

27 June 2007

Screening report

Croatia

Chapter 23 – Judiciary and fundamental rights

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I. CHAPTER CONTENT

According to Article 6 (1) of the EU Treaty, the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law. These principles are common to the Member States and need to be complied with by candidate countries.

The rule of law principle and the right to a fair trial, as enshrined in Article 6 of the European Convention on Human Rights (ECHR) and Article 47 of the Charter of Fundamental Rights of the European Union, provide that the **judiciary** must be independent and impartial. The content of these notions has been clarified in the jurisprudence of the European Court of Human Rights (ECtHR), which is an accepted reference for the EU *acquis* under Article 6 (2) of the EU Treaty. In particular, Courts must be established by law; there shall be no discrimination in the appointment procedures of judges; the judiciary must not be influenced in its decision-making by either the executive or the legislature; judges must act impartially and be seen to do so; their conditions of tenure must be adequately ensured by law; the grounds for disciplinary action or removal from the post must be limited and laid down in the law.

Furthermore, it is a general principle of EU law that the judiciary must have sufficient means to work efficiently; judges are expected to respect high ethical standards in the performance of their duties in accordance with the law. The Council of Europe (COE) Committee of Ministers Recommendation N° R (94) 12 on the Independence, Efficiency and the Role of Judges provides further clarifications. Similarly, the European Guidelines on Ethics and Conduct for Public Prosecutors (the Budapest guidelines) offer useful guidelines about a common European standard in the field.

Article 29 of the EU Treaty mentions that preventing and combating **corruption** contributes to the establishment of an area of freedom, security and justice. The 1995 Convention on the Protection of the EC's Financial Interests and the 1997 Convention on the Fight against Corruption involving Officials of the EC or the Member States imply that "effective, proportionate and dissuasive" criminal law penalties are required to fight corruption. The Council Framework Decision on Combating Corruption in the Private Sector of 2003 defines active and passive corruption in the private sector as a criminal offence and prescribes the responsibility of legal persons for both active and passive corruption. Candidate countries are expected under the Communication from the Commission on a Comprehensive EU Policy against Corruption of 2003 to maintain strong political commitment at the highest level, develop and improve investigative tools and allocate more specialised staff to the fight against corruption, pursue training and specialisation, implement strategies and legislation in an effective manner and become fully aligned with the relevant international instruments.

According to Article 6 (2) of the EU Treaty and the case-law of the Court of Justice, the Union respects **fundamental rights**, as guaranteed by the ECHR and as they result from the constitutional traditions common to the Member States, as general principles of Community law. Thus, they are binding on the Union institutions in the exercise of their powers and on the Member States when they implement Community law (Article 51 of the Charter of Fundamental Rights of the EU). In the interpretation of fundamental rights, the Court of Justice has mainly drawn on the provisions of the ECHR and, occasionally, on several other international sources such as the UN International Covenant on Civil and Political Rights. In its judgement of 27 June 2006 on the "family reunification" Directive¹, the Court of Justice also relied on the Charter of Fundamental Rights of the EU in order to clarify the scope of the EU fundamental rights *acquis*.

¹ Case C 540/03 *European Parliament v. Council of the EU*; judgement of 27 June 2006, recital n° 38.

The list of fundamental rights covers traditional civil rights, such as the right to life, the prohibition of torture and degrading treatment, the right to security and liberty imposing strict limits on pre-trial detention, the freedom of religion, freedom of speech and freedom of association and assembly. The Union also protects the fundamental right to privacy and guarantees the protection of personal data. Directive 95/46/EC of the European Parliament and of the Council on the Protection of Individuals with regard to the Processing of Personal Data and on the Free Movement of Such Data is the basic instrument at the EC level. This Directive gives substance to, and amplifies the principles of the protection of the rights and freedoms of individuals contained in other data protection agreements, in particular the COE Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data and its Additional Protocol 181. It provides for the free movement of such data within the EU/EEA for both the public and the private sectors under certain conditions such as legitimacy, good data quality, and observance of the finality principle.

The EU's human rights list also contains a number of guarantees to secure equality. There is a general prohibition of discrimination on a variety of grounds; equality between men and women must be ensured; cultural, religious and linguistic diversity is to be respected. Furthermore, the rights of the child need special protection; the contents of these rights may be drawn from the UN Convention on the Rights of the Child ratified by all Member States. Children have, in particular, the right to survival; development; protection from harmful influences, abuse and exploitation; and full participation in family, cultural and social life. Moreover, the EU Framework Decision on Combating the Sexual Exploitation of Children and Child Pornography of 2003 calls upon Member States to ensure that in their legal systems certain conduct is punishable; relevant sanctions need to be effective, proportionate and dissuasive.

According to Article 21 of the Charter of Fundamental Rights of the EU, members of national minorities shall not be discriminated against. Article 1 of the Framework Convention for the Protection of National Minorities confirms that human rights include minority rights. The latter include the right to non-discrimination of a person belonging to a national minority; the freedom of association, to assembly, of expression; the freedom of religion; the right to use one's language; and the effective participation in public affairs. Measures against racism and xenophobia cover areas such as anti-Semitism, Islamophobia, anti-gypsism. The importance of preventing and combating these phenomena is stressed in Article 29 of the EU Treaty. The Council adopted, in 1996, a Joint Action to combat racism and xenophobia.

Finally, the Union *acquis* in the field of fundamental rights contains a number of important judicial guarantees. Everybody has the right to a fair trial and the right to an effective remedy. Legal aid should be given if the person charged does not have sufficient means; this initially concerned criminal cases but has been extended, under certain conditions, to civil ones when the interest of justice so requires. Furthermore, the principles of legality and proportionality of criminal offences and penalties need to be observed. The accused must also benefit from a presumption of innocence and enjoy defence rights.

The **EU citizens' rights** regard the right to vote and stand as a candidate in elections to the European Parliament and in municipal elections; the right to move and reside freely within the European Union; and diplomatic and consular protection.

II. COUNTRY ALIGNMENT AND IMPLEMENTATION CAPACITY

This part summarises the information provided by Croatia and the discussion at the screening meeting.

Croatia indicated that it can accept the *acquis* regarding Judiciary and fundamental rights. Croatia indicated that it does not expect any difficulties to implement the *acquis* by accession.

II.a JUDICIARY

Independence

Article 117 of the Constitution and Article 2 of the Act on Courts provide that judicial power in the Republic of Croatia is exercised by courts established by law, in an autonomous and independent fashion. Under Article 124 of the Constitution and Article 2 of the Act on the State Attorney's Office the latter is an autonomous and independent judicial body empowered and due to proceed against those who commit crime, and to protect the property of the Republic of Croatia. According to Article 29 of the Constitution and Articles 3 and 4 of the Act on Courts decisions on the rights and duties of individuals and/or on the suspicion or the charge of a penal offence is reached by courts only. The authority and types of courts is established by law. Article 5 of the Act on Courts provides that courts administer justice only on the basis of the Constitution, legal acts and international agreements; Article 6 of the Act, together with Article 309 of the Criminal Code, forbid any kind of influence on judicial decisions.

Article 123 of the Constitution and Article 12 of the Act on the State Judicial Council provide that judges are appointed and relieved of duty by the State Judicial Council. The appointment procedure involves the announcement of vacancies by the Ministry of Justice further to proposals of court presidents. Applications received from candidates are transmitted by the Ministry to judicial councils for opinion. The latter form their views by requesting information from, *inter alia*, the presidents of courts if the candidate worked in one as judicial trainee or in another capacity. The judicial councils submit their written opinions to the Ministry of Justice which, then, forwards them to the State Judicial Council. The latter decides to appoint or not a judge having also taken into account the views of the Justice Committee of Parliament. Article 124 of the Constitution and Articles 87-122 of the Act on the State Attorney Office provide for similar procedures for the appointment of Deputy State Attorneys whereby the decision is taken by the State Attorney's Council². Further to a probation period of 5 years, judges and attorneys become permanent and enjoy immunity as provided for under the law³. Judges and public prosecutors may be transferred only if they agree to it. The only exception to this is their transfer in the event of dissolution or reorganisation of Courts⁴. Articles 14 and 44 of the Constitution forbid any kind of discrimination while Article 74 of the Act on Courts includes the right of members of national minorities to call upon the right of representation of their minority in the judiciary.

The State Judicial Council and the State Attorney's Council are also responsible for disciplinary matters for judges and state attorneys, respectively. Activities subject to disciplinary action and disciplinary action itself are established by law. Judges have the right to appeal to the Constitutional Court against decisions relieving them of duty whereas state attorneys may file an administrative suit against such decisions.

Impartiality

² The Act on the State Attorney's Office as amended in January 2007 introduced changes in the procedure for nomination and dismissal of state attorneys, including interviews by the State Attorney's Council, internal supervision of the work of State Attorneys, a new evaluation system and an obligation for permanent training.

³ Article 8 of the Act on Courts provides that judges must not be held responsible for opinions expressed or votes cast in the context of the judicial decision-making process. In addition, judges may not be detained, or judicial proceedings against them may not be launched without the permission of the State Judicial Council except when a prison sentence of 5 years or more is foreseen for the criminal offence they commit.

