Joint Opinion of the Croatian civil society organisations on the readiness of the Republic of Croatia for the closing of negotiations in Chapter 23 - Judiciary and Fundamental Rights

Zagreb, February 16, 2011

This report is a joint effort of a group of Croatian civil society organizations (CSOs) with a long-standing track record in the area of human rights protection: B.a.B.e. – Be Active Be Emancipated, ZINH - Association of Investigative Journalists of Croatia, Centre for Peace, Non-violence and Human Rights Osijek, CESI – Centre for Education, Counselling and Research, CMS – Centre for Peace Studies, Documenta – Centre for Dealing with the Past, GOLJP – Civic Committee for Human Rights, GONG, Green Action, Right to the City, Centre for LGBT Equality, SDF – Serbian Democratic Forum and Transparency International Croatia.[1]

We have embarked on this endeavour to enable access to relevant information to Croatian voters prior to the EU accession referendum, so that they can make an informed decision based on their own conclusion of Croatia's respect for EU, but more importantly, its own standards regarding the rule of law and status of human rights' protection. We also wish to provide additional, independent information and perspective to the European Commission prior to its March 2011 Progress Report on Croatia, on issues which the Croatian institutions have, in our opinion, failed to address adequately so far.

It is our opinion that at this time – mid February 2011 – Croatia is not yet ready to close Chapter 23, given the Chapter's essence, i.e. ensuring adequate levels of the rule of law by means of an effective judiciary and human rights protection mechanisms. Namely, **closing of Chapter 23 should mean that positive changes in the rule of law are irreversible, which is still not the case.** In some crucial benchmarks we have identified lack of evidence of sincere political will to ensure that reform initiatives result in tangible positive improvements for everyday lives of Croatian citizens. Furthermore, significant challenges remain in some normative solutions, but more importantly, there are insufficient guarantees of sustainable implementation capacities.

However, it is our sincere belief that the **specific legislative and especially implementation measures that we propose <u>can be implemented</u> by the Croatian Government and Parliament by mid June 2011, if these issues are indeed recognized as a political priority. The adoption of the proposed mid-term obligations would be proof of such a standing commitment, regardless of the configuration of the future ruling structures.**

[1] Information and inputs on specific issues have also been obtained from the Association of Roma Women "Bolja budućnost", Bosnian National Community for Zagreb and Zagreb County, the Youth Initiative for Human Rights, Centre for LGBT Equality (member organizations: Zagreb Pride, Queer Zagreb and LORI - Lesbian Organization Rijeka)

In the meantime, we expect from both the Croatian Government and the EC to transparently and in a timely manner communicate progress on this Chapter with Croatian public.

We remain committed to reporting in detail on specific issues considering the reform of the judiciary, preventing and combating corruption, human rights protection, political rights, national minority and returnee rights, processing war crimes and cooperation with the ICTY. Our positive assessment will depend on the success of all three branches of power in accomplishing the following measures.

In the area of Reform of the Judiciary, we demand that:

- the January 2011 **appointment of 57 judges be annulled** and the entire procedure carried out again in full accordance with the new Law on State Judicial Council;
- **the reform and independence of the Judiciary be effectively monitored** by means of an institutionalized independent monitoring mechanism with the status of independent rapporteurs to the Croatian Parliament and the EU institutions, at **least in the first three years upon accession**.

In the area of preventing and combating corruption, we demand that:

- the **Code of Practice on Consultation with the Interested Public in Procedures of Adopting Laws** be consistently adhered to and its **institutional standing strengthened by linking it to the prospective Law on Regulatory Impact Assessment (RIA) and the roll-out of RIA procedure**.
- the **Law on Golf Courses be annulled immediately**, given its corruptive potential and the fact that it has turned into a symbol of state capture by interest groups;
- the February 2011 passed **Law on the Conflict of Interest** o**f Public Officials be annulled and a new one adopted after thorough deliberation**, ensuring that the appointments to the Commission on the Prevention of Conflict of Interest do not reflect the government majority represented in the Parliament. Furthermore, the law should be binding for all state and local level appointed and elected holders of public office or other duties, as well as managing public servants;
- relevant parliamentary working bodies – **the Commission for the Prevention of Conflict of Interest and the Commission for Monitoring the Implementation of the Anticorruption policy** - should be adequately staffed and resourced to ensure timely substantial support to the work of the Commissions' members;
- the **Law on Lobbying Activities** and the **Law on Protection of Whistleblowers and Human Rights Defenders be passed and enacted**,
- the **newly enacted amended Freedom of Information Act** be annulled, given that it was not adopted by the qualified majority. Furthermore, the amendments to the Act should ensure establishment of the independent body in charge of conducting the test of public interest, followed by harmonization of the Data Secrecy Act.

In the area of human rights protection, we demand that:

- the **Free Legal Aid Act be amended**, to remove administrative and other obstacles to effective implementation, and ensure that the Act becomes an adequate mechanism for accessing justice;
- **paragraphs 9 and 10 of Article 9 of the Antidiscrimination Act be annulled** as they directly discriminate against foreign nationals and same-sex relationships, respectively;
- **the results of the negotiation process with the EU be urgently publicized**, with emphasis on negotiated exemptions and adjustment periods;
- **the Law on Security and Intelligence System be amended** in order to strengthen the mandate of the Council for Civilian Oversight of Security and Intelligence Agencies and improve the compliance of security agencies with human rights standards;
- **independent civilian control** be insured in the scope of the new law **on police**;
- **criminal acts motivated by hatred as well as assaults on human rights defenders, whistle-blowers and journalists be classified as aggravated assaults** in the Criminal Code;
- **decriminalization of slander to misdemeanour;**
- **criminalizing censorship in the media;**
- **policies in the area of protection of persons with disabilities** be coherent in terms of classification as well as the causes/circumstances of disability, and harmonized with relevant international standards.

