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Third report on Croatia

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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.

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.

The country-by-country approach deals with all member States of the Council of Europe on an equal footing. The work is taking place in 4/5 year cycles, covering 9/10 countries per year. The reports of the first round were completed at the end of 1998 and those of the second round at the end of the year 2002. Work on the third round reports started in January 2003.

The third round reports focus on "implementation". They examine if ECRI's main recommendations from previous reports have been followed and implemented, and if so, with what degree of success and effectiveness. The third round reports deal also with "specific issues", chosen according to the different situations in the various countries, and examined in more depth in each report.

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 propose, if they consider it necessary, amendments to 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 following report was drawn up by ECRI under its own and full responsibility. It covers the situation as of 17 December 2004 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.

Executive summary

Since the publication of ECRI's second report on Croatia in July 2001, progress has been made in a number of areas covered by the report. For example, Croatia ratified Protocol No.12 to the European Convention on Human Rights on 3 February 2003. It has reinforced some criminal law provisions designed to combat racism and some Labour Code provisions prohibiting discrimination. A law on asylum was adopted in 2003 and measures have been taken to combat trafficking in human beings. The government has made many symbolic gestures in favour of national minorities and has set up the Commission for the Return of Refugees and Displaced Persons and the Restitution of Property to assist the return process. In October 2003 the Croatian authorities also adopted a National Programme for the Roma. A Commission of Experts Working on Combating Discrimination began its work in 2004 and has prepared a National Strategy against all Forms of Discrimination.

However, a number of recommendations made in ECRI's second report have not been implemented or have only been partially implemented. The problems surrounding the acquisition of nationality encountered by persons of non-Croatian origin who have lived in the country for a long time have not yet been fully resolved. Interethnic violence and racist attacks continue, albeit to a lesser extent, but do not always receive the requisite attention from the authorities. The current civil and administrative law provisions are not sufficient to prohibit discrimination in all areas of life. There is no national body specialising in combating racism and racial discrimination, although people, notably those belonging to national minorities, still suffer from racial discrimination. Although the level of intolerance in the media decreased, the overall results are not satisfactory. Substantial progress remains to be made concerning the return of refugees and displaced persons, especially in the matter of housing. Supplementary measures need to be taken to restore fairness in the administration of justice.

In this report, ECRI addresses a series of recommendations to the Croatian authorities. It recommends that they take all the necessary measures to solve the problems surrounding the acquisition of Croatian nationality. Criminal law should be strengthened to counter racism and intolerance, and the implementation of the existing criminal law provisions should be strengthened. ECRI recommends that the Croatian authorities take steps to adopt an immigration policy and protect the rights of asylum-seekers and refugees more effectively. It is important to foster mutual respect between ethnic communities and to make the general public aware of the need to combat racism. Every effort should be made to facilitate the return of refugees and displaced persons. ECRI stresses the importance of ensuring fairness in the administration of justice notably between ethnic Croats and people belonging to other ethnic groups, and particularly ethnic Serbs. It encourages the authorities to reinforce the measures taken to counter discrimination against Roma.

I. FOLLOW-UP TO ECRI'S SECOND REPORT ON CROATIA

International legal instruments

1. In its second report on Croatia, ECRI recommended that the Croatian authorities accept Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, which allows the Committee on the Elimination of Racial Discrimination to receive communications from individuals. Croatia has not yet made the declaration under Article 14, but the authorities have informed ECRI that they are seriously considering the possibility.
2. In its second report on Croatia, ECRI recommended that the Croatian authorities ratify the European Social Charter and that they sign and ratify the Revised European Social Charter, the European Convention on Nationality, 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. It also recommended that Croatia ratify Protocol No. 12 to the European Convention on Human Rights (ECHR), which establishes the general principle of non-discrimination.
3. Croatia ratified the European Social Charter on 26 February 2003. It has neither signed nor ratified the Revised European Social Charter. As regards the European Convention on Nationality, Croatia has signed this Convention and the Croatian authorities have indicated that ratification is expected to follow. They have informed ECRI that they are monitoring the situation as regards 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 and that their decision to sign and ratify these instruments will depend on how the situation develops. ECRI is pleased to learn that Croatia ratified Protocol No. 12 to the ECHR on 3 February 2003.

Recommendations:

4. ECRI recommends 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, which allows the Committee on the Elimination of Racial Discrimination to receive communications from individuals.
5. ECRI recommends that the Croatian authorities ratify the Revised European Social Charter, the European Convention on the Legal Status of Migrant Workers, and the Convention for the Participation of Foreigners in Public Life at Local Level.
6. ECRI recommends that the Croatian authorities conclude the process of ratifying the European Convention on Nationality as soon as possible.
7. The Convention on Cybercrime was ratified by Croatia on 17 October 2002 and its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems was signed on 26 March 2003. The Croatian authorities have informed ECRI that the procedure for ratifying the Additional Protocol is underway. The International

Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, which came into force on 1 July 2003, has been neither signed nor ratified by Croatia. The Croatian authorities have stated that they will continue to consider the possibility of ratifying this Convention, taking into account, *inter alia*, any ratifications by other European states.

Recommendations:

8. Noting with approval that Croatia is in the process of ratifying the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, ECRI encourages the Croatian authorities to make every effort to ensure that this process is completed as soon as possible.
9. ECRI recommends that the Croatian authorities sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

Constitutional provisions and other basic provisions

10. In its second report, ECRI pointed out that Article 14 of the Constitution, which prohibits discrimination does not specifically refer to discrimination on the grounds of belonging to a national minority. Since the adoption of the second report, the Constitutional Law on the Rights of National Minorities, adopted on 13 December 2002, has come into force. This law brings a solution by providing that under Article 4-4 “any discrimination by reason of belonging to a national minority shall be prohibited. Members of national minorities shall be guaranteed equality before the law and equal legal protection”. This law, which has constitutional force, supplements and reinforces Article 14 of the Constitution which provides for a general prohibition of discrimination.
11. In its second report, ECRI noted that Croatia was considering introducing laws to supplement the Constitutional Law on National Minorities which was itself due to be amended. ECRI recommended that the new provisions address the issue of the representation of national minorities in public administration and their participation in public affairs. It noted that the list of indigenous national minorities in the Preamble to the Constitution did not refer explicitly to the Bosniak and Slovenian minorities. It suggested that a satisfactory solution to this problem be found, for example by amending the Preamble to bring it in line with the list of minorities.
12. The new constitutional law does not contain a list of national minorities, but Article 5 defines a national minority as “a group of Croatian citizens whose members are traditionally established within the territory of the Republic of Croatia and who have ethnic, linguistic, cultural and/or religious characteristics distinct from those of other citizens and who are guided by the desire to preserve these characteristics”. Unlike the Preamble to the Constitution, the constitutional law makes no distinction between indigenous and other national minorities.
13. The Constitutional Law on the Rights of National Minorities has been welcomed as a progressive piece of legislation, designed to provide better protection for the rights of national minorities living in the country. It reinforces the right of

national minorities to be represented in local and national administrations, in the judiciary and in public life, including notably in the Croatian Parliament, in the National Council for National Minorities and in local councils for national minorities. As the law was adopted only recently however, and for other reasons, there are some failings which will be addressed later in this report.

Recommendations:

14. While welcoming the adoption of the Constitutional Law of 13 December 2002 and the improvements that it brings, ECRI encourages the Croatian authorities to find a satisfactory solution to the lack of explicit reference to certain national minorities in the Preamble to the Constitution.