⁴ The Act on Courts as amended in January 2007 introduced the possibility for judges to be transferred for up to two years to a Court within 50 km radius without their consent.

According to Article 26 of the Constitution, all nationals of the Republic of Croatia and foreigners are equal before the courts. Procedural laws provide that judges and state attorneys in cases of conflict of interest are exempted from trying cases.

As regards judicial ethics, the Act on Courts provides for the adoption of a Code of Judicial Ethics for Judges⁵ and that the newly appointed judges declare their assets⁶.

The assignment of cases is carried out on the basis of the alphabetical order of the list of judges dealing with a category of cases. In a very limited number of courts where IT systems exist random allocation of cases has begun. When the alphabetical order cannot be followed for reasons of, for example, workload, cases are re-assigned.

Professionalism/Competence

Training for judges and state attorneys is carried out by the Judicial Academy but, also, by law schools, professional associations, and the courts and state attorney's offices themselves. The Judicial Academy⁷ was founded in 2004, has 14 staff⁸ and its 2006 budget was €0.47 million. Five regional centres of the Academy have been founded which are not yet fully developed.

The Act on Courts provides that judges should respond to the invitation of the Judicial Academy to participate as lecturers, workshop hosts and participants in professional development programmes and that such engagement should be taken into account in evaluations and promotions. Similar provisions exist for State Attorneys. In terms of pre-service training, to date there are only *ad hoc* programmes; a number of standard and specialised programmes have been developed for in-service training. Workshops have been organised on EU law and, also, on human rights and anti-corruption.

Efficiency

The Act on Courts and the Act on the Execution of the State Budget define the process for the establishment of the budget for the judiciary: a proposal is established by the Ministry of Justice that, as regards the Courts' budgets, takes into account the views of the presidents of courts. The Parliament debates and eventually approves the budget that is submitted to it by the Government. The presidents of Courts manage funds that are necessary for the operation of the courts and the Ministry of Justice those for capital investments. The budget for the judiciary in 2006 was €291 million, out of which €25.66 million were earmarked for capital investments, 8% and 34% more than in 2005 and 2004, respectively.

In terms of introduction of Information Technology, the Croatian Government has decided to support the Integrated Case Management System (ICMS), the Land Register Management System and to interconnect all judicial institutions into a single information network and on the Internet. The ICMS is being implemented in two pilot courts and preparations are under way for its introduction in six more courts⁹. The roll out of the system in 70 courts is planned to be completed by 2009.

⁵ A Code of Judicial Ethics was adopted by the Council of the Presidents of Judicial Councils of Croatia on 26 October 2006 and was published in the OG of 4 December 2006.

⁶ Under the Act on Courts of 2005, newly appointed judges had to submit property cards. The Amendments to the Act on Courts of January 2007 extend this obligation to all judges.

⁷ In November 2006 an Advisory Board to the Judicial Academy was set up.

⁸ Currently, only one employee (a seconded State Attorney) represents the judicial practice.

⁹ As of June 2007.

Croatia has 248 regular and specialised courts and 1,943¹⁰ judges, i.e. 6 courts and 44 judges per 100,000 inhabitants. There are, also, 521 court advisors, 322 judicial trainees and 6,047 civil servants and employees. In the State Attorney's Office, in addition to the Chief State Attorney, there are 558 state attorneys and their deputies, 89 advisors, 76 trainees and 666 civil servants and employees. The rationalisation of the courts network constitutes an objective of the reform of the judiciary and is based on the premises that (a) there is an excessive number of courts in relation to the size of the country and the number of its inhabitants, and (b) the existing network of courts is not financially cost-effective and requires significant structural investments. A working group for the rationalisation of courts has been established with a view to preparing a proposal for the future network of courts. On the basis of a decision of the Minister of Justice of May 2006, a pilot project of merging municipal and misdemeanour courts started in 8 towns. An individual issue in the context of the rationalisation of the courts' network is that of the Administrative Court in terms of rendering it a Court of full jurisdiction as per Article 6 of the ECHR. Four war crime departments in the Zagreb, Osijek, Rijeka and Split County Courts have been established by the Law on the Application of the Statute of the International Criminal Court and on the Prosecution of Criminal Acts against the International Law on War and Humanitarian Law; thus, four "special" courts have been granted extra-territorial jurisdiction over war crimes.

On 30 June 2006 the total number of pending cases was approximately 1,230,000 compared to the approximately 1,638,000 at the beginning of 2005¹¹. Of these, 29% were misdemeanour cases, 24% execution cases, 22% civil cases and 15% land register cases. Measures to reduce the number of pending cases include (a) greater attention paid to resolving old cases: old criminal cases are defined as those received prior to 31 December 2003 and old civil cases are those received prior to 31 December 2000. From December 2005 to June 2006 the old cases were reduced from approximately 79,000 to 63,000; (b) converting manually kept land register books into electronic form and making the Land Register Database available on the Internet. The process has not been completed yet. From August 2004 to August 2006 the pending land registry cases dropped from approximately 360,000 to 183,000¹²; (c) reducing the pending execution cases through a number of measures such as using the services of public notaries. From October 2005 to June 2006 these cases were reduced from approximately 600,000 to 292,000; (d) using alternative dispute resolution (mediation, arbitration) and provisions for a trial within a reasonable term.

Judicial reform

The Government adopted a Strategy for the Reform of the Justice System together with an Action Plan for the implementation of the Strategy in September 2005. The Strategy aims at creating an efficient judiciary by, among other things (a) dealing with the large number of pending cases; (b) reducing the duration of court proceedings; (c) modernising the court administration; (d) rationalising the court network; and (e) providing education and professional training. A Council for Monitoring the Implementation of the Strategy for the Reform of the Judiciary composed of the Minister of Justice, the President of the Supreme Court, the Chief State Attorney, the President of the Committee on the Judiciary of the Parliament, the President of the Chamber of Notaries, the President of the Croatian Bar Association and a State Secretary at the Ministry of Justice has been set up. Its main task is to follow implementation and give guidance. The Department for Strategic Planning of the Ministry of Justice follows-up the implementation in more operational terms and ensures coordination of bodies involved.

¹⁰ As of June 2007.

¹¹ In March 2007 there were 1.026.015 pending cases before the Croatian Courts.

¹² On 31 May 2007 approximately 97% land registry files had been digitalised at the municipal courts of the Republic of Croatia, of which 33% have been verified; the number of pending land registry cases decreased to approximately 137,000.

The strategy provides for the introduction of transparency in the work of the Courts. This includes the introduction of spokespersons at courts (already foreseen in the Act on Courts), the publication of reports on the work of courts on the Internet and the provision of information to the public regarding other aspects of the work of the judiciary.

II.b ANTI-CORRUPTION

Policy and domestic institutions

Following the submission by the Government, the Parliament adopted in March 2006 a National Anti-corruption Programme 2006-2008. In the Programme it is stated that the Government is aware of the extent of corruption within Croatian society and that it is determined to approach the fight against corruption as an issue of crucial importance. Special attention is devoted in the context of the Programme to areas where perceived corruption is widespread including the judiciary, health services, local government and public administration, political parties and the economy and science. Separate Action Plans were subsequently prepared in each of these priority areas. The Ministry of Justice is the national coordinator. A National Council for the Fight against Corruption responsible for monitoring implementation of the Programme has been established. This body comprises a chairman and ten members, including representatives of the Parliament, employers, trade unions, media, NGOs and independent experts. Measures regarding legislation and the judiciary include, among other things, the introduction of heavier sentences for corruption through amendments to the Criminal Code, of property declarations¹³, of an ethics code for judges¹⁴, and of the written justification of the reallocation of court cases through amendments to the Court Rulebook. Mandatory declaration of assets has been introduced for State Attorneys. As regards politics, legislation on the financing of political parties has been amended¹⁵ with the aim of introducing greater transparency.

The anti-corruption institutions are both repressive and preventive in nature. The Office for the Suppression of Corruption and Organised Crime (USKOK) is the central body in the fight against corruption and is part of the State Attorney's Office. Its remit includes criminal prosecution of corruption and organised crime, international cooperation in both of these fields and prevention of corruption. USKOK is authorised to request information from state bodies and legal entities, and initiate and conduct inquiries into criminal offences; it has concluded separate Memoranda of Understanding with the Tax Administration. The Ministry of Interior has an Economic Crime and Corruption Department within the Crime Police Directorate, and an Internal Control Department. The Ministry of Finance has an Independent Department for the Detection of Criminal Tax Offences within the Tax Administration, and an Internal Inspection and Control Department within the Customs Directorate. The State Audit Office is an institution answerable to Parliament with remit to control public revenues and expenditure at the level of central and local government.

According to the Croatian authorities, over the period 2002-2005, 6,531 persons were reported for corruptive criminal offences, 2,578 were indicted and 1,204 convicted. The most common of these offences were embezzlement, abuse of office and official authority, and bribery.

