recommendation N° 3 on combating racism and intolerance against Roma/Gypsies.

- Serbs

49. Serbs encounter discrimination in most significant fields of life, as discussed throughout this report. In addition, security continues to be an important concern in waraffected areas despite an improvement in this respect as noted recently by international observers. Serbs continue to be victims of violence, harassment and intimidation, especially in connection with return, although the authorities have put in place a number of measures to address such problems and there are indications that the situation is improving. ECRI also notes here

¹⁶ See above, *Constitutional provisions and other basic provisions*

¹⁷ See above, *Criminal law provisions*

that confusion and uncertainty surrounding the implementation of the Amnesty Law causes insecurity amongst Serbs and has a negative effect upon return and the process of reconciliation. Reports of public posting of lists of so-called Serb war criminals, composed of names of individuals who have been amnestied, are of concern to ECRI.

K. Monitoring the situation in the country

50. There is uncertainty with respect to the size of different ethnic and national minority groups in the Republic of Croatia, as the last official census took place in 1991. This issue has become particularly important in light of Constitutional amendments and discussions with respect to the representation of minority groups. ECRI is pleased to learn that a census is expected to be carried out in 2001. It encourages the Croatian authorities to include a question pertaining to ethnic identity, respecting the principle of voluntary self-identification. ECRI also believes that representatives of ethnic and national minority groups should be involved in the various stages of this process, including the wording of the question.
51. ECRI also encourages the Croatian authorities to set up a system of data collection to record incidents of violence and discrimination perpetrated against members of minority groups and the subsequent action taken by law enforcement officials. The Croatian authorities should also consider ways of establishing a coherent and comprehensive means of data collection to enable the situation of the various minority groups living in Croatia and the extent of manifestations of racism and discrimination to be assessed. Such a system of data collection should be based on the voluntary self-registration of the persons involved, and be designed with due respect paid to the right to privacy and to standards of data protection and free and informed consent of the persons in question. In this connection, the attention of the Croatian authorities is also drawn to ECRI's general Policy Recommendation N°4 on national surveys on the experience and perception of discrimination and racism from the point of view of potential victims.

L. Conduct of Certain Institutions

- Law Enforcement Officials

52. ECRI is concerned by reports that police in Croatia do not always react appropriately to protect Serbs and Serb property in cases of attacks, harassment and acts of intimidation, particularly in areas where ethnic tensions are still high and where there are returns of non-ethnic Croats. However, the recent decision by the OSCE to terminate the Police Monitoring Groups in the Danube Region is an encouraging sign that the situation is improving. ECRI considers that there is a continuing need for improved recording and reporting of racially motivated violence or other incidents, as well as improved investigation and action by the police. This priority should be clearly communicated to police at the local level across the country and they should be given special training enabling them to more effectively identify and investigate racist crimes. The principle of non-discrimination should also be emphasised and cases of suspected discrimination and racism by members of the police

should be investigated and, where appropriate, followed by appropriate disciplinary action.

53. ECRI notes that an internal investigation procedure into complaints of police behaviour exists and has been informed by the Croatian authorities that in 1999 two hundred police officers were dismissed as a result of such investigations. Nonetheless ECRI considers that it is important that such internal control be complemented with an independent body charged with the task of carrying out such investigations.
54. ECRI stresses the importance of improving relations between police and minority groups. In this regard, ECRI notes with interest a new policy within the police seeking to recruit members of minority groups and hopes that such efforts will continue and be strengthened. It is also paramount that all law enforcement officials receive special human rights training, particularly in relation to racism and intolerance, and that they are given a thorough understanding of the relevant national legislation as well as international human rights standards. ECRI appreciates the fact that human rights is taught in the police academy, however encourages the Croatian authorities to extend this training and ensure it is offered to all levels of the police force, as part of in-service training as well as initial training.

M. Media

55. Some media in Croatia promote intolerance and negative stereotypes about non-ethnic Croats and present material in such a manner as to foster ethnic tensions. The media has an important role to play in creating an atmosphere of general tolerance and understanding between members of different ethnic communities and in promoting a climate which fosters confidence-building and reconciliation. ECRI hopes the media will take steps to assume such a constructive role, including the adoption of codes of self-regulation to combat racist and discriminatory reporting and to promote coverage that is balanced and impartial. ECRI also believes that politicians and government officials bear a responsibility not to supply the media with material likely to foster ethnic tension and should instead encourage balanced reporting of any incidents or episodes and strive to disseminate positive information.

SECTION II: ISSUES OF PARTICULAR CONCERN

56. In this section of its country-by-country reports, ECRI wishes to draw attention to a limited number of issues which in its opinion merit particular and urgent attention in the country in question. In the case of Croatia, ECRI would like to draw attention to problems of discrimination by local authorities and the need for reconciliation and confidence-building measures.