- Law on nationality

15. In its second report on Croatia, ECRI recommended that the Croatian authorities introduce a simplified naturalisation procedure for all those who were citizens of the former Socialist Federal Republic of Yugoslavia and were resident in Croatia when it gained independence.
16. The Law on Nationality of 1991 has remained unchanged since the adoption of ECRI's second report, and the special status that allows ethnic Croats to obtain Croatian nationality more easily than persons of non-Croatian origin is still in place. The authorities have informed ECRI that a reform of the law is in progress and that the new law should reflect the recommendation made by ECRI in its second report to facilitate the acquisition of citizenship for citizens of the former Socialist Federal Republic of Yugoslavia who were living in Croatia at the time of independence. Under the Law on Foreigners of July 2003, non-citizens who have resided in Croatia for a long time can apply up until June 2005 to have their permanent resident status in Croatia restored until such time as they obtain Croatian nationality. ECRI is concerned, however, to learn from a survey carried out by the OSCE mission in Croatia that 16 out of 18 police units surveyed across Croatia are implementing the Law on Foreigners incorrectly, for example by demanding means of proof of residence in Croatia which the law does not require. The Croatian authorities have indicated to ECRI that the Ministry of the Interior has issued an instruction to the competent police departments clarifying the type of proof to be accepted. Some representatives of national minorities have said that the Law on Foreigners is not sufficient to solve the existing problems in acquiring Croatian nationality.
17. ECRI is concerned to learn that there are still serious problems when it comes to obtaining Croatian nationality. Persons of non-Croat origin remain at a disadvantage compared with ethnic Croats in terms of the requirements to be met for obtaining Croatian nationality. Numerous barriers to naturalisation remain in place. For example, it is not possible to obtain Croatian nationality unless the original nationality has been renounced. There are exceptions to this rule, such as if person was born in Croatia or is married to a Croat. It is still not easy to obtain documentary evidence which proves that one has renounced the nationality of other former Yugoslav states. The requirement for proficiency in the Croatian language poses a major problem for those members of the Roma community who are illiterate. Nevertheless, the Croatian authorities have indicated that they interpret this requirement in such a way as to accept a low

level of knowledge of Croatian, thereby facilitating the acquisition of nationality. ECRI attaches considerable importance to this nationality issue because persons without status are in a difficult situation which has knock-on effects in other areas, including access to public services, access to employment, etc.

18. The National Programme for Roma which was introduced in October 2003 calls for “the removal of any administrative barriers liable to engender discrimination against Roma” who are long-term residents of Croatia by preventing them from obtaining Croatian nationality. To this end, the programme proposes a whole series of measures, including the publication of an information brochure in the Romani language and the creation of mobile units to inform Roma about their rights, which is currently under way¹.

Recommendations:

19. ECRI urges 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.
20. ECRI recommends 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.

Criminal law provisions

21. In its second report on Croatia, ECRI recommended that the Croatian authorities make it clear that racist crimes would not be tolerated, notably by providing that racist motives constitute an aggravating factor in ordinary offences. It also recommended the inclusion of a provision banning racist organisations which promote racial discrimination.
22. ECRI welcomes the amendments made in July 2004 to Article 174 of the Criminal Code and which came into force on 1 October 2004. Article 174-1 already outlawed discrimination on the basis of race, colour and national or ethnic origin, but the new version of this article extends the prohibition of discrimination to include, among others, discrimination on religious and linguistic grounds.
23. A third paragraph has been inserted in Article 174 in order to prohibit “the propagation of racial, sexual, religious, national and ethnic hatred and hatred based on colour, sexual orientation and other characteristics”. This provision also makes it an offence to “disseminate ideas claiming the superiority of one race or the inferiority of another race, ethnic or religious community, gender or nation or ideas claiming superiority or inferiority based on colour, sexual orientation or any other characteristic”. The penalty is three months’ to three years’ imprisonment. Paragraph 4 states that it is prohibited to distribute, for

¹ On the National Programme for the Roma, see below “Situation of the Roma community in Croatia”.

one of the purposes specified in paragraph 3, through a computer system or any other means accessible to the public, any material which denies, diminishes, approves or justifies the offence of genocide or crimes against humanity. The penalty ranges from a fine to imprisonment for a period of three months to three years.

24. The criminal code still does not prohibit organisations which promote racism or racial discrimination but it is currently being revised and ECRI understands that discussions are being held on this subject and on the possibility of introducing a specific provision banning the display of racist symbols and in particular Ustasha symbols. There is as yet no provision under which racist motives constitute an aggravating factor in ordinary offences but the Croatian authorities have informed ECRI that the courts may take into account the racist motives under the general provision which allows any aggravating circumstances to be taken into consideration when sentencing.

Recommendations:

25. ECRI encourages the Croatian authorities to take account of the sections on criminal law provisions contained in its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination as part of the current revision of the Criminal Code. In particular, this Recommendation states that the law should make it a criminal offence to create or lead a group which promotes racism. The law should also provide that racist motives constitute an aggravating factor in ordinary offences.
26. ECRI recommends that the authorities duly implement the new provisions of Article 174 of the Criminal Code aimed at strengthening action against racism. It encourages the authorities to mount an information campaign which would be aimed at members of the judiciary and the general public about these new provisions.
27. In its second report on Croatia, ECRI recommended that the Croatian authorities give priority to the full implementation of provisions aimed at combating racism and racial discrimination.
28. ECRI notes that both the Croatian authorities and non-governmental sources believe interethnic violence, public hate speech and racist incidents such as attacks by skinheads on members of visible minorities have declined in recent years. According to several sources, the police are increasingly active when it comes to combating problems of this kind. For example, they were very quick to remove two monuments erected recently in Slunj, in honour of former senior Ustasha officials. According to the Croatian authorities, complaints about racist acts and racial discrimination are very rare. In 2003, for example, only ten complaints were filed under Article 106 of the Criminal Code prohibiting racist violence, seven of which were dismissed. Also in 2003, five complaints were filed under Article 74, four of which were dismissed and one of which was pending at the end of 2004. The Public Prosecutor said his staff took complaints about racist acts very seriously.

29. While welcoming the fall in the number of racist acts reported in Croatia and the authorities' growing willingness to prosecute, ECRI is concerned that racist acts have not ceased completely and that according to NGO reports, they are still not receiving the full attention they deserve from the police. In war affected areas in particular, there are still instances of interethnic violence and racist remarks in the media, which are mainly directed against members of the Serb minority. It appears that the recent racist attacks carried out by skinheads on Roma and members of other visible minorities have not led to any convictions, and that racist symbols are still being displayed without appropriate steps always being taken. However, the authorities have indicated to ECRI that the Ministry of the Interior is taking measures to find and report on the perpetrators of racist acts, particularly skinheads and racist groups, and to remove racist messages and symbols.
30. It is true that the number of complaints about racist acts and racial discrimination is very small. However, ECRI feels that it is important to make sure that the reason for this is because such incidents are genuinely rare in Croatia and not simply because victims have no confidence in the police or the judicial system in general. Some NGOs believe that racist motives are not always given sufficient weight in investigations, prosecutions and judgements. Further checks should therefore be conducted to ensure that this is not due to lack of awareness on the part of victims and the competent authorities concerning the issue of racism and racial discrimination. The Croatian authorities have indicated that the National Strategy for the Elimination of All Forms of Discrimination² envisages setting up a system for monitoring the penal policy for combating discriminatory acts.

Recommendations:

31. ECRI believes that further action is needed to improve the effectiveness of the protection afforded by criminal law against racist offences. In particular, it strongly recommends that the Croatian 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.
32. ECRI recommends that the Croatian authorities strengthen their efforts to provide police officers, lawyers, prosecutors and judges with training in the implementation of the laws on racism and racial discrimination.
33. ECRI considers that the Croatian authorities should continue to closely monitor and combat the activities of the skinhead movement in Croatia and ensure that anyone involved in illegal activities in this context is brought to justice, especially in the case of racist offences committed against other persons.
34. ECRI recommends taking all proper measures to draw the public's attention to the prohibition of racist acts and to remove any barriers, such as lack of confidence in the judicial system, that might prevent victims from coming forward and filing complaints.

² See above, Specialised bodies and other institutions.