Domestic legal framework

Under Article 347 of the Criminal Code prison sentences are foreseen for accepting a bribe and under Article 348 for offering a bribe. Similarly, Articles 343 and 338 of the Code provide for

¹³ Under the Act on Courts of 2005, newly appointed judges had to submit property declarations. The Amendments to the Act on Courts of January 2007 extend this obligation to all judges.

¹⁴ A Code of Judicial Ethics was adopted by the Council of the Presidents of Judicial Councils of Croatia on 26 October 2006 and was published in the OG of 4 December 2006.

¹⁵ The Act on Financing of Political Parties, Independent Lists and Candidates entered into force in January 2007.

prison sentences for active and passive trading in influence, and abuse in performing governmental duties, respectively. Corruption offences in the private sector include abuse in bankruptcy proceedings in its passive and active form (Article 283 of the Code), unfair competition in foreign trade operations (Article 289 of the Code) and accepting and offering a bribe in economic transactions (Article 294 of the Code). The abuse of office and official authority is governed by Article 337 of the Code under which prison sentences are foreseen for such crimes.

According to Article 127 of the Criminal Procedure Act, an injured party in criminal proceedings can file a damages claim against the offender while Article 1 of the Civil Procedure Act stipulates that damages claim can be filed independently in a civil procedure. Under Croatian law, the state is liable for illegal action of judges, state attorneys, civil servants and employees. According to the Civil Obligations Act, the statute of limitations applies to damage claims as follows: 3 years from the establishment of the damage and the injured person, and 5 years from the moment the damage occurred. Article 115 of the Labour Act provides that reporting by workers to competent state administration bodies about wrong-doings of persons in charge is not considered a just cause for dismissal. The Accounting Act stipulates that companies are obliged to submit annual reports on their activities and that these reports are subject to audit. The Audit Act foresees that this audit is carried out by the State Audit Office.

The Act on Liability of Legal Persons for Criminal Offences of 2003 sanctions legal persons for criminal offences committed by a responsible person provided that a duty of the legal person is not observed or the legal person acquires or could acquire illegal pecuniary benefits.

The Act on the Prevention of Conflict of Interest in the Exercise of Public Office defines conflict of interest as a situation in which an official has a private interest that clashes with the public one, or a private interest that might affect the official's impartiality in the exercise of public office. The Act also stipulates that, as regards officials, information about assets, permanent income and the assets of their spouse and minor children, the manner of their acquisition, the sources of funds used for acquiring property and money savings exceeding the official's one-year income is public and can be disclosed without the official's consent. The Commission for the Resolution of Conflict of Interest, appointed by the Croatian Parliament, monitors the implementation of the Act.

International legal framework and institutions

Article 140 of the Constitution provides that international agreements form part of the internal legal order of the Republic of Croatia and takes precedence over domestic legislation.

Croatia has ratified the UN Convention against Corruption, the COE Criminal Law Convention on Corruption and Additional Protocol, the COE Civil Law Convention on Corruption, the COE Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime, and other COE Conventions such as the 1957 Convention on Extradition and the First and Second Additional Protocols, the 1959 European Convention on Mutual Legal Assistance in Criminal Matters and the First and Second¹⁶ Additional Protocols, the 1983 Convention on Transfer of Sentenced Persons, and the 2001 Convention on Cyber-crime.

The Act on International Legal Assistance in Criminal Matters entered into force in July 2005 and includes, among others things, provisions on (a) extradition (Croatia considers the UN Convention against corruption as the legal basis for cooperation on extradition. Extradition of Croatian citizens is prohibited under Article 9 of the Constitution; in such cases, alternative solutions, e.g. transfer of proceedings or take over of the enforcement of foreign verdicts, are sought); (b)

¹⁶ Parliament ratified the Second Additional Protocol on 19 December 2006.

transfer of criminal proceedings; (c) conversion procedure whereby the court determines a sanction in the foreign verdict pursuant to the law of the Republic of Croatia; and (d) the possibility to transfer convicts to the state of citizenship or domicile.

The Civil Procedure Act provides that courts must offer legal assistance to other courts and cooperate with courts in other countries.

Aspects concerning money laundering are dealt with in chapter 4 – Free Movement of Capital; aspects concerning public procurement are dealt with in chapter 5 – Public Procurement; aspects concerning the fight against organised crime are dealt with in chapter 24 – Justice, Freedom and Security.

II.c FUNDAMENTAL RIGHTS

General

Article 3 of the Constitution determines the highest values of the constitutional order as the grounds for the interpretation and implementation of the Constitution itself. These are, amongst others, freedom, equal rights, national and gender equality, respect for human rights, inviolability of ownership, the rule of law, and a democratic multi-party system. Chapter III of the Constitution guarantees civil and political rights as well as economic, social and cultural rights. Article 35 of the Constitution provides among other things that everyone is guaranteed respect for dignity. Human dignity is a horizontal principle that characterises the entire chapter. Article 140 of the Constitution provides that international agreements in force are part of the internal legal order of the Republic of Croatia and take precedence over domestic legislation. Article 5 of the Act on Courts stipulates that courts rule, also, according to the international treaties which are part of the Croatian legal order.

Croatia is party to the following UN treaties and their optional protocols: (a) International Convention for the Elimination of All Forms of Discrimination; (b) International Covenant on Civil and Political Rights, its Optional Protocol and its Second Optional Protocol on the Abolition of the Death Penalty; (c) International Covenant on Economic, Social and Cultural Issues; (d) Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol; (e) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment together with its Optional Protocol; (f) Convention on the Rights of the Child and its two optional protocols on child prostitution and pornography, and on the involvement of children in armed conflicts. Croatia has ratified the ECHR together with its Protocols 1, 4, 6, 7, 11, 12 (on anti-discrimination), 13 (abolition of death penalty in all circumstances), and 14.

The institutional structure established for monitoring the human rights situation includes the Government Office for Human Rights whose mandate, among other things, is to provide analysis on the situation regarding human rights and freedoms in the country and on the compliance of the domestic legislation with the Constitution and international human rights agreements, and propose measures to the Government; the Human Rights Centre, a public institution whose aim is to bring together, and assist, the Government, academia, the judiciary, NGOs on issues of human rights; the Ombudsman, whose remit is to protect the constitutional and legal rights of the citizens before the state administration and bodies vested with public authority; the Ombudsman for Children, and the Ombudsman for Gender Equality; last, the Government Office for Gender Equality. As regards minorities, the institutional structure includes the Council for National Minorities at the national level, established under the Constitutional Law on National Minorities as an advisory body to the Government; the (local advisory) Councils for National Minorities established, also, under the same law as advisory bodies to the municipal and county level councils; and the Government Office for National Minorities responsible for the oversight of the implementation of

the Constitutional Act on the Rights of National Minorities (CLNM) and the Framework Convention for the Protection of National Minorities (FCNM), the proposal of measures to the Government and the coordination of Government activities towards minorities.

Aspects related to the fight against terrorism are dealt with in chapter 24 – Justice, Freedom and Security; this chapter deals with the possible impact of anti-terrorist legislation on human rights.

Human rights

- ***Right to life and to the integrity of the person***

According to Article 21 of the Constitution, every human being has the right to life and there is no capital punishment in the Republic of Croatia. Under Article 17 restrictions on this right may not be imposed even in cases of immediate threat to the existence of the state. As mentioned above, Croatia has ratified the International Covenant on Civil and Political Rights and its Second Optional Protocol on the abolition of the death penalty.

Prison sentences are provided for under Article 94 of the Criminal Code for those killing another upon the latter's express and earnest request; Article 96 for assisting in suicide; and Article 97 for the unlawful termination of pregnancy.

- ***Prohibition of torture and inhuman or degrading treatment or punishment***

Under Article 23 of the Constitution no one shall be subject to any form of maltreatment and under Article 25 all arrested and convicted persons shall be treated humanely and their dignity shall be respected. Croatia ratified the European Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment together with its Protocols 1 and 2, and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment together with its Optional Protocol.

Article 176 of the Criminal Code provides for prison sentences for inflicting on a person physical or mental pain or suffering with the purpose of obtaining information or a confession. Cruel and degrading treatment is a qualification element in several criminal offences committed by third persons. Violent behaviour of third persons by which someone is maltreated or degraded is treated as a special criminal offence. As regards protection of prisoners and detainees, the Criminal Procedure Act (Article 118) together with the Act on Serving Prison Sentence provides that detention is executed in conditions that do not offend the dignity of the detainee. Last, the Asylum Act prohibits forced expulsion of a person threatened by torture or maltreatment in a country to which he/she is expelled.

- ***Prohibition of slavery, servitude, and forced or compulsory labour***

Article 23 of the Constitution provides that forced and compulsory labour is forbidden. Relevant international legal agreements that Croatia has adopted are the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children; the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography; and the Supplementary Convention on the Abolition of Slavery, Slave Trade, and Institutions and Practices Similar to Slavery of 1956.

Under Article 175 of the Criminal Code, prison sentences are foreseen for trafficking in human beings and slavery.