N. Local authorities

57. While local authorities in some districts of Croatia are at the origin of several positive initiatives as regards the situation of ethnic and national minorities, in some other areas, and in particular those affected by war, they are sometimes responsible for racist and discriminatory practices of concern to ECRI. The change of attitude and good will demonstrated at the national level with

respect to the Serb minority and its place in Croatian society is not consistently replicated at the local level.

58. This situation affects most issues of concern to ECRI, discussed throughout this report such as citizenship, return, housing, access to social services, the application of the convalidation law and security. Although amendments to discriminatory legislation may be adopted at the national level, in order for these changes to impact upon individuals at the local level, they must be effectively implemented by local authorities. The same applies to national initiatives such as the Return Programme. ECRI is concerned that decisions in the area of racism and intolerance do not filter down to the day-to-day practices of local authorities. Individuals continue to face discrimination at the hands of a variety of local officials including: Housing Commissions, courts, police, government officials responsible for providing social services and utility companies. This discrimination may take not only an overt form, such as unfavourable decision, but also a more hidden form, such as inaction or lack of cooperation in addressing problems.
59. While ECRI appreciates the limits and constraints that the national authorities face in interfering with local powers, ECRI believes that the national authorities should nonetheless take measures open to them to ensure that racist and discriminatory practices do not occur at the local level. As concerns the implementation of legislation, ECRI encourages the national authorities to issue clear implementing instructions and monitor application at the local level. The national authorities should also undertake special training initiatives for local authorities as concerns new legislation and human rights, particularly in relation to racism and intolerance. This training could include information about relevant national legislation as well as international human rights standards. ECRI repeats in this regard its recommendation to the national authorities to consider enacting anti-discrimination legislation in key fields of life¹⁸.
60. The national authorities may also stimulate local authorities to address problems faced by Serbs and other ethnic and national minorities as well as displaced persons through different types of incentives. For example, priority funding for social, education and economic restoration projects could be channelled to Croatian counties and municipalities whose local authorities are willing to encourage the return of refugees and displaced persons of all ethnic groups, which could serve as models of "open communities". Local initiatives could also be encouraged and supported.
61. The national authorities may also wish to consider means to increase their cooperation with local authorities in order to more effectively identify the precise nature of problems and devise appropriate measures to address these problems. They may, for instance, consider establishing local contact points, perhaps in cooperation with the Ombudsman, where individuals or organisations may express problems they experience. It may also be possible to support efforts of mediation or other forms of conflict resolution in order to find solutions to issues of discrimination and encourage a process of trust building. ECRI also stresses the importance of close cooperation with members

¹⁸ See above, *Civil and administrative law provisions*

of ethnic and national minority groups and their representatives in order to develop creative and effective means to address local problems.

O. Reconciliation and Confidence-Building

62. Issues of racism and intolerance in the Republic of Croatia are intimately linked with the period of conflict, its enduring consequences, both psychological and practical, and the ensuing climate of tension that remains, particularly in the war affected areas. Underlying current problems in key fields of life such as security, return, citizenship, housing, social services and employment, are feelings of mistrust, hostility, chauvinism, ill will and prejudice. In this context confidence-building and reconciliation are necessary in order to effectively address problems of racism and intolerance. It is essential that all concerned parties take active part in the process.
63. In its first report, ECRI noted and stressed the paramount importance of the "Programme on Establishment of Trust, Accelerated Return and Normalisation of Living Conditions in the War Affected Regions of Croatia" adopted in October 1997. It seems that this ambitious programme has not been effectively implemented for a variety of reasons. Certain of the Programme's goals have been integrated into other Programmes such as the Return Programme and the newly established "Co-ordination for Areas of Special State Concern". However, ECRI is very concerned that the fundamental goals of building trust and reconciliation as well as creating a climate of tolerance in the war affected areas have not been adequately addressed by the Croatian authorities. Although ECRI recognises and appreciates the difficulty of confidence building, particularly in conditions of transition such as those present in Croatia, ECRI strongly believes that the Croatian authorities should give this issue high priority and undertake special measures in order to stimulate and encourage this process. For its part, the Serb community should also take concrete steps to promote reconciliation and build mutual tolerance.

Legal Framework

64. ECRI draws attention in this connection to the importance of a legislative framework which guarantees the equality of all citizens regardless of ethnicity or national association and which protects all individuals against racism and discrimination. The Constitution has a fundamental role to play in this regard, both symbolic and practical, and ECRI encourages the Croatian authorities to continue their efforts to create a constitutional framework which guarantees equality and protects human and minority rights. As noted earlier in this report, it is therefore vital in the process of amending the Constitutional Law of Human Rights that solutions are found to pending issues which are satisfactory to all parties, particularly as concerns questions of special administrative arrangements and representation and participation in public affairs. ECRI also repeats in this connection its recommendation to the national authorities to consider enacting anti-discrimination legislation in key fields of life.