Civil and administrative law provisions

35. In its second report on Croatia, ECRI recommended that the Croatian authorities supplement the existing legislation, in particular the Labour Code, and provide more effective judicial and administrative remedies for combating racial discrimination.
36. Article 2 of the Labour Code was amended in 2003 and now contains fairly comprehensive provisions for combating racial discrimination. This article defines and prohibits direct and indirect discrimination on grounds such as race, skin colour, language, religion and national origin. Discrimination is prohibited in many areas of professional activity such as access to employment and vocational training, working conditions and termination of contract of employment. To ECRI's knowledge, no procedures have thus far been introduced on the basis of this provision, despite numerous reports that there have been cases of discrimination in employment, particularly against the Roma, which have apparently gone unpunished. These sources also indicate that the number of complaints is low and does not reflect the true extent of the problem of discrimination in employment.
37. ECRI has not observed any other changes as regards protection against racial discrimination in civil and administrative law. It notes, however, that a law on gender equality that was adopted in July 2003 prohibits gender-based discrimination in employment and education and requires public entities to take affirmative action in favour of gender equality. Under this law, a government Office for Gender Equality and an Ombudsman for gender equality have been introduced. Since there are numerous indications that direct and indirect racial discrimination is still going on in many areas of life such as housing, education and public services³, ECRI considers that the Croatian authorities could draw inspiration from the law on gender equality in order to adopt comprehensive and effective legislation to combat problems of this kind.

Recommendations:

38. ECRI recommends that the Croatian authorities continue tightening their civil and administrative law to combat racial discrimination. ECRI thus wishes to draw attention here to its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination.
39. ECRI emphasises in particular 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 intended for the public, public places, the pursuit of economic activity and public services.

- Law on convalidation

40. In its second report on Croatia, ECRI recommended that the Croatian authorities address the problems which occur in the application of the 1997 law

³ These matters are addressed in various sections of this report.

which allows the validation of official documents issued by the “*Republika Srpska Krajina*” authorities.

41. ECRI is concerned at reports that ethnic Serbs who came under the authority of the “*Republika Srpska Krajina*” from 1991 to 1995 still face problems and administrative barriers when it comes to validating official documents issued during this period. These difficulties have a major impact on the economic and social rights of the individuals concerned, in particular on persons seeking recognition for years worked during this period in order to draw pensions. The failure to extend the official deadline beyond April 1999 has prevented many people from applying for validation, and even those who did apply in time are having trouble proving their entitlement to a pension.

Recommendations:

42. ECRI reiterates its recommendation to the Croatian authorities to take all the necessary measures to resolve the problems facing ethnic Serbs as regards the implementation of the 1997 Law on Convalidation.

Specialised bodies and other institutions

43. In its second report on Croatia, ECRI recommended that the role of the Croatian Ombudsman in public life be strengthened further, through, *inter alia*, increased publicity, better staff training and wider contacts with national institutions in other countries, international organisations and local NGOs.
44. The Ombudsman’s Office has informed ECRI that it receives very few complaints directly related to racial discrimination and that it does not take the applicants’ ethnic origin into account. However, when the Ombudsman believes that discrimination on the basis of ethnic origin has been a factor in a particular case, he informs the relevant authorities, and asks them to take remedial action. The Ombudsman’s Office also receives numerous complaints about the restitution of property, reconstruction and occupancy rights, which concern mainly members of the Serb minority and are dealt with later in this report⁴.
45. ECRI is pleased to learn that the Ombudsman regularly travels to other parts of Croatia to meet with potential victims who are notified of his visits in advance through information campaigns. ECRI notes, however, that the Ombudsman is hampered in his task by a lack of financial and other resources and that the recommendations which he makes to the authorities are not always acted upon.
46. Since 2003, two new Ombudsmen have begun operating in Croatia, one for children and another for gender equality. There is also a governmental Office for Gender Equality and a governmental Office for Human Rights. The Human Rights Office has informed ECRI that it can accept complaints from individuals and that it regularly organises public information campaigns to promote human rights and, more specifically, combating racism and intolerance, including racial discrimination. For example, it has released promotional TV spots under the general motto “Tolerance means life”.

⁴ See below “Return of refugees and displaced persons”.

Recommendations:

47. ECRI recommends that the Croatian authorities provide the Ombudsman's Office with the human and financial resources it needs to perform its tasks successfully. In particular, the Office should be able to give a high priority to the problems of racism and racial discrimination. ECRI further recommends that the various governmental offices responsible for protecting human rights ensure that their efforts are co-ordinated and work together to combat racism and racial discrimination.
48. In its second report on Croatia, ECRI recommended setting up an independent body specifically to deal with cases of discrimination and intolerance of a racist nature.
49. The Croatian authorities have informed ECRI that, so far, there are no plans to set up a specialised body to combat racism and racial discrimination, even though they admit there are no major obstacles to the establishment of such a body. ECRI is pleased to learn, however, that an interministerial working group, the Commission of Experts Working on Combating Discrimination, has been set up in 2004 and has devised a National Strategy against all Forms of Discrimination, including racial discrimination. The measures foreseen by this Strategy include human rights education, the elimination of all discriminatory behaviour, sanctioning hate speech, promoting gender equality, eliminating stereotypes and prejudices and raising the public's awareness of the need to combat discrimination. In the context of the accession to the European Union, the Commission of experts could consider creating a specialised body to combat racism and racial discrimination in the light of EU Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, which calls for the setting up of "a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin" (Article 13). ECRI notes with interest that Croatia has a National Programme for the Protection and Promotion of Human Rights (2005-2008) which aims, among others, to combat racism and to create a "national policy for promoting gender equality". The latter includes an action plan for the period 2001-2005 and a whole series of practical measures, some of which are specifically aimed at promoting equal opportunities for women from ethnic minorities.

Recommendations:

50. ECRI strongly recommends that the Croatian 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 Recommendation No. 7 on national legislation to combat racism and racial discrimination and its General Policy Recommendation No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, which provide guidelines as to the organisation, responsibilities and functions of such bodies. ECRI also encourages the Croatian authorities to devise a national policy to combat racism

by using for example, the above-mentioned “national policy for promoting gender equality” as a source of inspiration.

Reception and status of non-citizens

- *Immigration*

51. ECRI has very little information on immigration to Croatia, but it appears that the immigration rate is fairly low and that Croatia is mainly a transit country for economic migrants. ECRI is pleased to learn that in 2003, the Parliament adopted a Law on Foreigners which clarifies the status of non-citizens in Croatia, particularly the status of migrant workers. This law came into force on 1 January 2004. Immigrant children are all entitled to an education but the Croatian authorities have informed ECRI that very few of them actually attend school, presumably because parents feel it is not worth enrolling their children in schools in Croatia as they are merely passing through.
52. As regards training for officials who come into contact with illegal immigrants in Croatia, ECRI is pleased to learn that, as recommended in its second report, training in human rights is being provided, including for the police and border guards which should help to improve protection for the fundamental rights of illegal immigrants, in particular those being held in detention centres.

Recommendations:

53. ECRI encourages the Croatian authorities to closely monitor the situation as regards immigration and to formulate an immigration policy that will enable immigrants to find their proper place in an integrated society.
54. ECRI encourages 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.

- *Refugees and asylum-seekers*

55. In its second report on Croatia, ECRI recommended that the Croatian authorities adopt a law on asylum in keeping with international standards and provide adequate training in human rights and the relevant legislation for border police and other officials involved in the asylum procedure.
56. ECRI is pleased to learn that a new law on asylum was adopted in July 2003 and came into force in July 2004. In the opinion of the Office of the United Nations High Commissioner for Refugees (UNHCR), this law provides a good basis for introducing an asylum procedure. ECRI notes that it remedies certain deficiencies in the previous system and represents an improvement in terms of protection for the rights of asylum-seekers and refugees. For example, it introduces a series of measures designed to help refugees learn Croatian and become socially integrated.