Aspects related to labour law are dealt with in chapter 19 – Social Policy and Employment.

- ***Respect for private and family life and communications***

Article 35 of the Constitution guarantees respect for and legal protection of personal and family life and Article 36 provides that freedom and privacy of correspondence and all other forms of communication shall be guaranteed and inviolable.

The Croatian internal legal framework for the protection of this right consists of the Family Act, the Inheritance Act, the Act on Same-Sex Unions, the Criminal Procedure Act and the Act on the Security and Intelligence System of the Republic of Croatia. The latter contains provisions on the secret collection of information. These provisions can be used only when the Head of the Intelligence Services so requests and a judge of the Supreme Court approves. In emergency cases these provisions can be activated without the judge's prior approval. However, this approval is necessary within 24 hours. If the judge decides that secret collection of information was unnecessary, all material collected is destroyed. The law retains the Civilian Council for Supervision of the Intelligence Services introduced under 2003 legislation.

- ***Right to marry and right to found a family***

Under Article 61 of the Constitution marriage and legal relations in marriage, common-law marriage and families are regulated by law.

The Family Act and the Gender Equality Act constitute the internal legal framework.

- ***Freedom of thought, conscience and religion***

Freedom of thought is guaranteed by Article 38 of the Constitution. Article 40 of it guarantees freedom of conscience and religion and freedom to manifest religion and other convictions. Article 41 provides that all religious communities are equal before the law and are separated from the state. Article 47 of the Constitution states that conscientious objection is allowed to all those who, for religious or moral reasons, are not willing to participate in the performance of military service in the armed forces.

The internal legal framework consists of the Act on the Legal Position of Religious Communities.

- ***Freedom of expression including freedom and pluralism of the media***

Article 38 of the Constitution guarantees the freedom of expression. It clarifies that this includes the freedom of the press and other media of communication, freedom of speech and public expression, and free establishment of all institutions of public communication.

The internal legal framework consists of the Media Act, the Electronic Media Act and the Croatian Radio Television Act. Further to amendments to the Criminal Code in June 2006, prison sentences for libel have been abolished.

Aspects related to broadcasting and audio-visual policy including regulatory bodies in these areas are dealt with in chapter 10 – Information Society and Media.

- ***Freedom of assembly and association, including freedom to form political parties, the right to establish trade unions***

Article 6 of the Constitution provides that the establishment of political parties is free; Article 43 that everyone is guaranteed the freedom of association and may freely form associations but that this freedom is restricted by the prohibition of any violent threat to the democratic constitutional

order and independence, unity and territorial integrity of the Republic of Croatia; Article 42 that everyone is guaranteed the right of public assembly and peaceful protest.

The internal legal framework consists of the Associations Act, the Act on Political Parties and the Public Assembly Act.

Aspects concerning Trade Union rights are dealt with in chapter 19 –Social Policy and Employment.

- ***Treatment of socially vulnerable and disabled persons and principle of non-discrimination***

Article 14 of the Constitution foresees that everyone in the Republic of Croatia enjoys rights and freedoms regardless of race, colour, gender, language, religion, political or other belief, national or social origin, property, birth, education, social status or other characteristics.

Legislation that provides for prohibition of discrimination includes the Constitutional Act on the Rights of National Minorities; the Act on the Use of Language and Script of National Minorities in the Republic of Croatia; the Act on Education in the Language and Script of National Minorities; the Gender Equality Act; the Act on Same-sex Unions; and the Criminal Code. A National Action Plan for the Suppression of Discrimination is in the process of being adopted. The Penal Code was amended in June 2006 to include a wider definition of "hate crime", in order to deal with a situation of an increasing number of apparently ethnically motivated attacks against Croatian Serbs and their institutions.

Aspects related to people with disabilities and to EU anti-discrimination legislation are dealt with in chapter 19 –Social Policy and Employment.

- ***Right to education***

Under Article 65 of the Constitution primary education is compulsory and free of charge, and secondary and higher education are equally accessible to all according to abilities.

According to the Pre-school Education Act, attending pre-school institutions is not a prerequisite to enrolling into primary education. The Primary Education Act foresees that primary education is compulsory from the age of 6 or 7 regardless of citizenship; the Secondary Education Act that secondary education is equally accessible to all according to abilities; the Scientific Activity and Higher Education Act that higher education is based on academic freedoms and university autonomy.

Aspects related to cooperation in the field of education policies, Community programmes and access to education of EU citizens are dealt with in chapter 26 – Education and Culture.

- ***Right to property***

Article 3 of the Constitution mentions the inviolability of property as a fundamental value; Article 48 guarantees the right to ownership; Article 50 provides that property may, in the interest of the Republic of Croatia, be restricted or expropriated by law upon payment of compensation equal to its market value.

- ***Gender equality and women's rights***

According to Article 3 of the Constitution gender equality, among other things, constitutes one of the highest values of the constitutional order and ground for the interpretation of the Constitution

itself. Croatia has ratified the UN Convention on Elimination of all Forms of Discrimination against Women (CEDAW) together with the Optional Protocol to this Convention.

The basic strategic documents in this field are the National Policy for the Promotion of Gender Equality 2006 – 2010 and the National Strategy for the Protection against Domestic Violence 2005 – 2007. The former document includes measures for the improvement of the social situation of women and for raising awareness on the need to respect women's rights. It also strengthens and promotes measures that enable reconciliation of family and professional obligations. Croatia participates in the COE campaign for Combating Violence against Women, including Domestic Violence.

The Ombudsman for Gender Equality and the Government Office for Gender Equality have been established under the Gender Equality Act. The Gender Equality Ombudsman is appointed by, and reports to Parliament and acts independently and autonomously. He/she, among other things, monitors the implementation of the Act; issues warnings/proposals/recommendations on matters falling under his/her competence; and initiates proceedings to check whether legislation complies with the principle of gender equality. The Government Office for Gender Equality was established in 2004 in order to promote gender equality through, among other things, awareness raising. It has also initiated the creation and networking of county gender-equality committees. The Croatian authorities indicated that in November 2005, trained around-the-clock teams were established in police departments to deal with family violence.

Employment aspects of gender equality are dealt with in chapter 19 – Social Policy and Employment.

- ***Rights of the child***

According to Article 62 of the Constitution, the State should protect children. Article 63 foresees that parents shall have the duty to bring up, support and educate their children and that they shall be responsible for ensuring the right of their children to a full and harmonious development. Last, under Article 64 everyone has the duty to protect children. Croatia has ratified the UN Convention on the Rights of the Child. According to the Croatian authorities the recommendations of the UN Committee on the Rights of the Child, to which two reports have been submitted to date, have been incorporated in the National Action Plan 2006 – 2012 on the Rights and Interests of Children. Both Optional Protocols to the Convention on the Rights of the Child, the first on the Sale of Children, Child Prostitution and Child Pornography and the second on the Involvement of Children in Armed Conflicts, have been ratified by Croatia.

The Family Act provides that children born outside a marriage have the same rights as children born in a marriage. As regards the notion of *best interest of the child*, this is incorporated in the Family Act and is the crucial factor when decisions have to be made on matters such as which parent the child will live with, meetings with the other parent or prohibition of association with the other parent, adoption, guardianship, etc. The Act on the Ombudsman for Children establishes this Ombudsman as an autonomous institution for children aiming at protecting their interests and welfare and promoting their rights. A number of provisions in the Constitution, the Family Act, the Social Welfare Act, the Health Care Act and the Juvenile Courts Act guarantee *the right to life, survival and development* of the child. The Criminal Code sanctions, among other things, offences such as child desertion, neglect and maltreatment, torture and other cruel, inhuman or degrading treatment, and failure to provide maintenance. Last, *respect for children's views/attitudes* is mainly guaranteed through provisions of the Family Act.

The Croatian authorities consider that the Croatian legislation is to a large extent aligned with the Council Framework Decision on Combating Sexual Exploitation of Children and Child

Pornography. They further indicated that alignment is required as regards provisions on informing the victim about the cessation of the convicted person's imprisonment, provision of legal assistance and establishment of special departments within the competent authorities for the protection of, and assistance to victims of criminal offences.

Aspects related to child labour are dealt with in chapter 19 – Social Policy and Employment.

Procedural safeguards

- ***Liberty and security***

The Constitution provides that no one may be deprived of liberty, or may this liberty be restricted, except upon a court decision in accordance with the law; it also provides that freedoms and rights may be restricted only by law in order to protect freedoms and rights of others, public order and morality, and health. Under the Constitution, no one may be arrested or detained without a written court warrant as prescribed by law. The police may arrest a person without warrant when the person is reasonably suspected of having committed a serious criminal offence defined by law, provided that the person is brought before the court within the shortest term specified by law. The arrested person should be informed promptly, in terms he/she understands, of the reasons for his arrest, and of his rights as determined by law.