In the area of political rights, we demand that:

- **the Law on the Amendments to the Law on Free Assembly be annulled**, to enable free expression of political views on St. Mark's Square in Zagreb;
- **the Law on Referendum be amended** to enable easier referenda initiation by citizens;
- **the Law on Residence be amended** as a prerequisite for the **necessary and urgent review of voter lists;**

In the area of national minority and returnee rights, we demand that:

- the pending **11 cases of illegal investments in returnee properties be settled**, **so that State takes over the responsibility for damage compensations**, compensations for length of procedures and all disputes with ex temporary users of these properties;
- the State produces evidence of **the implementation of Article 22** of the Constitutional Law on the Right of National Minorities pertaining to **employment of national minorities in public services;**
- the law on election of representatives to the Croatian parliament **be amended to ensure equal treatment of all national minorities**, taking into account their specific interests and rights,
- **the legal deadline for the applying for the process of (con) validation of working years (pension rights) be extended.**

In the area of processing war crimes and cooperation with the ICTY, we demand that:

- **the Act on Implementation of the Statute of the International Criminal Court and Prosecution of Criminal Acts against International War and Humanitarian Law be changed**, in order to allow the use of testimony given to ICTY investigators in proceedings before national courts;
- **first instance proceedings be put under the exclusive competence of the county courts and prosecutor's offices in Zagreb, Osijek, Rijeka and Split**, including only judges and prosecutors experienced in the gravest criminal cases; Furthermore, the **Supreme Court should decide on these issues without jurors.**
- **a legal mechanism in accordance with the UN reparation standards**, by initiating adoption and securing resources for the National program and action plan for compensation of damages for wrongful death of close family members, including compensation of expenses in court proceedings;
- **cases in which courts applied Act on Amnesty be revised** so that the questionable use of the Act would be analysed and cases of grave human rights violations re-tried;
- regarding effective **assistance to victims and witnesses of war crimes**, adequate strategy and action plan, including financial resources, be developed in cooperation with civil society organizations;
- **full political and institutional support for establishing all facts about war crimes be ensured**, as a prerequisite for a widespread societal process of dealing with the past.

The following sections of the report **represent a summary of the wider Shadow Report on Croatia's readiness to close Chapter 23**, which is currently being prepared by the above mentioned group of organizations and will be presented to the Croatian public and interested domestic and international state and non-state actors upon the March 2011 Progress Report released by the EC. In the shadow report, we will provide a detailed review of the key achievements and challenges, with a number of illustrative examples, related to the normative, operational and communicative aspects of the key objectives and benchmarks stated in this negotiation Chapter.

In this summary report, the focus is on the key open issues and remaining challenges related to the benchmarks placed by the EU for closing Chapter 23 - Judiciary and Fundamental Rights, **with a proposed set of actions that should be taken immediately** to increase independence and effectiveness of the judiciary system, anticorruption policy, human, minority and returnee rights and prosecution of war crimes, including cooperation with the ICTY.

Conclusion Related to the Reform of the Judiciary

In the area of the reform of the judiciary, which should be geared towards the attainment of sustainable, high standards of independence, transparency, accountability and professionalism of judicial officers as well as judicial institutions, serious concerns remain in respect to the actual will of the political and judicial elites to truly and fully separate politics from the judiciary. This very prerequisite has proved to be missing in the case of hasty appointment of 57 judges in January 2011, carried out in accordance with the old Law on State Judicial Council, even though the new, reformist law – a key component of the benchmark 2 in Chapter 23 – was in the final process of adoption. Political influence on high courts has been evidenced in several prominent cases, where conspicuous coincidences in the timing and contents of court and executive decisions or stances could be noted, e.g. Constitutional Court's opinions on the Law on Medically Assisted Conception, Law on Golf Courses, referendum on Labour Law; massive arrests, indictments and convictions of the protesters in Varšavska street.

It is of particular concern that there is no revision of the status of judges of the Constitutional Court, who were appointed by political decree of parliamentary majority, with questionable integrity and competencies, and whose voting track-record (e.g. cases Hrastov; Blažević and Vukojević; Banić) generates negative public opinion on the Court's credibility and impartiality in defending fundamental human rights.

Even though the appointment of the new State Judicial Council is being carried out in line with the new procedure which *de iure* guarantees the prominence of professional vs. political criteria and confidentiality of each vote, the lack of clearly defined implementation plan meant that in several courts the conditions were far from optimal, resulting in several official complaints submitted to the Council and reported for further investigation to Croatian civil society organizations.

Public trust in the independence and impartiality of the judiciary is insufficiently supported by expected improvements in the openness of judicial institutions, e.g. State Judicial Councils and State Prosecutorial Councils' sessions remain fully closed to the public, while timely and comprehensive information on court proceedings and decisions is insufficiently accessible on official websites, with striking discrepancies between the practices of individual courts.