57. Since this law came into force only recently, it is too early to assess its impact. The Croatian authorities have said that they intend to revise the law shortly in order to clarify and adjust the procedure for applying for asylum. The question of reception centres for asylum-seekers remains to be settled, as accommodation facilities are still inadequate and in some cases inappropriate.
58. ECRI is concerned that the delay in setting up a reception centre for asylum-seekers is partly due to hostility from the local community over the location of the centre. Despite government assurances that far from creating problems for the local community, the new centre will help to improve the economic situation in the region, local residents have been demonstrating and signing petitions against the proposal. More generally, some sources complain that asylum-seekers and refugees tend to be portrayed as criminals.
59. ECRI is pleased to learn that training courses in the relevant standards as regards asylum are being organised, notably with the help of the UNHCR, for officials who come into contact with asylum-seekers and refugees, including police officers and border guards. These courses, however, are not sufficient to meet the needs of all officials. They mainly concern those working in central offices and therefore all officials working at local level and in border areas do not receive training of this kind yet.
60. ECRI notes that refugees from Bosnia and Herzegovina have been living under a temporary protection arrangement for several years now. Most are unwilling or unable to return to Bosnia and Herzegovina and would prefer to find some way of becoming socially integrated in Croatia. However, with the exception of offering state funds for helping these persons integrate at the local level, no specific measures such as the adoption of simplified naturalisation procedures are planned in this area.

Recommendations:

61. ECRI encourages 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.
62. ECRI encourages 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.
63. ECRI encourages the Croatian authorities to pursue and strengthen their efforts to provide training in the new law, human rights and respect for diversity for all personnel in contact with asylum-seekers and refugees.
64. ECRI strongly recommends 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.

- **Trafficking in human beings**

65. Croatia is mainly a transit country but also, a country of destination and origin for trafficking in women for the purposes of prostitution. ECRI is pleased to note that the authorities have recently begun to take action to combat trafficking in human beings. In 2002, a national committee for combating trafficking in human beings was set up and a national action plan adopted. A National Programme for the Suppression of Trafficking in Human Beings (2005-2008) exists. The Criminal Code is currently being amended to include a provision that will expressly prohibit trafficking in human beings, making it easier to convict traffickers. Some traffickers, however, have already been convicted under provisions already in force which ban slavery and prostitution. Assistance for victims of trafficking is available, mainly in the form of housing and temporary residence permits on humanitarian grounds. Officials involved in the fight against trafficking in human beings are given special training and an initiative to raise public awareness of the dangers of trafficking in human beings has been put in place.
66. ECRI is concerned to note, however, that despite all the measures taken, some of them very recent, trafficking in human beings for the purposes of prostitution is still a problem in Croatia, as indicated by both the Croatian authorities and non-governmental sources.

Recommendations:

67. ECRI recommends the adoption of further measures to combat trafficking in women for the purposes of prostitution, including a prevention and awareness initiative designed to alert all sections of the population concerned to this serious problem. In particular, ECRI encourages the Croatian authorities to take all measures necessary to protect and assist the victims of trafficking in human beings.

Vulnerable groups

- **Roma**

68. See Section II of this report.

- **Refugees and displaced persons**

69. See Section II of this report.

- **Bosniaks**

70. In its second report on Croatia, ECRI encouraged the Croatian authorities to include the Bosniaks in the list of minorities contained in the Preamble to the Constitution (see above "Constitutional provisions and other basic provisions") and to include them as a separate group in the upcoming census. As the Bosniaks were also encountering problems in obtaining Croatian citizenship, ECRI hoped that this problem would be resolved as quickly as possible.

71. ECRI notes that the 2001 census, in which it was possible to identify oneself as “Bosniak”, gave a count of 20 755 Bosniaks, ie 0.5% of the total population. However, everyone agrees that the number of Bosniaks is in fact greater and that a denomination problem arose when the questionnaires were filled in: 19 677 persons stated under the heading “national origin” that they were “Muslim”, whereas they would no doubt have chosen to be included in the “Bosniaks” category if they had been better informed. Some sources claim that persons wishing to register as Bosniaks were pressurised by census officials to put themselves down as Muslim. This situation poses a problem because the census figures are those which are taken into account for the purpose of applying the rules on representation of the Bosniak minority both in public affairs and in public administration. The elections to local councils for national minorities were somewhat disrupted for this reason. However, ECRI notes that the authorities are aware of the problem and are seeking solutions that will enable the Bosniak minority to be represented in a manner which reflects the real situation more closely. The problem of the acquisition of Croatian nationality is addressed above⁵.

Recommendations:

72. ECRI recommends 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. ECRI considers that the requirements for resolving this problem include an information campaign that would target people who are likely to be affected, and close co-operation in this area between the Croatian authorities and the representatives of the Bosniak minority.

- Serbs: access to employment and education

73. ECRI discusses the situation of Croatia’s Serb community in several sections of this report⁶. In this section, the question of access to employment and education for members of the Serb community is addressed.
74. ECRI notes with concern that there are many allegations of discrimination against ethnic Serbs regarding access to public sector jobs. These allegations concern both ethnic Serbs who sought refuge elsewhere during the armed conflict and have returned and those who remained in Croatia during that period. The instances of discrimination reported by several sources occur primarily, but not exclusively, in the war-affected areas. Discrimination apparently occurs at several levels, both when it comes to passing a competitive examination for entry into the civil service and when a person is to be reinstated in their post following unfair dismissal. Some ethnic Serbs who applied for a post for which they were fully qualified did not obtain it, even where no one else met the requirements for the post. In such cases the post remained vacant. In other cases it would appear that ethnic Croat candidates are given preference over better qualified ethnic Serb candidates. ECRI notes

⁵ See “Law on nationality”.

⁶ See in particular the following headings: “Law on nationality”, “Law on convalidation”, “Climate of opinion”, “Return of refugees and displaced persons”, “Administration of justice”.

that the problem of discrimination has been reported in particular regarding access to teaching posts, which has sometimes prompted the intervention of the Ombudsman to remedy the situation - in some cases successfully.

Recommendations:

75. ECRI strongly recommends that the Croatian authorities ensure that there is no discrimination against ethnic Serbs in access to public sector jobs. It encourages 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 stresses 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 service⁷.
76. ECRI notes that Croatian legislation allows members of national minorities, including the Serb minority, to receive education in their native language and script. ECRI welcomes the efforts made by the Croatian authorities over the last few years to implement these provisions. However, it notes that there are some public schools in the town of Vukovar where ethnic Croat children and ethnic Serb children receive exactly the same education but in separate classes and separate areas of the town. The authorities acknowledge that this is so and explain that it is the outcome of a request from the Serb community itself, which wants Serb children to receive education in the Serbian language. ECRI understands that the authorities wish to meet the Serbs' wishes, but is concerned at the method used, which might result in all contact being broken off between pupils within the same public school on the sole basis of their ethnic origin. Some NGOs, as well as representatives of the Serb community, have stated that opting for identical but entirely separate classes in the same school is a solution that may in the long term prove detrimental to relations between the two communities.

Recommendations:

77. ECRI strongly recommends 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. One solution would be to arrange for joint activities between the children of the two communities, which would also make it easier to teach ethnic Serb children Croatian, which is essential to pursue their education.

Antisemitism

78. In its second report, ECRI encouraged the Croatian authorities in their efforts to take legal and policy measures to address the issue of antisemitism.
79. ECRI notes with satisfaction that the President of Croatia has publicly declared that he sincerely and deeply regrets "the crimes committed against Jews during the Second World War on the territory of what was known as the independent state of Croatia, but was neither independent nor Croatian". However, the

⁷ On this point, see below "Administration of justice".

representatives of the Jewish community point out that antisemitic statements and symbols, inter alia of a revisionist nature, are sometimes heard or seen and are not always punished or even prosecuted. Dubious links between Israeli policy and Croatia's Jewish community are sometimes made in public statements and in the media.

Recommendations:

80. ECRI recommends that the Croatian authorities take all the necessary measures to combat antisemitism in Croatia. It is particularly important to duly prosecute the authors of antisemitic statements and acts and to send even stronger signals to the general public that antisemitic acts will not be tolerated. On this point, ECRI draws the Croatian authorities' attention to its General Policy Recommendation No.9 on the fight against antisemitism.