The Criminal Procedure Act prescribes that the police may arrest a person (a) against whom they execute a ruling for compulsory appearance; (b) against whom a detention order is to be executed; (c) who is caught in the act of committing an offence subject to public prosecution; and (d) against whom there are grounds of suspicion that he might have committed an offence subject to public prosecution. The arrested person must be immediately informed, in a language he/she understands, about the reasons for the arrest, that he/she is under no legal obligation to testify and that he/she is entitled to a defence counsel of his/her choosing. Police should also inform members of the family of the arrested, except when the arrested does not wish to. The arrested should be brought to the investigating judge or be released within 24 hours at the latest. The Criminal Procedure Act provides that detention is used only when the same purpose cannot be achieved by an alternative measure; as soon as the grounds for detention cease to exist, the detainee is released. When considering detention and its duration, the court considers the gravity of the offence, the sentence expected to be imposed and the need to order detention. Detention is used when (a) there is a risk that the suspect may abscond, (b) there is reasonable suspicion that evidence might be destroyed or witnesses influenced, (c) there is concern that the offence might be repeated, completed or a threat may be executed, and (d) the offence involves certain crimes such as murder, robbery, rape, terrorism, etc. or any crime punishable with a sentence of 12 years or more, and the circumstances of the offence are particularly grave. The Criminal Procedure Act defines a range of precautionary measures (e.g. house arrest, obligation to report periodically to a certain person or authority, etc.) that the Courts may use instead of detention. Throughout detention, the defendant is entitled to a defence counsel with whom communications should be unrestricted and unimpeded. Detention or its vacation may be appealed by the defendant or the State Attorney; a court should render its decision on the appeal within 48 hours.

- ***Right to a fair trial***

Under Article 29 of the Constitution everyone has the right to an independent and fair trial as provided by law, within a reasonable time, such that a decision is reached upon his/her rights and obligations, or upon a suspicion or a charge of a penal offence. The Article defines further the rights of the suspect, accused and prosecuted person in the lines of Article 6(3) of the ECHR.

As regards the right to a trial within a reasonable time and in the context of establishing an effective domestic remedy, amendments to the Constitutional Act of the Constitutional Court (new Article 63) and the 2005 amendments to the Act on Courts (27 and 28) establish a new scheme of domestic remedy. The Constitutional Court no longer decides in the first instance on a violation of the right to a trial within a reasonable time: it is the immediately higher Court that decides on such complaints. The Croatian Government and Parliament also adopted measures (described in the section on the Judiciary of this report) to eliminate what they consider to be the causes for the long duration of civil proceedings.

The guarantee of the right to a fair trial provided for under Article 29 of the Constitution implies the right of access to justice under equal conditions for all. Article 27 of the Constitution stipulates that the Bar, as an autonomous and independent body, provides everyone with legal aid, in conformity with the law. There is no single comprehensive law on legal aid and assistance: provisions are included in the Criminal Procedure Code, the Civil Procedure Code, the Act on Court Fees and the Law on Legal Professions.

As regards *legal aid in criminal matters*, Article 65 of the Criminal Procedure Act defines the cases of mandatory defence with court-appointed defence counsels. This includes cases when the defendant is physically not capable of defending him/herself, when he/she is in detention or tried *in absentia*, etc. Article 66 provides for the appointment of a defence counsel in cases other than those of Article 65 when circumstances so require and the defendant cannot afford the services of a defence counsel. All defendants, whether Croatian or foreign citizens, have the right to a defence counsel; the decision on the appointment of a defence counsel is made by courts of first instance.

As regards *legal aid in civil matters*, Article 172 of the Civil Procedure Act provides that the court may exempt a party from paying the costs of court proceedings if the party cannot afford paying these costs without putting to risk the vital support for him/herself and his/her family. Article 173 provides that courts of first instance decide on exemptions from litigation costs and may request proof regarding the financial status of the party, and Article 174 provides that parties completely exempt from paying litigation costs are assigned an agent at their request if the court considers that the party cannot defend him/herself without a lawyer's assistance. Lawyers providing legal aid are entitled to 50% of the lawyers' fees. Beneficiaries are Croatian citizens and foreigners on condition of reciprocity, except when they are residents of Croatia. Finally, Article 21 of the Act on the Legal Profession ensures the right to a plenipotentiary for (a) victims of the Homeland War, and (b) socially deprived persons when it is about rights linked with their position. According to information provided by the Ministry of Justice, in 2004 NGOs provided legal assistance in 70,000 cases while the Bar Association represented a party *pro bono* in 350 cases and in 404 cases the party was relieved from Court fees.

Minority rights and cultural rights

Under Article 14 of the Constitution, everyone enjoys all rights and freedoms regardless of race, colour, gender, language, religion, political or other belief, national or social origin and that all are equal before the law. Article 15 provides that members of national minorities have equal rights in the Republic of Croatia. Croatia ratified the Framework Convention for the Protection of National Minorities (FCNM) and the European Charter for Regional Minority Languages. Bilateral agreements for the protection of national minorities have been concluded with Italy, Hungary and Serbia and Montenegro. Intergovernmental committees (that include members of national minorities) have been appointed to monitor the implementation of all these bi-lateral agreements. Last, according to Article 140 of the Constitution international agreements in force take precedence over domestic legislation.

At the 2001 census, 331,383 citizens (7.5% of the total population) declared themselves as members of national minorities. There are 22 national minorities of which Serbs (4.5%), Bosniaks (0.5%), Italians (0.4%) and Hungarians (0.4%) are the most numerous.

The Constitutional Act on the Rights of National Minorities defines the term national minority, forbids discrimination based on affiliation to such a minority and establishes the right of every citizen to declare freely that he/she is a member of a minority. It provides for representation of these minorities in the civil service and the judiciary. Current statistical information indicates that 4% of civil servants and 4.5% of the judiciary are members of minorities. Under the Act on Civil Servants of November 2005, employment plans for members of national minorities that would ensure appropriate levels of minority representation should be established. Minority provisions in this Act, as well as in the Acts on Local and Regional Self-Government, on Courts, and on State Judicial Council mirror the provisions of the Constitutional Act on the Rights of National Minorities without providing for more detailed regulation.

Freedom of association is ensured and national minorities may establish associations, endowments and foundations. Three persons can establish an association that is registered at local level. The state budget supports national minority associations: from HRK 22 million (approx. €2.9 million) in 2004, it went up to HRK 29.7 million (approx. € 3.96 million) in 2006. In 2006, 66 associations, out of a total of 377, were financed through the state budget.

Members of national minorities may express and profess freely their religion and found their communities. The right to learn about one's own religion is guaranteed. The number of registered religious communities is 50 and they receive budgetary support.

On the basis of the Constitutional Act on the Rights of National Minorities, members of the latter may use their language and script, in private and in public, including with the administration and the judiciary; also, they have the right to use minority signs and symbols. Bilingual rights are guaranteed in those municipalities and towns where the members of an ethnic minority constitute at least one third of the total population, or when it is prescribed by an international agreement or laid down in the statute of a municipality or town. The Act on the Education in the Language and Script of National Minorities of 2000 guarantees that the right to education in the language and script of national minorities is exercised at all levels of education; classes may be formed regardless of the number of students and bi-lingual books are available. The Ministry of Science, Education and Sport has established a separate department for Minority Education. Special advisor posts were also created to function as a link between the Ministry, local school authorities and minority communities. Education in Eastern Slavonia is being provided for the Serb minority language and script in line with Croatia's obligations under the Erdut Agreement. A Special Advisor for Roma has been appointed in the National Employment Office and in the Ministry of Science, Education and Sports. Minorities have the right to establish institutions in their own language and script; this right is exercised by Italians, Serbs, Czechs and Hungarians. Members of minorities may found broadcasting companies and produce programmes, or publish newspapers and magazines. In 2006 the budget support for information activities of the minorities was HRK 12.77 million (approx. €1.70 million).

Pursuant to the Act on the Election of Members of Parliament, 8 seats are reserved for members of national minorities. Minorities are guaranteed representatives in elected bodies of local and regional self-government. There are 369 such representatives of which 227 are Serbs, 73 Italians, 26 Hungarians, 20 Czechs, etc.

Measures against racism and xenophobia

The Croatian Constitution provides that everyone in Croatia enjoys rights and freedoms regardless of, among other things, race. Also, that any call for, or incitement to war, or resort to violence, national, racial or religious hatred, or any form of intolerance is prohibited and punishable.

Under the Criminal Code prison sentences are foreseen for violations of fundamental rights on the basis of difference in race, gender, colour, nationality or ethnic origin. Also, prison sentences are foreseen for publicly expressing or spreading ideas of superiority of one race over another, or spreading race hate, or encouraging race discrimination. Recent amendments to the Criminal Code have introduced a definition of hate crime; the Croatian authorities stated that hate crimes constitute aggravating circumstance. A number of policies, programmes and plans adopted by the Croatian Government (e.g. National Programme for the Roma, National Employment Action Plan, National Family Policy, and National Strategy for Health Development) include provisions against race discrimination.

Aspects related to anti-discrimination on the grounds of race are dealt with in chapter 19 – Social Policy and Employment.

