

Croatia

Croatia made progress in 2004 toward membership in the European Union (E.U.) but did little to improve its still checkered human rights record. Key rights concerns include the government's continuing failure to pursue Croat suspects as aggressively as it does non-Croats in domestic war crimes trials, insufficient cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY), and slow progress toward the return of displaced and refugee Serbs.

The task of enhancing Croatia's human rights record now falls to the Croatian Democratic Union (HDZ), which took power following its victory in November 2003 parliamentary elections. Soon after taking office, Prime Minister Ivo Sanader made a series of policy statements intended to signal a new willingness on the part of the traditionally nationalistic HDZ to undertake necessary human rights reforms. The government's limited progress to date, however, has resurrected concerns among HDZ's key interlocutors—including the Serb members of the Parliament who support the HDZ minority government and the chief prosecutor of the ICTY—about whether it can deliver on its promises.

Refugee Returns

Between 300,000 and 350,000 Croatian Serbs left their homes during the 1991-95 war in Croatia, mostly for Serbia and Montenegro, and Bosnia and Herzegovina. By August 2004, the government had registered 112,162 Serb returnees. The actual number of returns is significantly lower because many Croatian Serbs leave again for Serbia and Montenegro or Bosnia after only a short stay in Croatia.

It took almost a decade for most minority refugees and displaced persons to repossess their houses, which had been occupied after they fled or were forced out of Croatia. The explanation lies in a pattern of obstruction and discrimination by previous governments and local authorities. However, the process is now finally nearing completion. According to government data, the authorities returned 1,800 houses to their owners in the first seven months of 2004, with only 1,700 occupied houses still to be vacated.

There has yet to be tangible progress on the issue of lost tenancy rights in socially-owned property. Croatian authorities terminated the tenancy rights of tens of thousands of Serb families after they fled their apartments during and after the war. In June 2003, the Croatian cabinet adopted a set of measures to enable former tenancy rights holders in Zagreb and other big cities to rent or purchase government-built apartments at below-market rates. In August 2004 the government admitted that the implementation of the scheme had yet to begin.

A July 2004 decision by the European Court of Human Rights (ECtHR) on tenancy rights in Croatia may limit future progress in restoring Serb tenancy rights. In the *Blecic* case, the ECtHR upheld Croatian court decisions terminating the tenancy rights of a woman who had left Zadar shortly before the outbreak of hostilities in 1991 and had not returned to her apartment within the six-month period specified by Croatian law at the time. The misguided decision by the ECtHR appears to stand for the proposition—at odds with basic tenets of humanitarian law and refugee law—that a displaced civilian must return to a war zone to preserve property rights.

For the second consecutive year, reconstruction of damaged or destroyed Serb homes in Croatia has continued at a satisfactory pace. The government announced in 2003 that it would reconstruct 10,800 houses and apartments during 2004-05, most of them owned by ethnic Serbs. In March 2004, the government also extended, until end-September, the deadline for submission of reconstruction claims for those who missed the original 2001 deadline.

Economic opportunities for minority returnees are limited by employment discrimination in local government and other public sector employers. A December 2002 constitutional law on minority rights obliges the state to ensure pre-war levels of minority representation in local government and in state, county, and municipal courts, but the law has yet adequately to be implemented in most areas.

Accountability for War Crimes

The government's willingness to provide documentary evidence to the ICTY and its efforts to persuade ethnic Croat indictees to surrender to the tribunal were overshadowed by its failure to hand over Ante Gotovina, a Croatian Army general indicted for 1995 crimes against Croatian Serbs. On March 11, Croatian generals Ivan Cermak and Mladen Markac voluntarily traveled to the Hague, ten days after the government received the ICTY indictment against them. Both are accused of crimes against humanity and war crimes against Croatian Serbs in 1995. Similarly, six Bosnian Croat military and political leaders indicted by the ICTY flew from Zagreb to the Hague on April 5, two weeks before the European Commission was to issue an opinion on Croatia's bid for E.U. membership. All six are charged with participating in a joint criminal enterprise to forcibly expel Bosnian Muslims and Serbs from the self-declared Croat statelet of Herceg-Bosna during the Bosnian war.

Following the surrenders in March and April, ICTY Chief Prosecutor Carla Del Ponte stated that Croatia was cooperating fully with the tribunal. In her November 2004 report to the U.N. Security Council, however, Del Ponte revised her assessment, indicating that Croatia will be cooperating fully once Gotovina is handed over to the ICTY.

Accountability efforts in Croatian courts continue to fall short of international standards. In 2004, Croatian courts tried only two cases involving war crimes perpetrated against ethnic Serbs. On April 10, the Osijek district court convicted one person and acquitted a second for the killing of nineteen Serb civilians in December 1991 by ethnic Croat forces in the village of Paulin Dvor. Despite evidence that

others were involved in the killing, no one else has been indicted. On September 21, the county court in Karlovac reopened the trial of Mihajlo Hrastov, a former military police officer accused of killing thirteen Serb prisoners of war in 1991 and twice acquitted in the past.

While the prosecution of individuals responsible for atrocities against ethnic Serbs made little progress, trials against ethnic Serbs accused of war crimes continued throughout the country. Despite clear directives from Croatia's chief prosecutor that lower level prosecutors drop charges not supported by credible evidence and cease to bring cases in the absence of the accused, the courts in Zadar and Vukovar continued with such practices.

Key International Actors

On April 20, 2004, the European Commission issued a positive opinion on Croatia's membership application. The commission found that Croatia was a functioning democracy that largely respects fundamental rights. The European Council named Croatia as a candidate country for E.U. membership on June 18.

The E.U. continues to emphasize, however, that improved policies on the return of Serb refugees are a precondition for improved relations. The commission's April opinion stressed the need for additional efforts on minority rights, refugee return, judiciary reform, regional cooperation, and the fight against corruption. The European Partnership document, adopted by the E.U. Council on September 13, 2004, details short and medium term priorities for Croatia's preparations for E.U. membership. Key human rights priorities—in addition to those highlighted in the Commission opinion—include: implementation of the Constitutional Law on National Minorities, enhanced freedom of expression and non-interference in the media, improved government cooperation with the human rights ombudsman, and full cooperation with the ICTY. The document fails to make reference to shortcomings in domestic war crimes trials, and the need to ensure justice regardless of the ethnicity of victims and perpetrators.

The Organization for Security and Cooperation in Europe (OSCE) mission to Croatia has continued to develop a dialogue with the government, while issuing reports critical of its return-related practices, minority rights record, and progress in domestic war crimes trials. In a July 2004 periodic report, the OSCE mission acknowledged the new government's expressed willingness to reconcile with the country's minorities, and welcomed progress in property reconstruction assistance to refugees and property repossession. The report, however, noted the slow progress in resolution of the issue of tenancy rights, and lingering problems in developing the rule of law, including the barriers to successful domestic war crimes prosecutions.

The OSCE mission has systematically monitored and reported on domestic war crimes prosecutions, identifying several areas—lack of impartiality, pressures on witnesses, weak inter-state cooperation, and the need for additional training of judges and prosecutors, among others—where further reforms are essential. The mission nevertheless concluded in June that efforts undertaken by the Ministry of

Justice—including training by the ICTY for judges in the Zagreb, Osijek, Split, and Rijeka County Courts—made it likely that the Croatian courts would be adequately able to handle the limited number of cases that are expected to be transferred from the ICTY.