There has been only limited change evidenced regarding chronic inefficiencies of the investigative and court proceedings in cases of assaults on journalists and human rights activists or war crimes, which poses questions of political commitment, as well as technical capacities and internal organization. Timely and effective access to justice has continuously been lacking in administrative court proceedings related to the Freedom of Information Act and issues related to spatial planning construction and environmental protection, where long-lasting procedures make the eventual decisions not only overdue but also irrelevant. For example, according to independent research by GONG in November 2010, even three years are considered a reasonable timeframe for the cases regarding freedom of information, while average duration of these cases ranges from 6 to

9 months. A related problem is the lack of sanctions or follow-up actions for frequent cases of non-compliance of public bodies with the Administrative Court decisions, as evidence in the case of non-compliance with the valid decision in a Freedom of Information Act case in favour of the plaintiff Ivica Bačić against State Prosecutors' Office of the Republic of Croatia. In that sense, insufficient budgetary allocations for adequate equipment of courts with Integrated Case Management System (ICMS), in particular the misdemeanour courts, and a lack of implementation plan with financial backing for the upcoming reform of administrative court system are particularly concerning indicators of a disconnect between declarations and actions.

Finally, significant gaps remain in respect to the professional competencies of judicial officers regarding the application of international conventions and the European law in domestic proceedings concerning the exercise of political and citizens' rights, i.e. in respect to environmental protection and impact assessments as well as human rights protection. For example, there is only one case evidenced by watchdog CSOs of a court decision with direct reference to Aarhus Convention provisions. Another area of professional development of judicial staff that lacks evidence of effectiveness is the current system of training of junior staff and interns in courts and prosecutorial offices.

In order to ensure and sustain satisfactory level of actual implementation of the reform of the judiciary, which should unequivocally and irreversibly result in undoubted independence, professionalism and accountability of judicial officers and institutions **the following actions <u>should be taken in the scope of the very final stage of Croatia's accession to the EU</u>, in order to convince both the Croatian and the EU citizens that the Croatian political and judicial elite are truly committed to sustained rule of law in the Republic of Croatia:**

The January 2011 appointment of 57 judges should be annulled and the entire procedure carried out again in full accordance with the new Law on State Judicial Council.

Reform of the Judiciary should be exacerbated and sustained beyond potential government change and budget cuts - the Action Plan on the implementation of the next phase of the judicial reform should be devised and adopted both at the government and parliamentary levels for the period 2011–13. accompanied by a three-year program budget, with special attention paid to the earmarking of adequate financial, technical and human resources for judicial institutions, inspections, as well as the Ministry of Justice, including a fully rolled-out Integrated Case Management System with the statistical case analysis. The Government should pass a decision on the lasting exemption from the current employment ban of government and judicial agencies responsible for the judicial reform.

Reform and independence of the Judiciary should be effectively monitored - an independent monitoring mechanism of the judicial reform should be set up and institutionalized, granting the experts from the academic community, professional and civil society organizations access to official information and a status of independent

rapporteurs to the Croatian Parliament and the EU institutions. **EU institutions should consider independence of the judiciary, high courts in particular, as one of the areas for the follow-up monitoring of Croatia's capacity to act as a member of the EU, in the first three years upon accession.**

Administrative courts system reforms should be made operational - an ex-ante feasibility study should be urgently conducted, as a basis for a comprehensive Operational Plan for the Administrative Court System Reform, with precise three-year program budget 2012-14. The fine-tuning and operationalisation of the reform should pay special attention to the risks of inefficiency and implementation deficits, i.e. it should envisage the introduction of enforceable sanctions for the non-compliance with the Administrative Court decisions.

Public Communication Plan for Courts and Prosecutorial Offices should be devised and adopted in consultations with the interested public, with clearly defined minimum standards and indicators of transparency relating to the entire investigative and court proceedings, with specified timeframe, budget and monitoring of implementation.

Professional development of Croatian judges should be enhanced, with stronger focus on key gaps in their competences and performance. A comprehensive gap analysis of competences of all Croatian judges should be conducted, against the new criteria for judges' appointment and advancement defined in Law on State Judicial Council, as a basis for setting priorities and targets for professional development and staffing in the upcoming period 2012-14. Application of international conventions and the EU law in the area of civil and human rights should be defined among top thematic foci for the professional development of judges in the period 2012-14, with respective program allocation. The system of professional training and supervision of junior court and prosecutorial officers, including interns, should be urgently improved.

Conclusion Related to Prevention and Combating Corruption

While there has been visible progress in the number of high profile cases of corruption under investigation, the selectiveness of investigative and prosecutorial proceedings is equally visible, as well as chronic lack of valid convictions and seizures of illegally obtained property. That has already raised considerable public concern about political impartiality of the police and prosecutor's office, especially in the striking case of numerous, repeated and enduring allegations of corruption in the City of Zagreb and Ministry of Sea, Transport and Infrastructure which have not resulted in any formal investigation, let alone indictments.

Upon recent amendments of the Law on criminal proceedings, State attorney gained huge powers in leading the investigation including granting of "pardon" to those perpetrators of crimes who give information on perpetrates or other facts in relation to other usually more severe crime. These procedures of granting a pardon by State attorney are without any court monitoring or involvement of judiciary. Furthermore, the definition of those powers is very vague and allows granting of the pardon for all types of crimes (including

war crimes) for any type of information, depending merely on the discretion of state attorney. This leads to unequal treatment of perpetrators and victims of crimes; because some are severely punished by Court for certain criminal act, while others do not even face indictment due to the pardon of State attorney.