The EU Fundamental Rights Agency

On 15 February 2007 the Council upon Commission proposal adopted Regulation (CE) N° 168/2007 establishing a European Agency for Fundamental Rights (FRA). The Agency came into existence on 1 March 2007, replacing the European Monitoring Centre on Racism and Xenophobia (EUMC).

The Agency will also be open for participation of candidate countries – including Croatia – as observers, after a decision of the relevant Association Council, which will indicate in particular the nature, extent and manner of this country's participation in the Agency's work, taking into account the specific status of each country.

Protection of personal data

Article 37 of the Constitution guarantees the safety and secrecy of personal data and prohibits the use of such data for purposes contrary to the one for which they were collected. Croatia has ratified the COE Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS N° 108) and the Additional Protocol to Convention 108 regarding supervisory authorities and transborder data flows.

The Personal Data Protection Act provides for the establishment of the Personal Data Protection Agency. The latter is answerable to the Croatian Parliament and its Director is appointed and relieved of duty by the Parliament upon Government proposal. The Agency's remit includes supervision of personal data protection legislation and activities, management of the central register containing records of personal data collections, and cooperation with state bodies in the drafting of legislation relating to personal data protection. This is complemented by the Regulation on keeping records and the form of records regarding personal data collections and the Regulation on storing and special technical protection measures for special categories of personal data. Under Article 133 of the Criminal Code fines or prison sentences are foreseen for the unauthorised collection, processing or use of personal data or the use of such data contrary to the statutory purpose of their collection.

II.d EU CITIZENS RIGHTS

Right to vote and stand as a candidate in elections to the European Parliament

The Croatian legal framework consists of the Constitution of the Republic of Croatia, the Law on the Election of Members of Representative Bodies of Units of Local and Regional Self-government and the Law on Electoral Registers. The Croatian authorities have indicated that implementation of this right requires alignment of the current legislation.

Right to vote and stand as a candidate in municipal elections

The Law on the Election of Members of Representative Bodies of Units of Local and Regional Self-government regulates the election of the representative bodies of municipalities, towns and counties. It provides that Croatian citizens above the age of 18 elect members of these bodies and have the right to stand in the elections for such bodies. The Constitution, the Law on the Election of Members of Representative Bodies of Units of Local and Regional Self-government and the Law on Electoral Registers have to be amended in order to implement this right.

Right to move and reside freely within the European Union

EU citizens are not required to hold a visa when entering the Republic of Croatia. Family members might need a visa depending on their citizenship. Croatia's visa system is aligned with the EU positive list but not with the negative one. EU citizens and their family members need a temporary residence permit when first residing on Croatia for work, education or family reunification or when they reside for periods longer than 90 days. Implementation of this right requires alignment of the current legislation.

Diplomatic and consular protection

The Foreign Affairs Act of the Republic of Croatia regulates the management of foreign affairs, organisation of diplomatic missions and consular offices, as well as offering of protection to the Croatian citizens abroad. The Croatian authorities stated that Croatia needs to amend this Act to meet the requirements of the Decision of the Representatives of the Governments of the Member States meeting within the Council of 19 December 1995 regarding protection for citizens of the European Union by diplomatic and consular representations. It should also be amended to ensure compliance with the Decision of the Representatives of the Governments of the Member States meeting within the Council of 25 June 1996 on the establishment of an emergency travel document.

III. ASSESSMENT OF THE DEGREE OF ALIGNMENT AND IMPLEMENTING CAPACITY

III.a JUDICIARY

Independence

Articles 14, 29, 44, 117, 123, 124 of the Constitution, the Act on the State Judicial Council, the Act on Courts, the Act on the State Attorney's Office and the Criminal Code provide for the independence of the judiciary. Areas of concern are the management of the career of judges and state attorneys, starting with their recruitment, and their immunities.

Currently, there is no system in place that would ensure either the uniform, objective and transparent assessment of judges and judicial trainees wishing to enter into the profession (such as a competitive examination and/or interviews) or the country-wide distribution of their nominations. Procedures for the appointment of judicial trainees, judicial advisors and court presidents by the Ministry of Justice need to be reviewed to ensure transparency and the use of objective criteria. The State Judicial Council itself has called for greater transparency in the appointment procedures.

Judges and state attorneys assume office after an initial period of five years, following a positive assessment. There is no transparent mechanism, including criteria, for the evaluation of those serving their initial five-year period. Once appointed, in general they can be transferred by judicial authorities to another court only if they agree to it. Also, except for crimes for which a minimum 5-year sentence is foreseen, they may not be detained nor have criminal proceedings instituted against them without the approval of the State Judicial Council or the State Attorneys' Council. The provisions on penal immunity need to be re-assessed in line with the need for transparency and accountability within the judiciary.

Given the only relatively recent introduction of verifiable evaluation criteria for the work of judges and the introduction of the judicial inspection, it is too early to assess their implementation in practice. Equally, the work of the Disciplinary Council, established through amendments to the law on the State Judicial Council in 2005, needs to be assessed.

Impartiality

Article 26 of the Constitution, the Act on Courts together with the Code on Judicial Ethics and procedural laws provide for the impartiality of the judiciary.

Areas of concern are corruption within the judiciary, bias toward particular economic and other interests and ethnic bias against the Serb minority. In the vast majority of courts there is, at this stage, no IT infrastructure that would allow the random allocation of cases.

Professionalism/Competence

In terms of training, the Judicial Academy has begun with its activities, including in the regional centres. However, it has to move away from the current *ad hoc* curricula to a more strategically planned training. There is now a need for the Programme Committee to become operational and design the annual programme based on the Advisory Board's strategy. Yearly programmes on basic and specialised training should be introduced. The regional centres, whose status and management are unclear, have to become fully operational, including through the provision of adequate financial means. Moreover, the scope of the Academy's activities should be widened to cover all members of the judiciary.

Efficiency

The excessive length of court proceedings in Croatia remains a serious problem. In November 2005, the Supreme Court began collecting statistics on criminal cases which had been pending for more than 3 years and on civil cases pending more than 5 years. Since January 2006, a new computerised statistical system has been put in place by the Ministry of Justice for the registration of new cases in all courts. Not all cases are therefore covered. A comprehensive system of comparable data and a detailed analysis of the duration of proceedings before the different courts should be developed, identifying the types of cases which have been pending for excessive periods, and the reasons for the delay.

Despite an important reduction over the past couple of years, the overall number of pending cases remains very high. In particular, execution and enforcement cases are a major problem for the vast majority of courts. Alternative mechanisms should be considered that would take the enforcement process out of the hands of the overloaded courts.

The Act on Courts includes provisions aimed at ensuring the right to be heard within a reasonable time. These provisions were introduced in 2005; however, there is no empirical evidence today suggesting that the current scheme constitutes an effective domestic remedy. The Civil Procedure Code prohibits the introduction of new facts or evidence at the appeal level. However, the Courts

of Appeal still tends to send cases back to lower courts even if the evidence contained in the file would have been sufficient to decide on the case at the appeal level. Global statistics indicating the average duration of proceedings before the Croatian Courts, at different levels, are not yet available. This makes the calculation of the judges' workload and efficiency difficult.

Steps have been taken as regards the introduction of IT, in particular, in land registries. Significant further investments are needed especially to improve IT in Courts and State Attorney's Offices. This is also the case for the Integrated Case Management System which should be instrumental for the use of any random case allocation system and as a management tool to monitor performance and efficiency of the courts.

While pilot mergers of misdemeanour and municipal courts have taken place as a first step in the context of rationalisation of the courts' network, the Government decided¹⁷ not to continue in this direction but to proceed with the merger of Courts of the same type only. The first ten courts of each type have been identified. However, overall, there has been reluctance to go ahead with a more comprehensive approach, particularly when it comes to decisions on closure of courts. There needs to be a clear commitment to the rationalisation of the court system.

The performance as regards war crimes' trials requires particular attention not only in terms of preparedness of the four special war crimes departments in the Zagreb, Osijek, Rijeka and Split county courts that have been set up to deal with proceedings transferred from ITCY under Rule 11 *bis* but also in other courts conducting domestic war crime proceedings. This would include aspects related to the integrity of the process such as security of witnesses and informants; witness and informant support services; confidentiality of the investigation including witness and informant testimony; provision of an adequate defence by court-appointed counsel; and ethnic bias.

Several significant reforms which have been planned for several years are still outstanding, including placing limits on the number of times appealed cases can be remitted back to first instance, clearer rules governing the postponement of court proceedings, an overhaul of the system of attorney's fees, streamlining of the court document delivery system and tackling divergences in case law across the country. Even in cases where rules exist to address some of these shortcomings, they are not always applied.

Judicial reform

Implementation of judicial reform is underway. However, despite legislative and organisational changes that have been made, judicial reform in terms of concrete results is at an early stage and severe shortcomings have to be tackled.

Question marks remain over the financing and precise deadlines for the implementation of the Judicial Reform Strategy. The Action Plan lacks sufficient detail to allow for proper monitoring.