Education and awareness-raising

65. Moreover ECRI considers that in order to encourage reconciliation and build a climate of trust, education and awareness-raising of the general population is essential. Politicians, journalists and other public figures have a crucial role to play in this respect. They should avoid expressions of chauvinism, racism or antisemitism and be careful not to portray events in a manner which could encourage ethnic tensions and intolerance. Instead they should take the lead in denouncing racism and discrimination and in ensuring that members of minority groups are perceived as equal and desirable citizens. Unfortunately certain racist and antisemitic ideas continue to be promoted and recent World War II history revived in such manner as to stir up feelings of chauvinism and hostility. A number of public opinion leaders including senior level politicians are taking a public stand against such ideas and striving to promote a climate where ethnic and minority groups are respected. ECRI welcomes such efforts and encourages public figures to continue to play a constructive role, despite any possible temptation to use racist sentiments for political gain.
66. The Catholic Church has a strong influence in Croatian society and therefore must play an active role in building a climate where religious diversity is appreciated. ECRI also considers that it is important for there to be increased general acceptance of Croatian identity as one encompassing different religious beliefs.
67. The manner in which recent history is addressed and portrayed in the public sphere is, obviously, particularly important in the context of reconciliation and confidence-building. ECRI encourages politicians, the media and other public figures to try, as far as possible, to consider carefully the best manner of addressing these issues and to recognise that there are different interpretations of these events. They should take into account the sensitivity and potential emotional impact of these issues and the need to respect the dignity of victims. It may be helpful for special training on this topic to be offered to media professionals and public figures, perhaps in connection with more general training about reporting in such manner as to promote tolerance and respect for diversity.
68. While reconciliation and confidence-building are a slow process, intolerance may spread relatively quickly when the context and situation permit. ECRI therefore feels that the Croatian authorities should be particularly vigilant in fighting against hate speech and extremist organisations which spread racism and intolerance. Although not very widespread, overt neo-ustashe and skinhead groups and activities do exist in Croatia. In this respect ECRI recalls its General Policy Recommendation No. 1 where it recommends that member states "take measures, including where necessary legal measures to combat racist organisations...including banning such organisations where it is considered that this would contribute to the struggle against racism".
69. ECRI also repeats in this context its recommendation to the Croatian authorities to reestablish the offence of incitement to national, racial or religious hatred or intolerance in the Criminal Code and to ensure that such legislation is strictly enforced. Such legislation provides an important tool for fighting against statements which are harmful to the fragile process of reconciliation and

confidence building. It also serves an important educative and awareness-raising function, sending an important message that racism and discrimination will not be tolerated in Croatia.

70. Educational processes are fundamental to ensure reconciliation in a long-term perspective. It is important that schools strive to break down negative sentiments and stereotypes about other ethnic and national groups and replace them with more impartial information both about minority groups and the majority. ECRI is therefore pleased to learn of efforts by the Croatian government to include human rights education in the school curriculum and to continue to develop a national programme for human rights covering pre-school to university levels. ECRI encourages the authorities to include in such programmes materials focusing on issues of tolerance and respect for differences and the positive contributions to Croatian society made by ethnic and national minorities. These topics should be integrated into all levels of the education system and teachers offered special training in this area.
71. Furthermore ECRI believes that all subjects should be taught in a manner which fosters the above values. In this regard, ECRI expresses its concern that the school curriculum, and especially history books, portray Serbs and other minority groups in a negative light that may promote racism and prejudice. ECRI is pleased to learn that the new government is currently reviewing textbooks, including history books, and encourages the government to seek the input of minority groups in this process and to implement this revised curriculum as soon as possible at all levels of the education system. The Croatian authorities should also give very careful consideration to the manner the country's World War II history and events surrounding the recent war are addressed in the school curriculum. With respect to the teaching of recent history, ECRI notes an agreement signed between UNTAES and the Croatian government in the education sector, in which *inter alia* there was to be a five year moratorium of the teaching of history in schools. ECRI further notes that Council of Europe experts in the field of education have stressed the importance of such a moratorium to allow for a period of reflection in which consideration could be given to the best manner of teaching such history.

Engagement at the Local Level

72. Activity at the local level is crucial for an effective and sustainable process of reconciliation and trust building. ECRI stresses that key actors of civil society as well as concerned communities should be involved in the development and carrying out of confidence-building measures. ECRI is aware that in some municipalities spontaneous constructive initiatives have been undertaken by ethnic Serbs and Croats. There are also some non-governmental organisations working to bring victims of the conflict together to discuss common problems in a constructive manner. Such initiatives and projects coming from the grassroots level could be actively encouraged and supported by the Croatian authorities.

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