Social and institutional support and protection of witnesses, whistle-blowers, investigative journalists and human rights defenders, transparency and anticorruption activists is insufficient, as evidenced by numerous examples of physical assaults, media lynching, degradation or loss of job. There has been no significant success in the prosecution of the ones who ordered the attacks on Dušan Miljuš, Igor Rađenović and Josip Galinec, while cases of whistleblowers prove deficiencies in the legislative framework and judiciary (Damir Mihanović, Srećko Sladoljev, Vesna Balenović, Tonči Majica, Mirjana Juričić, Helena Puljiz, Marko Rakar, Ankica Lepej, Ruža Tomašić, Matko Marušić, Marija Petrušić, Nada Stanović, Vesna Majer, ...).

The recently proposed draft Law on Police, which is supposed to facilitate full depolitization of the police forces, contains unacceptable provisions for the appointment of managing police officers, including Police Director General, as well as for the appointment and composition of the new mechanism for civilian oversight, both of which provide full control to the current minister of interior, without adequate engagement of other decision-making stakeholders, including the Parliament. As this law is supposed to be adopted over the upcoming months, the appointment of the new managing cadre would take place just before the national elections, which puts this allegedly reformist law in the context of consolidation of political power of the current ruling majority for the upcoming period of five years.

It is particularly discouraging for democracy and human rights activists that there is no evidence that the accession process has significantly altered the prevalent, long-standing political and administrative culture of secrecy of information. First and foremost, negotiation positions and all related documentation have been treated as secret throughout the negotiation process, including this very final stage when all exemptions, and transition periods have already been agreed upon. The lack of transparency has, we believe, negatively affected the public trust in Government, as suspicions about preferential treatment of certain businesses or interest groups remain, without convincing disclaimers, in the form of disclosed official documents. Similarly, parts of weekly Government sessions are routinely closed to the public, without any justification, publicly announced agenda, concerning decisions on allocations from state budgetary reserves, political appointments, and reports on policy implementation.

The exemplary case of clientelism in legislative process is the Law on Golf Courses, which derogates proprietary rights, favours exclusively one type of investment and stimulates corruption in the scope of spatial planning at local government levels. Despite numerous complaints and public protests, including extensive argumentation provided by leading anti-corruption, democratization and environmental CSOs, as well as individual citizens and local communities, the government continues to ignore its negative effects

on human rights, public interest, economic development and international reputation of Croatia.

Despite the eventual adoption of the Code of Practice on Consultation with the Interested Public in Procedures of Adopting Laws in November 2009, this soft policy instrument has yet to become implemented systematically. It was not respected even in the cases of flagship legislative initiatives related to the prevention of corruption and the closing of Chapter 23, i.e. the Law on Financing of Political Activities and electoral promotion, the Law on prevention of conflict of interest of public officials. Both laws have been drafted without the inclusion of key CSOs with outstanding track-record of monitoring these policy issues, while the adopted proposal for amendment to the Freedom of Information Act in summer 2010, ignored the key recommendation of the working group members and consulted public were ignored - the introduction of independent body for conducting the test of public interest.

Even though the right to access information has recently been introduced into the Croatian Constitution as one of the fundamental human rights, the prospects of its practical consumption are severely limited by the laws and insufficiencies in the most recent normative changes and implementation capacities coupled by the track-record of violations on part of public bodies. The amended Freedom of Information Act was adopted in December 2010 as part of the EU legislative package, without qualified majority, which is mandatory for all acts regulating human rights issues defined in the Croatian Constitution. Hence, the Constitutional Court's opinion on its constitutionality is pending. Content-wise, the very purpose of amendments, i.e. ensuring effective scrutiny of public interest has not been realised, as this task has been entrusted to the Croatian Personal Data Protection Agency, as opposed to a specialised, independent body, such as Ombudsman for Information. At present, the Agency has not been provided with full institutional autonomy in respect to the Government, which appoints the Agency Head, nor have additional budget, staff and technical assistance been put in place for timely and high-quality performance of the test of public interest. Most importantly, the provisions of the Data Secrecy Act derogate the provisions of the Freedom of Information Act in respect to the conduct of test of public interest that cannot be performed in all cases where state level institutions have labelled any information within their jurisdiction as secret.

The new Law on Prevention of Conflict of Interest of Public Officials, adopted on February 11, 2011, only a week upon the adoption of its first draft, is an illustrative example how accession obligations are used as an alibi for the neglect of interested public and arguments espoused by political opposition, resulting in a law which contradicts its very purpose – increasing the standards for political accountability and public trust in government officials. The appointment procedure of members of the Commission for the Prevention of Conflict of Interest and the simple majority vote enable the parliamentary majority to install their favourite candidates, while eligibility criteria do not refer to individual or public integrity. The scope of interests that should be disclosed and checked

against potential conflict with public duties is very limited[2], while the law envision adequate support to whistle-blowers, as the Commission cannot consider any allegations of conflict of interest submitted anonymously. The law omits several important categories of public officials, such as members of local and regional government representative bodies, management of public institutions, including the Croatian Radio-Television and Croatian Information Agency, and members in a number of supervisory and managing boards of public agencies such as the Agency for Electronic Media, appointed by the Parliament. The passing of this law primarily serves the purpose of formal closing of the Chapter 23 and the political promotion of the current government. It should also be noted that there is no evidence of systematic application of provisions of the Civil Servants Act on the disclosure of interests, which have not been further elaborated in the form of internal administrative procedures at the level of state institutions. In conclusion, the current normative and institutional mechanisms of managing conflict of interest are fully unsatisfactory.