Media

81. ECRI notes that there are still cases of the media expressing prejudices and stereotypes about members of minority groups such as Roma, ethnic Serbs, immigrants, refugees and asylum-seekers and members of other minority groups. According to several sources, however, the situation has improved in the last few years, and in some cases significantly. ECRI is pleased to learn that the level of intolerance in the media is decreasing, even if the overall results are not yet satisfactory, particularly at the local level where there are still instances of racist remarks in the media and cases where an offender's ethnic origin is mentioned although this is irrelevant to the news report concerned.

Recommendations:

82. ECRI recommends 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 encourages the Croatian authorities to make every effort to prosecute and punish those responsible.

Education and awareness-raising

83. ECRI is concerned to learn that schoolbooks sometimes convey negative images of certain minority groups, particularly ethnic Serbs and Roma. The authorities have informed ECRI that they are currently revising school textbooks with a view to deleting all references that may convey negative images of certain minority groups. The moratorium on the teaching of recent history in the Slavonia region has not yet been lifted and the authorities are working on the drafting of books that give a balanced account of the facts, in co-operation with the representatives of the Serb community. ECRI is pleased to note that there are human rights training courses and steps to raise awareness of the need to counter discrimination in schools, although these initiatives remain too few and far between.

Recommendations:

84. ECRI recommends 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 encourages all initiatives aimed at fostering mutual respect among children of all ethnic origins.

Climate of opinion

85. In its second report, ECRI encouraged public figures to continue playing a constructive role in denouncing racism and intolerance in Croatia. It stressed the importance of monitoring the manner in which recent history is addressed and portrayed in the public sphere, particularly through training about reporting in a manner which promotes tolerance and respect for diversity.
86. ECRI is pleased to learn that the government has recently made numerous symbolic gestures aimed at fostering mutual understanding between the different ethnic communities, for instance by portraying national minorities as an "asset" to the country. The government has also repeatedly expressed its disapproval of racist or intolerant acts and statements in a manner that should have a positive impact on public opinion.
87. However, ECRI notes that the general public is not always sufficiently aware of the need to combat racism and promote mutual respect, whether it be between the different ethnic and religious communities or with regard to minority groups that have recently arrived in Croatia such as immigrants, asylum-seekers and refugees. Moreover, although they occur less often than in the past, violent acts of a racist nature which are committed by skinheads against members of visible minority groups such as Roma and immigrants do not result in any real punishment of their perpetrators⁸. Ustasha and Nazi symbols are still sometimes displayed in public without any real steps being taken to counter this type of behaviour.
88. In its second report, ECRI recommended that the Croatian authorities give high priority to the issue of reconciliation and confidence-building between ethnic communities in the wake of the conflict, especially in the areas directly affected by the war.
89. A study carried out in 2004⁹ indicates that further progress is needed to improve the climate between ethnic communities in Croatia, especially as regards the return of refugees and displaced persons¹⁰. According to the study's findings, only 14% of ethnic Serb refugees have expressed their intention of returning to Croatia, though 42% said that they might consider returning to Croatia if their homes were properly refurbished. 63% of the ethnic Croats who answered the questionnaire said that they did not believe the return of ethnic Serbs was a

⁸ On this point, see above "Criminal law provisions".

⁹ Marija Brajdić Vucović, Dragan Bačić, Croatia's Refugee Challenge, motivational and emotional factors for the return of refugees to their homes and the acceptance of their return by the local population, empirical research, OSCE, Zagreb, 2004.

¹⁰ See also below "Return of refugees and displaced persons".

good thing for Croatia. Lastly, the study concludes that both ethnic Serbs and ethnic Croats exhibited a high percentage of social distance in relation to ethnic groups other than their own.

90. Interethnic incidents still occur, albeit infrequently, targeting both ethnic Serbs in places where ethnic Croats are in the majority and ethnic Croats in areas where ethnic Serbs are in the majority. Representatives of the Serb community have indicated that neither tolerance nor understanding could as yet be said to exist between the different ethnic communities. A form of parallel co-existence appears to be developing in the war affected areas. Human rights NGOs describe interethnic relations in Croatia in terms of indifference or even a degree of hostility, though it is widely acknowledged that the climate has improved since the end of the armed conflict.
91. Despite the government's symbolic gestures in favour of the Serb community, ECRI notes that little action has so far been taken to foster communication and mutual understanding between the majority Croatian population and members of the Serb community.

Recommendations:

92. ECRI strongly recommends 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.
93. ECRI recommends 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 recommends 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.

Conduct of law enforcement officials

94. In its second report, ECRI recommended that the Croatian authorities give members of the police force special training enabling them to identify and investigate racist offences more effectively. It also recommended that they investigate allegations of discrimination and racism on the part of members of the police force with a view to taking disciplinary action against their perpetrators. ECRI also emphasised the importance of improving relations between the police and minority groups.
95. The Croatian authorities are currently reforming the police and have accordingly trained "contact" police officers who are entrusted with the task of local policing throughout Croatia. Human rights training courses are also planned. ECRI is pleased to learn that the conditions stated in the 1997 letter of intent on representation of the Serb minority in the police in east Slavonia have been complied with, but improvements are still needed as regards the representation of minorities, especially Serbs and Roma, in the police force throughout the rest of Croatia. ECRI is concerned to learn that according to *Amnesty International*

there are credible reports from NGOs working to protect asylum-seekers to the effect that a number of asylum seekers and illegal immigrants have been ill-treated by wardens at the Jezevo reception and detention centre and that no investigation has been conducted with a view to punishing such acts. The *European Roma Rights Centre* reports instances of police violence against members of the Roma community¹¹.

Recommendations:

96. ECRI recommends that further steps be taken to recruit members of minority groups to the police force.
97. ECRI urges 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 emphasises 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.

Monitoring the situation

98. ECRI is concerned at the lack of reliable information on the situation of the different minority groups living in Croatia. It emphasises the need to compile statistics, without which it would seem difficult effectively implement Article 22 of the Constitutional Law on the Rights of National Minorities, which provides for representation of members of national minorities on national and local government bodies and on judicial bodies. Generally speaking, gathering data providing a breakdown on the basis of ethnic origin would make it easier to identify areas of life where direct or indirect racial discrimination may exist and to work out the best ways of countering this type of discrimination.

Recommendations:

99. ECRI encourages 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. The data collection system will have to comply with domestic law and with European regulations and recommendations on data protection and protection of privacy, as stated in ECRI's General Policy Recommendation No.1 on combating racism, xenophobia, antisemitism and intolerance. When data is collected, the Croatian authorities will in particular have to respect the anonymity and dignity of the persons questioned and obtain their full consent. The system for collecting data on racism and racial discrimination should also take into account equality between women and men, especially in the light of the possibility of double or multiple discrimination.

¹¹ Regarding the police, see also above "Criminal law provisions".