The Department for Strategic Planning within the Ministry of Justice is composed of the Head and two staff members. In view of the scope of the reform challenges¹⁸, significant reinforcement is necessary not only in terms of monitoring but also of political support at the highest level.

III.b ANTI-CORRUPTION

Policy and domestic institutions

¹⁷ At the beginning of 2007.

¹⁸ This Department also coordinates anti-corruption activities.

Overall, corruption remains a serious problem in Croatia that affects various aspects of society. The general attitude of the authorities to corruption is reactive rather than proactive. Greater efforts to prevent, detect and effectively prosecute corruption are needed. Public perception of corruption remains overwhelmingly negative. General tolerance of petty corruption appears to be widespread. Corruption in Croatia is aided by a lack of good governance, transparency and accountability in public administration and by a lack of ethic codes and codes of conduct in the public and private sectors.

As outlined in part II of this report, the National Anti-Corruption Programme adopted in spring 2006 recognised corruption as a widespread problem and the fight against it a matter of crucial importance. However, there are not adequate material and financial means for the Programme's implementation as well as its monitoring. In this respect, neither the Ministry of Justice nor the National Council has managed to fulfil their role adequately. The success of the national strategy for preventing and combating corruption depends on the equally focused implementation of all measures of the Action Plans, on the strong and efficient coordination by the relevant authorities and on the provision of sufficient financial and human resources.

Efforts have been made to improve the capacity of the Office for the Prevention of Corruption and Organised Crime (USKOK). Staff numbers have been increased after the replacement of the Head of USKOK at the end of 2005 and joint task forces were established with the Ministry of Finance and the Police. These efforts need to continue. USKOK's cooperation with all state bodies involved in the fight against corruption needs to be improved significantly. Consideration should be given to reviewing USKOK's mandate to allow greater focus on serious corruption including abuse of office.

Domestic legal framework

The legal framework to combat corruption is largely in place. Maximum sentences for corruption related offences were increased in the changes made to the Penal Code in 2006. Legislation on the financing of political parties was adopted by Parliament. While in general a positive step forward, the important issue of financing of election campaigns, which is not addressed specifically in this law, should be properly addressed in order to avoid any vulnerability to corruption¹⁹. The penalty provisions of the Law for the Prevention of Conflict of Interest should be revised in order to ensure the application of effective, proportionate and dissuasive sanctions. Also, authorities need to develop public written, interpretative guidance of the current prohibitions for public officials in this respect. In summary, the law should be turned into an effective instrument for fighting high level and political corruption. Property disclosure rules for certain public officials have been extended to judges. However, in practice there is often confusion over what exactly is to be declared and supervision is lacking. Legislation in the field of local self-government covering the resignation procedure for councillors remains to be adopted.

Problems with the consistent implementation and enforcement of the law persist. Investigations are often not sufficiently broad or thorough. Attention should be paid to high profile corruption as well as to prevention and awareness-raising on the negative impact of corruption, including on the investment climate.

International legal framework and institutions

¹⁹ Provisions on the financing of election campaigns are included in the Law on the Election of Representatives to the Croatian Parliament. Amendments to the latter were passed in February 2007. However, political parties are still under no obligation under this law as amended in 2007 to declare the amount and the sources of funds spent in election campaigns.

Croatia has aligned itself with the major international instruments against corruption in the course of the last few years. Croatia needs to work on ensuring consistent implementation of these instruments.

III.c FUNDAMENTAL RIGHTS

General

Croatia's Constitution provides for the protection of fundamental rights. Croatia has ratified a number of international agreements regarding the protection of these rights.

As regards the institutional structure established to monitor the human rights situation, the Government Office for Human Rights and the Government Office for National Minorities should be reinforced and given adequate authority in order to be in a position to fulfil their mandates. The work of the Ombudsman is limited by a lack of funding and personnel, despite recent increases. In particular, it is difficult to ensure the presence of the Ombudsman outside Zagreb. The other two Ombudsmen have also encountered difficulties in their operation. In general, and despite some positive developments, the institutions involved in the area of fundamental rights have not yet fully established their position and role in the Croatian system.

The Ombudsman has been receiving a large number of complaints concerning the length of judicial proceedings although he has no competence on judicial issues. The majority of judgements of the ECtHR against Croatia concern violations of the right to a fair trial and the length of proceedings. Cases dealt with by the Ombudsman relate to the length of administrative proceedings, reconstruction, construction and urban planning, and obstacles faced by refugees who have returned to Croatia. State administrative bodies tend not to respond within the legal timeframe.

Human rights

- ***Right to life and to the integrity of the person***

Articles 17 and 21 of the Constitution together with the international agreements ratified by Croatia, as described in Part II of this report, provide for the right to life.

No significant problems in relation to the right to life and to the integrity of the person have been reported in practice.

- ***Prohibition of torture and inhuman or degrading treatment or punishment***

Articles 23 and 25 of the Constitution, the Criminal Code, the Criminal Procedure Act, the Act on Serving Prison Sentences, the Asylum Act together with the international agreements ratified by Croatia, as described in Part II of this report, provide for the prohibition of torture and inhuman or degrading treatment or punishment.

This right is generally respected in practice. Croatia has addressed the case of degrading treatment of a former prisoner in the Lepoglava prison²⁰. However, there is room for improvement of prison conditions more generally. The Ombudsman issued in March 2006 the first comprehensive report on the Croatian prison system, concluding that prisons were suffering from overcrowding and poor hygienic and medical conditions. Neither the number of employees in the network of prisons,

²⁰ The ECtHR ruled in March 2006 in the *Cenbauer vs. Croatia* case that there had been a violation of Article 3 of the ECHR and condemned Croatia for degrading treatment of a former prisoner in the Lepoglava prison.

including guards, nor their training is adequate. The most recent Government report on the prison administration concludes along similar lines.

- ***Prohibition of slavery, servitude, and forced or compulsory labour***

Article 23 of the Constitution, the Criminal Code together with the international agreements ratified by Croatia described in Part II of this report, provide for the prohibition of slavery, servitude and forced or compulsory labour.

No significant problems in relation to slavery, servitude, and forced or compulsory labour have been reported in practice. The Programme for the suppression of trafficking of persons and the Plan for the suppression of trafficking of children should be evaluated on their results.

- ***Respect for private and family life and communications***

The Croatian internal legal framework, together with the ECHR, provide for the respect for private and family life and communications. However, following a recent incident involving allegedly inappropriate vetting by the security services of candidates for positions on the National Council for NGOs, some legislative weaknesses have been highlighted. Following this incident, the Government announced that it plans to amend the relevant legislation in order to strengthen control of security services. In so doing, clarity in law should be achieved on the question of who is authorised to carry out security vetting of citizens and for what purpose.

- ***Right to marry and right to found a family***

Article 61 of the Constitution, the Family Act and the Gender Equality Act, together with the international agreements ratified by Croatia, provide for the right of a man and a woman to marry and the right to found a family.

No significant problems in relation to the right to marry and right to found a family have been reported in practice.

- ***Freedom of thought, conscience and religion***

Articles 38, 40, 41 and 47 provide for the freedom of thought, conscience and religion. This includes provisions on conscientious objection.

No significant problems in relation to the freedom of thought, conscience and religion have been reported in practice.

- ***Freedom of expression including freedom and pluralism of the media***

Article 38 of the Constitution, the internal legal framework described in part II of this report and international agreements ratified by Croatia provide for the freedom of expression including freedom and pluralism of the media.

The media are broadly free and subject to market rules. However, there are a small number of outstanding issues. The public broadcaster HRT occasionally comes under political pressure; this raises concerns about freedom of expression. There are possibilities for political influence on the media at the local level in particular due to the fact that much of the media at this level is in public hands.

- ***Freedom of assembly and association, including freedom to form political parties, the right to establish trade unions***

Articles 6, 42 and 43 of the Constitution, the ECHR ratified by Croatia and the internal legal framework described in Part II of this report, provide for freedom of assembly and association, including freedom to form political parties.

No significant problems in relation to the freedom of assembly and association, including the freedom to form political parties and the right to establish trade unions have been reported in practice.

- ***Treatment of socially vulnerable and disabled persons and principle of non-discrimination***

Article 14 of the Constitution, internal legislation and the international agreements ratified by Croatia described in Part II of this report provide for the prohibition of discrimination.

However, a comprehensive national strategy and action plan on the suppression of all forms of discrimination has still not been adopted. Budgetary constraints continue to limit the scope of the rights to health and special care and the social integration of the socially vulnerable. Public awareness regarding these issues needs to be raised. The level of protection against discrimination in practice and its judicial prosecution is still not in line with EU standards.

- ***Right to education***

Article 65 of the Constitution together with the international agreements ratified by Croatia described in Part II of this report provide for the right to education.

No significant problems in relation to the right to education have been reported in practice.

- ***Right to property***

Articles 3, 48 and 50 of the Constitution together with the international agreements ratified by Croatia provide for the right to property.