While the new and long-awaited Law on Financing of Political Activities and Election Campaigns, adopted on February 11, 2011, brings significant improvements in terms of transparency of election campaigns, there is area for improvement in respect to the efficiency of scrutiny and sanctioning of non-compliance, including parallel data collection on media advertising expenses, the mandate of the Central Election Commission and the severity of sanctions.

Given the described problems **in the area of fight against and prevention of corruption, we propose the following corrective measures to be undertaken**, prior to closing of Chapter 23:

State should **amend provisions of the Law on criminal proceedings** which are allowing State attorney to grant a pardon for any criminal act by the fact that perpetrator gave any information on other act or acts. State should put **granting a pardon to the jurisdiction of the courts and narrow the scope of criminal acts and types of information for which it could be given**. It should also secure that perpetrators who are also witnesses are under indictment and that pardon can be allowed only in relation to sentence, not the whole procedure.

The Law on Golf Courses should be annulled immediately, given its corruptive potential and the fact that it has turned into a symbol of state capture by interest groups;

The newly enacted amended **Freedom of Information Act** should be annulled, given that it was not adopted by the qualified majority. Furthermore, the Act should be amended to ensure and include key recommendations proposed by relevant CSOs, i.e. the

[2] For instance, according to Article 13, paragraph 3, public officials do not need the Commission's approval for the exercise of the following professional and public activities, including income-generation: scientific, research, educational, sports, cultural, artistic, agricultural; income-generation on the basis of intellectual and industrial ownership rights, as well as income-generation based on the participation in international projects financed by the EU, other foreign state, international organization or association.

establishment of the independent body in charge of conducting the test of public interest. Most importantly, human and financial resources should be ensured for adequate implementation and monitoring of the law. Finally, the Data Secrecy Act should be harmonized with the changes of the Constitution and Freedom of Information Act;

The **Law on Protection of Whistleblowers and Human Rights Defenders** as well as the **Law on Lobbying Activities** should be enacted, following an open process of consultation in accordance with the provisions of the Code of Practice in Passing Legislation and relevant UN Resolution;

The recently passed **Law on the Conflict of Interest** should be urgently annulled, and a new one passed which would ensure that the appointments to the Commission on the Prevention of Conflict of Interest do not reflect the government majority represented in the Parliament. Furthermore, the law should be binding for all state and local level appointed and elected holders of public office or other duties, as well as managing public servants.

Relevant parliamentary working bodies – **the Commission for the Prevention of Conflict of Interest and the Commission for Monitoring the Implementation of the Anticorruption policy** - should be adequately staffed and resourced to ensure timely substantial support to the work of the Commissions' members.

The Law on Financing Political Activities should be amended to specify and make more stringent the sanctioning procedure for non-compliance with reporting obligations, i.e. rather than postponing the allocation of funds until the report has been submitted, rendering it illegal to allocate funds after the dead-line has passed. Additionally, the mandate the Central Election Commission should be broadened to include the possibility of sanctioning political actors for non-compliance with the election rules during the campaign, while all media organizations, as well as mediators such as agencies, should be forced to publicize their price-lists.

The **Law on Government** should be amended to ensure significant improvements to the transparency of the government's work, i.e. significantly limiting the possibility of closed sessions of government, and specifying topics which can justly be discussed behind closed doors (e.g. national security). Additionally, the Law should explicitly prohibit any allocations of budgetary funds during closed sessions of Government.

Urgently publicize the results of the negotiation process with the EU by chapters, with emphasis on negotiated exemptions and adjustment periods;

Ensure consistent implementation of the **Code of Practice on Consultation with the Interested Public in Procedures of Adopting Laws** and **strengthen its institutional standing by linking the Code to provisions of the prospective** Law on Regulatory Impact Assessment (RIA) and the roll-out of RIA procedure. The **adoption of the Law on RIA should be treated as a condition for the closing of negotiations in Chapter**

23, Government Governments' track record of delays in its institutionalization over the past five years.

The Government's intention to penalize slander more severely with the possibility of imprisonment is in direct contradiction with the disclosure of possible corruptive practices by journalists, whistleblowers and human rights defenders. In that sense, instead of more severe punishments, **the Penal Act should be amended to decriminalize slander and treat it as a misdemeanour rather than a criminal act**, so that persons disclosing possible corruptive practices are not discouraged to do so. At the same time, **censorship in the media should be classified as a penal act**, discouraging editors-in-chief to censor any and all media reports or investigations pertaining to political or market-related corruption.

The current level of achievement in respect to both prevention and combat of corruption is far from being internalized at the level of political elites, state institutions and the wider society. It is **therefore necessary to ensure ongoing monitoring of Croatia's efforts in this respect, beyond the accession period and Croatia's closing of Chapter 23.**

Conclusion Related to Human Rights Protection

Notwithstanding Croatia's progress in the area of human rights protection since the opening of the accession negotiations, we are of the opinion that there are several issues that warrant serious concern and require immediate action.

In the area of political rights, Croatia's legislation still impedes the right to free assembly and expression of political views in front of the Parliament and Government buildings. The Law on Referendum, despite recent changes, did not change the very strict conditions regarding citizens' initiated referenda - 10% of registered voters must sign the referendum petition within a two week period. This is exacerbated by the fact that amendments to the Law on Residence, as a prerequisite for the review of voter lists, have not taken place yet, despite proclaimed state authorities' acknowledgment. Thus, the lack of credibility in voter lists shamefully fuel citizens' mistrust of the state institutions and still, 20 years after Croatia's first democratic elections, render doubts on the fairness of the election process.