II. ISSUES OF PARTICULAR CONCERN

Return of refugees and displaced persons

100. In its second report, ECRI recommended that the Croatian authorities pursue their efforts to facilitate the return of refugees and displaced persons as a result of the armed conflict. It identified a number of obstacles to their return that needed to be lifted, such as insecurity in the regions concerned, their difficult economic situation and the prevailing climate of hostility towards refugees in those areas. It also stressed the importance of effectively settling the issue of access to housing for refugees and displaced persons.
101. ECRI notes that the return of refugees and displaced persons has continued over the last few years, but at a fairly slow pace because many obstacles remain. Some returning refugees, especially the younger ones, remain only for a short time in Croatia and return to the country where they sought refuge or to another country. At the beginning of July 2004, the Croatian authorities' estimated that there were still 39,485 refugees and displaced persons awaiting permanent solutions. Furthermore, the authorities have indicated that a significant number of Serbs who left Croatia during the armed conflict do not wish to return because they feel that they are integrated in the country in which they live. The OSCE Mission and the NGOs point out that the main obstacle to return is the persistence of the problem of refugees' and displaced persons' access to housing. This issue is discussed in greater detail below. Other obstacles are yet to be removed in order to encourage refugees, especially ethnic Serbs, to return to Croatia. These include the difficulty they face in securing validation of the years worked before and during the war¹², the fear of not being covered by the amnesty law and of being arrested and prosecuted for war crimes¹³, the presence of anti-personnel mines in some areas and the Serb refugees' fear of being subjected in turn to harassment and discrimination both by the Croatian authorities and by the local population. The persistent hostility shown by some local authorities and by a few members of the local population and the sporadic occurrence of interethnic violence also act as a deterrent to the return of refugees and displaced persons.
102. In addition, one of the major obstacles to the return of refugees and displaced persons is the difficult economic situation facing all inhabitants of the regions which are directly affected by the conflict. The economic crisis is compounded by high unemployment and the lack of basic infrastructure facilities in some places, such as access to electricity or schools; this deters attempts to return. The local population in fact perceives an improvement in the economic situation as the best way to facilitate returns and acceptance of these returns by people already living in these areas.
103. ECRI points out that the Croatian authorities are aware of the existence of all these obstacles and have taken a wide range of measures to lift them. The first of these measures is the top Croatian authorities' firm public statements encouraging Serb refugees who so wish to return to Croatia. In March 2004 a Commission for the Return of Refugees and Displaced Persons and the Restitution of Property was set up to co-ordinate government activities in this area. In addition to programmes aimed at providing access to housing (see

¹² See above "Law on convalidation".

¹³ See below "Administration of justice".

below), steps have been taken to help boost the economy of the hardest hit regions and to provide social assistance benefits for those returnees wishing to settle in Croatia. Finally, the Croatian authorities have indicated that they are the ones financing the process of confidence-building, particularly in Vukovar.

Recommendations:

104. ECRI strongly recommends 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.
105. While welcoming the government authorities' clearly stated intention of facilitating the return of refugees and displaced persons, ECRI underlines the importance of ensuring that this is followed by practical implementing measures and, above all, that it is reflected at local level. If the government's objectives are to be achieved, local authorities must relay and fully participate in the measures taken to facilitate returns, which calls for better communication between national and local levels.
106. 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.

- ***Access to housing***

107. In its second report, ECRI recommended that the Croatian authorities adopt a whole series of measures to resolve the problems surrounding access to housing for refugees and displaced persons, with regard to both occupancy rights, occupied property and the rebuilding of housing destroyed during the armed conflict.
108. ECRI is pleased to learn that the Croatian government has stated in general terms that housing must be provided to refugees and displaced persons wishing to return. In this respect the Croatian authorities have taken a whole series of measures to remove the remaining difficulties surrounding access to housing.

Reconstruction

109. In its second report, ECRI recommended that the Croatian authorities ensure that all affected persons, regardless of their ethnic origin, benefit equally from reconstruction assistance. It is pleased to note that definite progress has been made in this area. Since 2002 reconstruction grants which were in practice previously reserved for ethnic Croats have also been awarded to ethnic Serbs. In fact, as indicated by the OSCE Mission, since 2003 the vast majority of beneficiaries of reconstruction assistance have been members of minorities (mainly Serbs). The deadline for applying for a reconstruction grant was extended to 30 September 2004 and an information campaign targeting refugees in the countries where they were living has been carried out. However, some concerns have been voiced as to the large number of rejections of applications for reconstruction assistance.

Recommendations:

110. ECRI encourages 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.

Occupied property

111. In its second report, ECRI recommended that the Croatian authorities improve the system enabling ethnic Serbs to recover their property where it was occupied by ethnic Croats. ECRI stressed the importance of establishing an effective, expeditious and non-discriminatory mechanism for adopting and enforcing eviction orders against persons illegally occupying property belonging to refugees and displaced persons.
112. The Croatian authorities have taken a number of measures to improve the situation of persons who cannot reoccupy their homes because they are occupied by others. The authorities have set up funds for the temporary housing of persons awaiting restitution of their property until alternative housing is found for the occupants. Many occupied homes have already been returned, particularly those which were illegally occupied. However, ECRI is concerned to learn that problems persist in this area, and especially that according to the OSCE Mission in Croatia and other sources, property is looted and damaged by the occupants before being returned to its owners in approximately one in five cases, without the perpetrators of such acts being effectively punished. The authorities have indicated, however, that they are preparing a procedure by which an out of court settlement will be agreed upon for the compensation of the owners of damaged property and the reimbursement of the funds invested in the property by the occupants. Moreover, it is still difficult to secure an eviction order from the courts, particularly because the occupants ask the owners to reimburse them for the outlay they have made on the property without the owners' consent. This procedure delays the conclusion of the proceedings. It is also difficult to secure enforcement of eviction orders by the competent authorities. Human rights NGOs regret that, as a rule, priority is given to the interests of the occupants - even illegal ones - over those of the owners in the restitution process. Lastly, farmland and shops have still to be returned to their owners.

Recommendations:

113. ECRI recommends that the Croatian authorities speed up and improve the process for returning property belonging to refugees and displaced persons. It particularly stresses the importance of facilitating evictions, especially when it is easy to find alternative accommodation for the occupants.
114. ECRI strongly recommends that the Croatian 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.

115. ECRI recommends that the Croatian authorities find a way to allow the rapid restitution of farmland and shops to their owners.

Occupancy rights

116. In its second report, ECRI encouraged the Croatian authorities to consider means of either restoring lost occupancy rights or providing previous occupants with just and equitable compensation.
117. The problem of the loss of occupancy rights mainly affects persons who lived in urban areas. The authorities have adopted two programmes, one in 2000 for areas of particular concern to the state and the other in 2003 for other areas. These programmes provide for the building of alternative housing for the former holders of occupancy rights. However, in the eyes of the international community and NGOs, these programmes have so far produced no visible results and have not yet been genuinely implemented. Obstacles such as political resistance at local level still have to be lifted in order to speed up the process. On this point, the international partners in Croatia consider that the deadline set at the end of 2004 for applying for the alternative housing programme is too short and they recommend extending it.

Recommendations:

118. ECRI strongly recommends 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.

Administration of justice

119. In its second report on Croatia, ECRI noted the general difficulties affecting the administration of justice in Croatia - particularly owing to the courts' excessive case-loads - which also affect the application of legislation against racism and racial discrimination.
120. ECRI notes that the courts' excessive case-load remains a major problem in Croatia and that the backlog of cases is far from having been dealt with. Many sources report that judges lack training, especially in the areas of human rights and action against racism and intolerance. NGOs note that the public has lost confidence in the judicial system as a result of these and other obstacles. However, ECRI is pleased to learn that the Croatian authorities are aware of these problems and have recently adopted a series of practical measures which should have a positive impact on developments in the application of the law for combating racism and intolerance. These measures include the establishment of a Judicial Academy to train judges in human rights and the fight against racism among other things, the transfer of cases from severely overburdened courts to other less burdened courts and the setting up of specialised sections in certain courts to deal with war criminals' cases.

121. ECRI notes that, despite the existence of a law guaranteeing free legal aid in civil cases, there are still problems concerning effective access to this aid, which may affect those persons wishing to complain of racial discrimination. It notes on this point that the planned reform of the judicial system includes reform of legal aid.