The process of restitution of property that was confiscated after World War II continues to proceed slowly. Provisions discriminating on grounds of nationality have not been removed from the Law on the Restitution of Nationalised Property. The process of repossession by Croatian Serb refugees of their property in Croatia following the war in the 1990s is to a large extent complete²¹; however, a few properties still need to be returned. Other problems remain, notably as regards unsolicited investments made by those who were occupying some of this property. This has led to demands for compensation from the rightful owners. There are also some cases reported of agricultural land and business premises that have not been returned to their rightful owners.

- ***Gender equality and women's rights***

Article 3 of the Constitution and the international legal agreements ratified by Croatia described in Part II of this report provide for gender equality and women's rights.

Enforcement of existing provisions on gender equality remains incomplete, however, and availability of gender-segregated statistical indicators should be improved. Overall, the work of

²¹ Recent ECtHR rulings have found Croatia responsible for extensive and insufficiently justified delays in the return of private property allocated by the Croatian Government during the 1991-1995 conflict. In the *Radanovic v. Croatia and Kunic v. Croatia* cases the Court determined that lengthy delays in repossession violated the owners' rights to property and that remedies available for owners to repossess property were ineffective. Following the rulings, Croatia will need to reassess the compensation available to owners for the undue delay in the return of their properties.

the Ombudsman for Gender Equality lacks visibility. Further efforts are needed as regards human trafficking.

- ***Rights of the child***

Articles 62 – 64 of the Constitution, the UN Convention on the Rights of the Child ratified by Croatia, together with its two optional Protocols, and the internal legal framework described in Part II of this report provide for the rights of the child.

In March 2006, together with the adoption of the National Plan for the Benefit of the Rights and Interests of the Child 2006-2012, the Parliament nominated a new Ombudsman for Children, after the post had been vacant for several months. The Parliament's Committee for Human Rights concluded, in October 2005, that there had been a lack of proper supervision of children's homes and inadequate coordination among the bodies involved; this finding has not been followed up adequately. There is a lack of experienced professionals working in social welfare centres, schools and children's homes. There has been little follow-up of cases of ill-treatment on children in such institutions, beyond the dismissal of the Deputy State Prosecutor.

Procedural safeguards

- ***Liberty and security***

The Croatian Constitution together with the Criminal Procedure Act broadly provide for the right to liberty and security.

No significant problems in relation to the right to liberty and security have been reported in practice.

- ***Right to a fair trial***

Articles 27 and 29 of the Constitution, the Criminal Procedure Act, the Civil Procedure Act, and the Act on Court Fees and the Law on Legal Professions provide for the right to a fair trial.

However, an integrated legal aid system for both criminal and civil proceedings still needs to be put in place and training and funds provided for its implementation. In practice, legal assistance is mostly provided through NGOs. The Croatian authorities have been working on a draft law on legal aid aiming at remedying the shortcomings of the current situation. A schedule for its adoption has still not been announced by the authorities. Comments on the length of legal proceedings under the heading Efficiency of the Judiciary in Part III of this report are also relevant for the right to a fair trial.

Minority rights and cultural rights

Articles 14, 15 and 140 of the Constitution, the international legal agreements ratified by Croatia and the internal legislative framework – in particular the Constitutional Act on the Rights of National Minorities (CLNM) - described in Part II of this report provide for minority rights and cultural rights.

Implementation of the CLNM's provisions in practice presents a mixed picture, some provisions are implemented well, others only to a limited extent. There is in any case no overall Action Plan covering all bodies concerned by the CLNM that would ensure its full implementation.

The right to education and the freedom of association and assembly are generally respected in practice. As regards effective participation of minorities in public affairs, the Parliament has eight

minority MPs and in local and regional assemblies adequate minority representation has been achieved. However, clarification is needed on how minority quotas should be reached, notably through the necessary updating of voters' lists. The capacity of Local Councils for National Minorities to advise local government in relation to minority issues – as provided for under the CLNM – goes unrecognised by the majority of local authorities and many of these local Councils struggle to obtain premises and funding. In the 2007 budget, however, allocations to the umbrella Council for national Minorities increased by HRK 2.3 million.

Problems persist particularly in terms of under-representation of minorities in state administration, the judiciary and the police and a long-term strategy to implement the Act's minority employment provisions is lacking. Detailed recruitment plans at all levels of state administration and a civil servants' registry to allow for systematic statistics collection are missing.²²

Provisions of the CLNM that public radio and TV stations at national and local level have to produce and/or broadcast programmes for minorities in their languages are not implemented fully. Also, in many cases bi-lingual rights guaranteed in municipalities and towns where a minority constitutes at least one third of the population are not exercised.

The minorities facing particular difficulties in Croatia are mainly Serbs and Roma. At the political level, the coalition between the governing HDZ party and the Serb party SDSS seems to function well. Existing institutions of the Serb minority (political parties, schools, cultural organisations) generally operate without obstacles. Positive leadership does not always filter down to the rest of the society, however. There are attacks against the Serb minority and the Serb Orthodox Church which are apparently ethnically motivated. In some cases, police are intervening faster than they used to do. However, there is still insufficient police investigation and prosecution under Article 174 (Racial and Other Discrimination) of the Criminal Code in relation to such incidents. While top officials have quickly condemned some incidents, there is often an absence of clear statements condemning ethnically motivated incidents when they occur, especially from local politicians and media.

There are still obstacles to the sustainable return of Serb refugees, such as enduring hostility in certain localities, and remaining housing concerns, mainly those involving tenancy rights holders. The implementation of the Croatian Government's Housing Care Programmes within and outside the Areas of Special State Concern (ASSC) for the former tenancy rights holders who wish to return to Croatia is extremely slow: more than half of the applications inside ASSC and the vast majority outside ASSC have not been processed yet. Outside the Areas of Special State Concern a little over 1% of apartments have been allocated four years after the programme was launched. In addition, the Government plans to implement the programme outside the Areas of Special State Concern through a Public Private Partnership have not yet been launched in earnest while the uncertainty about the number of those entitled to housing care constitutes an additional difficulty. This is the main outstanding housing problem for refugees. Apart from housing, the main concerns are employment and "convalidation", or the validation of certain documents and rights, including pension rights, of those residing in those parts of Croatia not under Croatian Government control during the 1990s.

The Government is taking the position of the Roma minority seriously and the administration has generally adopted a positive attitude. Funding for the implementation of projects for Roma has increased but it is still not adequate for addressing the challenges of the Action Plan if real improvements in the Roma's position are to be achieved. Most Roma remain excluded from the mainstream of Croatian society. Unemployment remains endemic and many of them are illiterate.

²² In February 2007 a plan prepared by the Central State Administration Office for recruitment in 2007 to the state administration included for the first time global targets for the recruitment of national minorities. While the plan does not go into detail, it is a positive first step towards addressing the CLNM provisions in this area.

Discrimination of Roma in Croatia continues, whether in terms of access to employment, in schooling or in general attitudes in society.

Croatia needs to encourage a spirit of tolerance *vis-à-vis* the Serbian and Roma minorities and take appropriate measures to protect persons belonging to these minorities who may be subject to threats or acts of discrimination, hostility or violence.

Measures against racism and xenophobia

The Constitution and the Criminal Code provide for measures against racism and xenophobia.

In practice, however, there is so far limited experience in prosecuting racially motivated crimes. Croatia faces certain challenges with respect to the existence of racist and xenophobic sentiment in parts of Croatian society. The adoption of an anti-discrimination strategy, which could help counter such sentiment and its ill effects, has been delayed. Measures encouraging tolerance and reconciliation, especially among citizens of the region, should be pursued.

The EU Fundamental rights Agency

The nature, extent and manner of Croatia's participation in the Agency's work will be decided by the EU-Croatia Association Council.

Protection of personal data

Full alignment with the Data Protection Directive and the Council of Europe recommendation regulating the use of personal data in the police sector needs to be completed. The Croatian Data Protection Agency has been fully operational since April 2005. Effective application of its supervisory and control powers is still lacking, in particular as regards the public administration, especially the police, and the telecommunications sector.

III.d EU CITIZENS RIGHTS

Right to vote and stand as a candidate in elections to the European Parliament

Upon accession Croatia needs to have adopted legislation that would allow EU citizens to vote and stand as candidates in elections to the European Parliament. The Croatian authorities have indicated that no particular difficulties are foreseen with the adoption of this part of the *acquis*.

Right to vote and stand as a candidate in municipal elections

Upon accession Croatia needs to have adopted legislation that would allow EU citizens to vote and stand as candidates in municipal elections. The Croatian authorities have indicated that no particular difficulties are foreseen with the adoption of this part of the *acquis*.

Right to move and reside freely within the European Union

Upon accession Croatia needs to have adopted legislation that would allow EU citizens to move and reside freely within Croatia. The Croatian authorities have indicated that no particular difficulties are foreseen with the adoption of this part of the *acquis*.

Diplomatic and consular protection

Upon accession Croatia needs to have adopted legislation that would ensure for EU citizens access to diplomatic and consular protection as foreseen by the *acquis*. The Croatian authorities

have indicated that no particular difficulties are foreseen with the adoption of this part of the *acquis*.