Therefore, before closing Chapter 23, Croatia should:

- **Annul the Law on the Amendment to the Law on Free Assembly, to enable free expression of political views on St. Mark's Square**
- **Change the Law on Referendum** to enable easier referenda initiation by citizens
- **Change the Law on Residence** as a prerequisite for the necessary and urgent **review of voter lists**

Vulnerable groups' access to justice has not improved with the enactment of the Free Legal Aid Act; quite the contrary. The procedure itself is highly bureaucratized and complicated, and is, as such, a completely inadequate mechanism for accessing justice. The only costs covered by the Act are those of legal representation, and at the rate far

below the official rate of the Bar Association. Therein lie the real reasons for attorneys' refusals of such cases, while at the same time CSOs are restricted to provide free legal aid to citizens, despite their experience and long-standing positive practice. The proscribed conditions for attaining this right are inadequately aligned to the living conditions of citizens, especially poor ones living in rural areas who have no means to visit the relevant state office to obtain necessary receipts. Finally, the Act vaguely stipulates that free legal aid is to be granted if "existential" issues of beneficiaries are at stake, thus enabling discretionary decisions and potential inequalities in decision-making.

Therefore, before closing Chapter 23, Croatia should amend the Free Legal Aid Act, in a participatory manner, and ensure that by removing administrative and other obstacles to effective implementation, the Act becomes an adequate mechanism for accessing justice.

The institutionalization of **antidiscrimination** policies and measures and the Antidiscrimination Act itself, although in place and for the most part implemented, show weaknesses in the effectiveness of monitoring and implementation of recommended correction measures. This is evidenced by the inability of the People's Ombudsman, the Ombudsperson for Gender equality and the Ombudsperson for Persons with Disabilities offices to influence the executive to take corrective action, as their authorities lack punitive measures, while their offices remain under capacitated. Additionally, antidiscrimination policies lack performance and impact indicators, as well as monitoring and evaluation plans.

There are also several concrete steps that need to be taken to enhance protection against discrimination:

- First and foremost, **the Law on Golf Courses should be immediately annulled** as it represents a striking example of state capture, directly infringing on the property rights of land owners and discriminating against potential investors whose entrepreneurial interests lie beyond golfing;
- **Criminal acts motivated by hatred as well as assaults on human rights defenders, whistle-blowers and journalists should be classified as aggravated assaults** in the Criminal Code and should be statistically labelled and tracked;
- The **Law on Protection of Persons with Mental Illnesses** should stipulate regular reviews of their status;
- Article 9, paragraphs 9 and 10 of the **Antidiscrimination Act** should be annulled as they directly discriminate against foreign nationals and same-sex relationships, respectively;
- **Policies in the area of protection of persons with disabilities** should be coherent in terms of classification as well as the causes/circumstances of disability, and harmonized with relevant international standards;

Chapter 23 should not be closed before the state carries out the decision of the Constitutional Court on harmonizing the pensions and paying the debt to pensioners.

Additionally, in the complex area of **human rights protection**, **there are several changes to the Croatian legislation that should be introduced to immediately improve the protection of human rights.** These include:

- **forbidding and penalizing mobbing in the Labour Law**;
- **introducing sanctions for disregarding the provisions of the Law on Media** considering the adoption of self-regulatory acts, and transparency of ownership. Additionally, journalists' opinion regarding editors-in-chief should be binding;
- **decriminalization of slander to a misdemeanour**, as opposed to the current government's intention to introduce the possibility of imprisonment for slander;
- **criminalizing censorship in the media**.

At the **systemic level,** in order to enhance **human rights' protection**, Croatia should:

- Accelerate efforts to create **favourable normative and infrastructural conditions for inclusive education in local communities**, which is critical to the prevention of institutionalization and deinstitutionalization of children with disabilities;
- Increase the **capacities of the Office for Monitoring of Practice and Representation before European Courts**;
- Ensure **timely translation and availability of the ECHR Decisions**
- Introduce **education on human and civic rights in the formal education system as a separate subject**;
- Systematically **build professional capacities** of police, prosecutors and judges and other officers of the court **on antidiscrimination policies** and international human rights protection standards;
- Start working, in a participatory and transparent manner, on **the formulation of the national integration policy of immigrants.**
- **Amend the Law on Security and Intelligence system** in order to specify conditions and procedure of secret data collection; ensure that People's Ombudsman can review the alignment of internal acts of security agencies with human rights standards; and to enable the *Council for Civilian Oversight of Security and Intelligence Agencies* to scrutinize activities of the Operational-Technical Centre, initiate inquiries and proactively inform the public of cases of severe human rights violations.

Conclusions related to Sustainable Return of Refugees

Although the matter of return of refugees is being addressed, there are still several essential issues that need to be tackled: administrative procedures for realization of rights are still extraordinarily long, status and social rights for refugees without Croatian citizenship is still not sufficiently regulated and economical conditions for sustainable return are systematically unfavourable. Although the issue of illegal investments in property of returnees is not widespread, there are still 11 cases for which Government is not taking responsibility to compensate damages done during temporary use by internally displaced persons and/or war veterans after 1995.

In order to give satisfying resolution of these issues, it is necessary to speed up administrative procedures and equalize their results within the reform of the judiciary and administrative adjudication process. **For refugees who do not have Croatian citizenship, it is crucial to alleviate the process of materialization of their property rights by providing permanent residence status**. Considering returnees who are former holders of tenant rights outside areas of special state concern, **it is of vital importance to immediately start the implementation and public oversight over the Government Programme**, so all returnees would be able to meet the application deadlines and evidential requirements and buy the apartments under the same conditions as all other Croatian citizens.