Recommendations:

122. ECRI strongly encourages 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.
123. ECRI wishes 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.
124. ECRI encourages 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 stresses the importance of ensuring free access to a professional interpreter in all judicial proceedings, where this proves necessary.
125. In its second report on Croatia, ECRI encouraged the Croatian authorities to take measures to remedy the problem of persons who were not ethnic Croats and were dismissed from the judiciary during and after the conflict, and to increase the ethnic diversity of the judiciary.
126. ECRI notes that Article 22-2 of the Constitutional Law on the Rights of National Minorities provides that members of national minorities shall be represented on judicial bodies in a manner proportional to their representation within the total population. Paragraph 4 also provides for the obligation to give priority to members of national minorities, under conditions of equality, when it comes to filling posts on judicial bodies. However, ECRI regrets that no practical positive measures have been taken to date to improve the representation of national minorities on judicial bodies. National minorities, especially the Serb minority, therefore remain under-represented. The Croatian authorities have indicated that they plan on adopting a series of measures intended to improve the situation in this area, particularly within the framework of the National Strategy for the Elimination of All Forms of Discrimination and judicial reform.
127. As regards the dismissal of persons who are not ethnic Croats from judicial bodies, the authorities have informed ECRI that persons wishing to be reinstated can ask the Ministry of Justice to reconsider their cases, which the ministry does with great care. They have indicated that a large number of persons who had been dismissed from their posts, including ethnic Serbs, have been reinstated. However, ECRI is concerned at the numerous reports from NGOs and international organisations that ethnic Serbs still come up against insurmountable difficulties when it comes to reinstatement in their posts on judicial bodies or access to other posts even when they have all the required

qualifications. On this point, see also below, “Serbs: access to employment and education”.

Recommendations:

128. ECRI strongly encourages 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.
129. ECRI recommends 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.
130. In its second report on Croatia, ECRI stressed the importance of remedying the problem of fairness in the trials of war criminals and of co-operating fully with the International Criminal Tribunal for the Former Yugoslavia. ECRI also expressed concern at the rather unsatisfactory application of the amnesty law regarding events during the armed conflict, which entailed difficulties for ethnic Serbs.
131. According to many reports, the problems of fairness in the trials of war criminals persist, with ethnic Serbs still being at a disadvantage compared with ethnic Croats. Detailed studies carried out by the OSCE Mission in Croatia show that ethnic Serbs are put at a disadvantage at different stages in the proceedings. These inequalities concern factors such as the classification of the offence, some elements of the criminal proceedings, such as trials in absentia and the severity of the penalty. The amnesty law designed to ensure that persons are not prosecuted for a certain type of act is not applied consistently; refugees who should benefit from the law fear that they might have to face a trial for war crimes if they return to Croatia.
132. However, ECRI is pleased to learn that the authorities have started to take numerous measures to restore fairness in the administration of justice in the trials of war criminals. In 2002 the Chief Public Prosecutor issued instructions to that effect, which request, in particular, the prosecuting authorities to refrain as far as possible from trying persons in absentia. He also reviewed and decided to take no further action on large numbers of files that did not contain sufficient evidence. The Supreme Court has set aside a substantial number of judgments that did not meet all the requirements of the fair administration of justice. There has been an increase in proceedings brought by the courts against ethnic Croats for war crimes. It is to be hoped that the measure assigning war crime cases to sections of certain courts whose members are to be specially trained for the purpose will help to restore fairness in the administration of justice in this area. In the view of the Chief Prosecutor at the International Criminal Tribunal for the Former Yugoslavia, Croatia’s co-operation with the tribunal has considerably improved. Finally, the Croatian authorities have indicated that several provisions of Croatian law have been modified in order to facilitate co-operation with the International Criminal Tribunal for the Former Yugoslavia.

Recommendations:

133. ECRI strongly recommends 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.
134. ECRI draws 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. The safeguards ensuring a fair trial as provided for by the European Convention on Human Rights must apply equally to all accused persons irrespective of their ethnic origin. ECRI encourages the Croatian authorities to introduce a code of ethics and training courses for members of the judicial service; this should make it possible to achieve this goal very quickly.

Situation of the Roma community in Croatia

135. In its second report, ECRI addressed a whole series of difficulties encountered by members of the Roma community in terms of racism and racial discrimination. It encouraged the Croatian authorities to take special steps to improve the situation.
136. The 2001 census indicates that Roma form 0.2% of the population, ie 9,463 persons, but the authorities and non-governmental sources estimate their real number as ranging from 30,000 to 50,000. One reason for this difference between the census findings and the real number is Roma community members' reluctance to openly state their ethnic origin for fear of harassment and discrimination. It is a fact that many NGOs criticise the discrimination to which Roma are still subjected in education, employment, access to public services and housing. They also point to the physical and verbal violence to which members of the Roma community are subjected by some members of the majority population and sometimes even by the police. It would appear that locally elected representatives sometimes make intolerant remarks about Roma without being prosecuted for doing so. Lastly, the main problem faced by many Roma is access to Croatian nationality¹⁴.
137. ECRI is pleased to learn that in October 2003 the government adopted a National Programme for the Roma which aims to resolve many of the difficulties encountered by Roma in their day-to-day lives. The programme is based on the observation that Roma are largely marginalised in social and public activities and experience worse living conditions than the average majority population and other minorities. The programme aims to abolish all forms of discrimination, violence, stereotyping and prejudice against Roma, while ensuring that they do not lose their own identity, culture or traditions. In order to achieve this aim, the programme sets out a series of measures in areas such as access to citizenship, education, housing, access to public services and relations with the police. In 2004, a commission made up of government representatives, Roma and NGO representatives was set up to monitor the programme and develop a joint action plan for the different ministries. A

¹⁴ On this point, see above "Law on nationality".

number of measures have already been taken, such as the training of Roma as assistants in schools or as police officers and the training of young Roma at seminars on participation in public life. The process of legalising housing built by Roma which does not meet town-planning standards is under way. However, implementation of the programme has not really got off the ground yet and NGOs are critical of the lack of budgetary resources provided, though these are essential to the success of such a programme. The programme must be regarded as positive, although in ECRI's view it does not sufficiently emphasise the part played by stereotyping and prejudice against Roma, both among the population and among representatives of the public authorities, in the difficulties encountered by this community. ECRI also notes with interest that the Government is in the process of adopting a National Action Plan for Roma, which proposes a wide range of measures to improve the situation of Roma.

Recommendations:

138. ECRI strongly recommends that the Croatian authorities speed up the implementation of the National Programme for the Roma. It also urges them to take steps to release the necessary funds to finance implementation of the programme. Care must also be taken 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.
139. ECRI considers that there is an urgent need for the authorities to take practical measures to counter all forms of direct and indirect discrimination against members of the Roma community. It recommends in particular that the Croatian authorities ensure that Roma have equal access to public services. On this point, it wishes to draw attention to the measures advocated in its General Policy Recommendation No.3 on combating racism and intolerance against Roma/Gypsies and to its General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination¹⁵. Special attention should be paid to the situation of Roma women who may be the victims of discrimination on several grounds such as gender and ethnic origin.
140. ECRI emphasises that countering the stereotyping and racist prejudice against Roma in Croatian society is an integral part of any policy designed to help them. It strongly recommends that the authorities highlight this aspect of the problem, which is not sufficiently apparent in the programme or in the current measures. It encourages the authorities 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.

- Access to education for Roma children

141. In its second report on Croatia, ECRI recommended that the Croatian authorities make special efforts to increase the participation of Roma children at all levels of education.

¹⁵ See also the recommendations made above under "Civil and administrative law provisions".

142. The authorities have taken measures to facilitate Roma children's access to education, such as setting up nursery school classes enabling them to learn Croatian, training teachers in Roma culture and training young Roma as assistants in schools. Some Roma now receive state grants to enrol in university. However, as they are very recent and applied on a small scale, these measures are not enough to offset the fact that Roma children are very much behind in terms of equal opportunities in education. Many Roma children leave school at a very early age. They do not always have access to education in their mother tongue and their own culture in schools, in spite of the legislation on the rights of national minorities which provides for this possibility. The authorities have explained to ECRI that this is because the Roma have not asked for it themselves and because the Romani language is not standardised, with several Romani dialects in Croatia. However, some Roma representatives have expressed the wish that the school curriculum for Roma children should include teaching of their mother tongue and Roma culture, though they also emphasise the importance of learning Croatian.
143. ECRI is particularly concerned by allegations that separate classes solely for Roma children exist alongside classes for non-Roma children in some schools in the Medjmurje region. According to several NGOs, including the *European Roma Rights Centre*, education in the classes set aside for Roma children is of poorer quality than in the other classes. According to the authorities, however, the sole reason why there are still classes comprising only Roma children is the de facto segregation which they face where housing is concerned, since Roma are sometimes in the majority in some areas. Nevertheless, this explanation does not provide a response to allegations that when the authorities tried to introduce mixed classes instead of separate classes in some schools, they came up against opposition from the non-Roma parents, who apparently signed petitions against this measure, with the result that the separate classes were maintained. ECRI notes that proceedings for racial segregation are pending before the national courts in this connection.