Furthermore, **it is of key importance to extend the legal deadline for the applying for the process of (con) validation of working years (pension rights)** spent in Croatian areas not under the Croatian Government control during the war period 1991-95. In order for all this to be done transparently, **it is necessary for the Directorate for Reconstruction as well as for Housing of the Ministry of Regional Development to have sufficient budgetary funding, precise implementation plans and performance indicators, and publicly share the information**.

Considering 11 cases of illegal investments in propriety of returnees, **the State should prepare individual contracts with owners of property so that State takes over the responsibility for damage compensations** and compensations for length of procedures and all disputes with ex temporary users.

Conclusion Related to the Protection of National Minorities

The status of national minorities' rights has been significantly upgraded, but there is a continuation of cases of discrimination, hate speech, verbal and physical violence, indifference of political actors and specific unresolved issues regarding all national minorities. There is still significant under-representation of minorities in state administration proving the lack in implementation of the article 22. of the Constitutional Law on the Rights of National Minorities. Furthermore, the new legislature on elections introduced discrimination between the biggest and all other national minorities.

In order to comply with Constitutional Law provisions on the employment of national minorities in public services, **it is necessary to publish the accompanying Action plan and produce evidence of its implementation**.

It is of **vital importance to enhance the effectiveness of activities and financial support of the National Programme for Roma and Action Plan for the Decade of Roma inclusion 2005-2015**. Croatia needs to continue to foster a spirit of tolerance towards national minorities and take appropriate measures to protect victims of discrimination, hostility or violence.

The law on election of representatives to the Croatian parliament **should be amended to ensure equal treatment of all national minorities**, taking into account their specific interest and rights.

Conclusions Related to Processing of War Crimes

Although the number of Croatian investigations into war crimes committed by members of the Croatian Armed Forces increased in 2010, investigations of command responsibility of individuals at the highest political and military levels are still lacking (Šeks, Vekić, Domazet, Brodarac, Laušić, Merčep, the case of the Josip Reihl Kir). It is not possible to use testimony given to ICTY investigators in evidence procedures before national courts (based on Supreme Court verdict in the Marino Selo case).

Court proceedings of war crimes against civilians have not yet started in 403 cases as is the case in still not prosecuted crimes in Sisak, Požega and Vukovar. There is a high discrepancy on the data regarding unprocessed cases between Ministry of Justice (38%) and State Attorneys Office (57%). The specialised war crime courts are not being used enough (in 2010 no trials were conducted in Split and Rijeka but have been conducted at other county courts). The length of certain proceedings is unreasonably long (the Hrastov case started in 1992, but the Constitutional Court recently annulled the condemning conviction; there are recent ECHR decisions in cases Jularić from Osijek and Skendžić from Otočac).

Sentences are, in general, considerably lighter than those imposed for the equivalent underlying crimes not classified as war crimes. The use of mitigating factors gives rise to different treatment linked to ethnicity. Furthermore, individuals who lost their case against Croatia regarding non-material damages have to pay high procedural expenses.

In order to address these issues, **it is of vital importance to change the Act on Implementation of the Statute of the International Criminal Court and Prosecution of Criminal Acts against International War and Humanitarian Law**, in order to allow the use of testimony given to ICTY investigators in proceedings before national courts. **First instance proceedings should be put under the exclusive competence of the county courts and prosecutor's offices in Zagreb, Osijek, Rijeka and Split**, including only judges and prosecutors experienced in the gravest criminal cases. Furthermore, the **Supreme Court should decide on these issues without jurors.**

Considering the issue of **expense compensation in proceedings for compensation of damages for wrongful death of close family members**, **the State should immediately and completely establish a legal mechanism in accordance with the UN reparation standards**[3], by initiating adoption and securing resources for the National program and action plan.

[3] United Nations' General Assembly Resolution adopted on 16 December 2005 titled *Basic Principles and Guidelines on the Right to a Remedy and Reparation for the Victims of Gross Violations of International Human Rights Law and Serious Violations of the International Humanitarian Law.*

Cases in which courts applied Act on Amnesty should be revised so that the questionable use of the Act would be analysed and cases of grave human rights violations re-tried.

In order to enhance efficiency of the Police, State Attorney's Offices and judges, it is necessary to improve their human, technical and material capacities and facilities, as well as widen the network of support. Further education of judges, state attorneys and police officers is necessary, as well as enhancement of the cooperation between state attorneys and police officers themselves as well as with their regional colleagues.

Considering the **assistance to victims and witnesses of war crimes**, the adequate strategy and action plan including financial resources should be developed in cooperation with civil society organizations. Finally, in order to **ensure a widespread societal dealing with the past**, it is necessary to ensure **full political and institutional support for establishing all facts about war crimes.**

Sources of Information

Act on the Prevention of Conflict of Interest in Public Office (NN 163/03, 94/04, 48/05, 141/06, 60/08, 38/09, 92/10)

Act on the Security and Intelligence System of the Republic of Croatia (NN 79/06)

Administrative Disputes Act (NN 53/91, 9/92, 77/92)

Antidiscrimination Act (NN 85/08)

Antimobbing Advisory Network (2010). *Comparative Legal Analysis of Anti-mobbing Legislation (Country studies: Croatia, Macedonia, Montenegro and Serbia)*

Caucus of Croatian Investigative Journalists (publication pending), *Special Report: Chronology of the Assaults and Threats on Journalists 1990-2010*, Zagreb

Comparative research regarding the Law on Golf Courses (performed by the NGO Green Action – organizational documentation)

Constitution of the Republic of Croatia (NN 56/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10)

Constitutional Act on the Rights of National Minorities (NN 155/02, 47/10, 80/10)

Convalidation Act (NN104/97)

Council of Europe's Group of States against Corruption (GRECO) - Second and Third Round Evaluation Report on Croatia

Croatia Progress Report issued by the European Commission (2006 - 2010)

Data Secrecy Act (NN 79/07)

Draft Proposal of Amendments to the Penal Act (January 2011)

Electronic Media Act (NN 153/09)

Amendments of the European Parliament's Committee on Foreign Affairs on statements by the Council and the Commission pursuant to Rule 110(2) of the Rules of Procedure on the 2010 progress report on Croatia (December 2010)

Free Legal Aid Act (NN 62/08)

Freedom of Information Act (NN 172/03, 144/10)

General Public Administration Procedure Law (NN 47/09)

GONG (2009) *Final report of the LOTUS research (Local, Responsible and Transparent Government and Self-government),* Zagreb

GONG (2010) *Research on Political Literacy and Attitudes regarding Accession of Croatia to EU among High School Seniors – Data analysis,* Zagreb

GONG's Regular Reports on presidential, parliamentary and local elections

GONG's Analysis of the official Central State Office for Administration/Ministry of Administration Reports on the Implementation of the Freedom of Information Act in Croatia (2008 and 2009)

GONG's Annual Reports on Evaluation of Croatian Freedom of Information Act (2005-2010)

Government of the Republic of Croatia (2008). *National Plan for the Fight against Discrimination 2008-2013,* Zagreb

Government of the Republic of Croatia (2010). *Action Plan for Fight against Corruption – revision,* Zagreb

Government Office for Cooperation with NGOs (2010). *Guidelines for the Implementation of Code of Practice on Consultation with the Interested Public in Procedures of Adopting Laws,* Zagreb

Government Office for Human Rights (2007). *National Program for the Protection and Promotion of Human Rights 2008 – 2011,* Zagreb

Government Office for Human Rights (2009). *Research on Attitudes and the Level of Awareness about Discrimination and Manifestations of Discriminations,* Zagreb

Johnsen, J. T., Stawa G. & Uzelac, A. (2010). *Evaluation of the Croatian Free Legal Aid Act and its implementation (International expertise),* Zagreb, Center for Human Rights

Judgement, Lukenda vs. Slovenia, no. 23032/02, para. 67, ECHR 2005-X

Judiciary Reform Strategy

Labor Law (NN 149/09)

Law on Election of MPs to the Lower Chamber of the Croatian State Parliament (NN 116/99, 109/00, 53/03, 69/03, 167/03, 44/06, 19/07, 20/09, 145/10)

Law on Election Units for the Election of MPs to the Lower Chamber of the Croatian State Parliament (NN 116/99)

Law on Financing of Political Activities and Election Campaigns (February 2011)

Law on Golf Courses (NN 152/08, 80/10)

Law on Referendum (NN 33/96, 92/01, 44/06, 58/06, 38/09)
Law on the Central Election Commission of the Republic of Croatia (NN 44/06, 19/07)

Law on the Government of the Republic Croatian (NN 101/98, 15/00, 117/01, 199/03, 30/04, 77/09)

Law on the Office for the Fight against Corruption and Organized Crime (NN 76/09, 116/10, 145/10)

Law on the State Judiciary Council (NN 116/2010)

Law on Voters' Lists (NN 19/07)

Media Act (NN 59/04)

Meetings and direct communication with State Attorney Office and Office for the Fight against Corruption and Organized Crime (USKOK) (GONG, B.a.B.e. – Be Active Be Emancipated, Association of Investigative Journalists of Croatia, Green Action, Caucus of Court Reporters of the Croatian Journalists' Association)

Ministry of the Family, Veterans' Affairs and Intergenerational Solidarity (2009). *Report on Implementation of Anti-discrimination Law,* Zagreb

Monitoring of legal actions regarding environmental protection (NGO Green Action)

Monitoring of legal actions in the case of Varšavska (NGO Green Action)

Ombudsman (2010). *Report on the Appearance of Discrimination in 2009,* Zagreb

Ombudsman Act (NN 60/92)

Partnership for Social Development (February 15th, 2011). *Croatian progress related to meeting benchmarks within Chapter 23 - Judiciary and Fundamental Rights*, Zagreb

Personal Data Protection Act (NN 103/03, 118/06, 41/08)

Proposal of Police Act (February 2011)

Report on the Implementation of the Action Plan for Fight against Corruption with the execution period for 1st, 2nd and 3rd quarter of 2010 and continuously

SIGMA Croatia Assessment Report 2010

State Attorney Act (NN 76/09, 153/09, 116/10, 145/10)

Strategy for Fight against Corruption (NN 75/08)

Submissions to the Constitutional Court

Trade Union of Croatians Journalists and expert group of International Federation of Journalists (IFJ) for free journalists (2006). *Report on the State of the Free Journalism in Croatia,* Zagreb

Transparency International: Corruption Perceptions Index (2006 - 2010)

Transparency International: Global Corruption Barometer (2006, 2007, 2009 and 2010)

United Nations' General Assembly Resolution (16 December 2005). *Basic Principles and Guidelines on the Right to a Remedy and Reparation for the Victims of Gross Violations of International Human Rights Law and Serious Violations of the International Humanitarian Law*