Recommendations:

144. ECRI urges the Croatian authorities to take measures without delay to improve equal opportunities for Roma children in education. It stresses 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. In particular, it should be made easier for Roma children to learn Croatian while also allowing those who so wish to be taught their Romani dialect and Roma culture.
145. ECRI encourages the Croatian authorities to conduct an in-depth investigation into the allegations that segregation is practised between Roma and non-Roma children in some schools and to rapidly take all the necessary measures, where appropriate, to put an end to such situations.
146. ECRI reiterates its recommendation that a study be carried out on the influence of stereotyping and prejudices among teachers, which may lead to low expectations of Roma children. It encourages all measures designed to educate teachers about Roma culture.

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APPENDIX

The following appendix does not form part of ECRI's analysis and proposals concerning the situation in Croatia

ECRI wishes to point out that the analysis contained in its third report on Croatia, is dated 17 December 2004, and that any subsequent development is not taken into account.

In accordance with ECRI's country-by-country procedure, ECRI's draft report on Croatia was subject to a confidential dialogue with the Croatian authorities. A number of their comments were taken into account by ECRI, and integrated into the report.

However, following this dialogue, the Croatian authorities requested that the following viewpoints on their part be reproduced as an appendix to ECRI's report.

“Comments by the Croatian authorities on the Third Report of the European Commission against Racism and Intolerance on Croatia

The Government of the Republic of Croatia appreciates that in ECRI Third report on Croatia the progress in a number of areas concerning the field of racism and intolerance has been recognized. The examples of this progress are: the ratification of Protocol No. 12 to the European Convention on Human Rights, the adoption of the new criminal law provisions and Labour Code provisions on the prohibition of discrimination, as well as the adoption of the new Asylum Law. Also the National Program for the Roma has been adopted, and an Expert Working Commission on Discrimination Combating has prepared a National Strategy against all forms of Discrimination. Additionally, we would like to mention that the National Program for the Suppression of Trafficking in Human Beings (2005-08) and the Operative plan for 2005 were adopted by the Government on 15 December 2004.

Since the ECRI Second report on Croatia, the situation in the field of human rights, whether on international or national level, has improved. We would like to underline that Croatia performed its democracy by adoption of all modern standards which it successively confirms through the relations with neighboring countries, and, much broader, through cooperation within the regional and global international order.

Croatian Government is fully determined to take into consideration the issued recommendations in order to improve the situation in the field of racism and intolerance.

Further, the Government would also like to thank ECRI for the adoption of a great number of comments made by the Croatian authorities to the draft of the Third Report of ECRI, as well as for accepting some of the explanations which improved the text of the Report.

In addition, Croatia would like to give the remarks concerning the constitutional protection of the national minorities which we would appreciate to be included as an annex to the Third Report on Croatia.

On the international level, in the field of combating the racism and intolerance, the Republic of Croatia is firmly committed to the suppressing and prevention of new discrimination phenomena, as are the new migrants flows, the issue of asylum and trafficking in human beings, especially women and children, as well as spreading racism through internet technology, and so on.

Croatia, through its constitutional regulation established transparent system concerning the implementation of international law. Pursuant to article 140 of the Constitution of the Republic of Croatia, international treaties which have been concluded in compliance with the Constitution, published and are currently in force, represent a part of the internal legal order and are above the national law in the hierarchy of legal sources. As such, international treaties can apply directly.

On the national level, beside the regular legal protection of the human rights in the field of racism and discrimination, the Constitutional court plays an important role as a court functioning outside the structural division of power to legislative, judicial and executive branches, and independent of the influence of any government body. In the Republic of Croatia there are also three ombudspersons: General Ombudsperson,

Ombudsperson for Children, and Ombudsperson for Gender Equality, all appointed by the Parliament and independent human rights institution that are autonomous in their work i.e. examination of cases of human rights violation and issuing recommendations for their solution.

The Republic of Croatia is a party to all the major international treaties on global and regional levels in the field of human rights (without reserves concerning their texts) and has incorporated their relevant standards in domestic legislation. Croatia is also meeting its regular commitments concerning the periodic reports and recommendations on it. The Republic of Croatia clearly extended an open invitation to the thematic mechanism of the Human Right Commission to visit its institutions, which was accepted by the international community as an act of transparency and good will. In addition to that, the Human Right Commissioner of Council of Europe for the first time visited Croatia in June 2004.

CONSTITUTIONAL PROVISIONS AND OTHER BASIC PROVISIONS

10.

- We believe it is particularly important to draw attention to a more detailed explanation of Art. 14 of the Constitution.

1. Interpretation of the concept of "national origin"

Art. 14 of the Constitution prevents discrimination on various bases, including "national origin". This constitutional term refers to the concept which includes a broader national identity pursuant to which national minorities may or may not be constituted as such (consequently, national minority is by all means part of this concept).

2. Interpretation of the concept of "other characteristics"

The provision of Art. 14 is not exhausted by enumerating reasons for discrimination, so this leaves open the possibility to prevent discrimination on the basis of the criteria mentioned in this provision as "other characteristics", which by all means include national minority.

3. Interrelation of Art. 14. and 15.

For a more complete interpretation of the provision of Art. 14 it is necessary to take into consideration the provision of Art. 15 which guarantees equality to members of all national minorities, free expression of their national identity, the use of the language and script and cultural autonomy. Moreover, Article 82 regulates the rights of national minorities by the laws passed by Croatian Parliament by a two-third majority of all the MP votes (also known as organic laws), which speaks in favour of special care with which Croatian authorities treat national minorities and their equality in rights and freedoms. In a broader sense, we draw attention to the necessity of taking into account the provision of Art. 4 paragraph 4 of the Constitutional Law on the Rights of National Minorities, which explicitly states that any discrimination on the basis of nationality is prohibited.

All these arguments are important for a better understanding of the legislative framework concerning the protection of national minorities from discrimination in Croatia. Notwithstanding the permanently open possibility of interpretation of the constitutional text, by various courts and the Constitutional Court it is apparent that the legislative framework in Croatia is in line with international standards, and that the explicit addition of the term "national minority" in the provision of Art. 14 of the Constitution would in itself not mean a greater contribution, in terms of its content, to the protection of national minorities in Croatia.

12, 13.

- In connection with the comment noted in the Report, that the autochthonous minorities listed in the Preamble to the Constitution do not include Bosniak and Slovenian national minorities, we note that it is necessary to have a more complete interpretation and take into account the text following the word "Ruthenians" that quotes "and others". The term "and others" in the spirit of Croatian lexical usage relates to other national minorities as well, not only to the "autochthonous" ones, and, consequently, to Bosniak and Slovenian national minorities. Thus, no national minority in the Republic of Croatia may be considered as left out from the Preamble in the Constitution. The status of national minorities, particularly their participation in the decision-making processes, is not derived from their explicit mention in the Preamble. Their individual rights are mainly provided in the Constitutional Law on the Rights of National Minorities, but their exercise often depends on the numerosness of the minority itself. We, however, believe that, since the legislator has not envisaged *numerus clauses*, but left the term "and others", that is open to interpretation and as such includes all other national minorities.

Members of ethnic groups have the right to declare themselves as belonging to a national minority, provided that they meet all the criteria mentioned in Art. 5 of the Constitutional Law on the Rights of National Minorities.”

