



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



Strasbourg, 5 October 2016

CommDH(2016)31
English only
Restricted

REPORT
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COMMISSIONER FOR HUMAN RIGHTS OF THE
COUNCIL OF EUROPE

FOLLOWING HIS VISIT TO CROATIA
FROM 25 TO 29 APRIL 2016

Embargo until 5 October 2016, 00:01 Paris time

Embargo until 5 October 2016, 00:01 Paris time

TABLE OF CONTENTS

Summary	4
Introduction	6
1 Major issues pertaining to transitional justice and social cohesion	8
1.1 The need to end impunity for wartime crimes and provide effective redress to all war victims.....	8
1.1.1 Relevant International and regional developments and co-operation.....	8
1.1.2 Domestic wartime criminal proceedings.....	9
1.1.2.1 The application of amnesty to wartime crime cases.....	11
1.1.3 Provision of adequate and effective reparations to war victims.....	11
1.1.4 Missing persons.....	12
1.1.5 Forcibly displaced persons due to the 1991-1995 conflict.....	13
1.1.5.1 General.....	13
1.1.5.2 Access to housing.....	14
1.1.5.3 Certain issues concerning the integration of returnees.....	15
1.1.5.4 The enjoyment by members of the Serbian minority of their linguistic rights.....	16
1.1.5.5 Statelessness.....	17
1.1.5.6 Access to legal aid.....	17
1.1.5.7 Other major pending issues adversely affecting social cohesion and the return process.....	18
1.2 Conclusions and recommendations.....	19
2 Human rights of immigrants, refugees and asylum seekers	21
2.1 General background.....	21
2.2 Overview of the asylum law and practice framework.....	21
2.3 Asylum seeker reception, migrant detention and integration.....	22
2.3.1 Asylum seekers' access to reception facilities.....	22
2.3.2 Detention of migrants.....	23
2.3.3 Situation of unaccompanied migrant children.....	24
2.3.4 Social integration of migrants.....	25
2.4 Conclusions and recommendations.....	26
3 Freedom of the media	28
3.1 General.....	28
3.2 Major issues of concern.....	28
3.2.1 Protection of journalists from violence.....	28
3.2.2 Developments related to public service media.....	29
3.2.3 Developments related to the electronic broadcast regulator.....	30
3.2.4 The termination of non-profit media public funding.....	31
3.2.5 Journalists' labour rights and ethical journalism.....	32
3.3 Conclusions and recommendations.....	32

SUMMARY

Commissioner Muižnieks and his delegation visited Croatia from 25 to 29 April 2016. In the course of this visit the Commissioner held discussions with state authorities, national human rights structures and non-governmental organisations. The present report draws on the themes of the Commissioner's visit and focuses on the following issues:

I. Major issues pertaining to transitional justice and social cohesion

Whilst welcoming the importance rightly attached by Croatia to regional co-operation in the prosecution of wartime crimes committed during the 1990s, the Commissioner notes with serious concern the recent reported regression of this co-operation in the region. He is gravely concerned about the lack of accountability in Croatia for certain serious violations of international human rights and humanitarian law and the reported bias in the selection of such cases for prosecution. He urges the authorities to take all necessary measures to end impunity, and effectively prosecute, try and sanction wartime crimes in line with international and European standards, in particular the case-law of the European Court of Human Rights ('the Court').

Although he welcomes the enactment of the law which provides for reparation for the victims of wartime crimes of sexual violence, the Commissioner urges the authorities to address the identified shortcomings in the law and in its implementation. Moreover, the authorities are urged to ensure that all victims of war-related crimes and their families are provided with effective access to justice and adequate reparation. Commissioner Muižnieks reiterates that additional efforts at the national and regional levels are necessary to resolve the pending cases of missing persons, in line with the obligations stemming notably from the European Convention on Human Rights ('ECHR') and the Court's case-law. In this context, Croatia is called upon to accede to the International Convention for the Protection of All Persons from Enforced Disappearance.

The Commissioner commends the steps taken by the authorities in order to ensure adequate conditions for the return of persons displaced by the 1991-1995 armed conflict. However, he is concerned about the remaining obstacles in this regard, relating in particular to the enjoyment by returnees belonging to national minorities of their economic, social, cultural and linguistic rights. The Commissioner welcomes the authorities' commitment in the context of the Regional Housing Programme which he supports, and encourages them to facilitate its implementation by addressing the outstanding issues identified by UNHCR. The Commissioner is seriously concerned that more than 2 800 persons, including Roma without permanent or temporary residence in Croatia, remain stateless or at risk of statelessness. Croatia is urged to accede to the Council of Europe treaties concerning nationality and statelessness and to intensify its efforts to resolve this serious human rights issue, including by strengthening the country's legal aid system.

Against the background of a reported rise in manifestations of ethnic intolerance and hate crime and its negative impact on social cohesion in Croatia, the Commissioner calls on the authorities to step up their efforts aimed at combating these phenomena. Although he considers important the strengthening of the legislative and institutional framework pertaining to the fight against hate crime, including hate speech, he believes that much more resolute action is needed to ensure awareness-raising and the effective implementation of this legislation. The Commissioner urges the authorities to pay particular attention to the recording of hate crime data and to ensure that law enforcement officials and legal professionals are adequately and systematically trained to be able to recognise and effectively investigate and sanction hate crime.

II. Human rights of immigrants, refugees and asylum seekers

Commissioner Muižnieks commends the authorities' humanitarian approach in dealing with migrants, including asylum seekers, who transited through the country in 2015 and 2016, and the important positive role played in this context by the Ombudsman and civil society. The Commissioner is concerned however about the inclusion in the draft Aliens Law of provisions relating to the criminalisation of social and humanitarian assistance to irregular migrants, despite his suggestions to the authorities to refrain from this approach. He recommends that Croatia repeal the relevant provisions of the Aliens Act and refrain from taking this approach in the future.

Croatia's asylum recognition rates are low, which appears to relate to the fact that many asylum seekers leave the country before a decision on their asylum request has been rendered. However, the Commissioner is concerned that reasons can also be found in the lack of asylum and immigration expertise among administrative judges. He notes with satisfaction the authorities' upcoming training plans in this context, and encourages them to ensure that legal professionals are systematically provided with training on asylum and immigration, including possibly through the Council of Europe's Human Rights Education for Legal Professionals (HELP) programme.

The Commissioner is seriously concerned that the authorities continue to oblige migrant detainees subject to deportation to pay for their accommodation and removal. He is disappointed that the authorities decided to retain the provisions providing for this possibility in the current draft Aliens Law. The Commissioner recommends that Croatia discontinue this practice and repeal the relevant provisions of the Aliens Act.

The authorities are called on to address the vulnerability of unaccompanied migrant children, including by strengthening the system of special guardians and improving the identification of victims of trafficking amongst irregular migrants.

The Commissioner welcomes Croatia's commitment to accept more than 1 600 refugees under the EU relocation and resettlement schemes. However, he is concerned about the existence of many obstacles to migrant integration. He urges the authorities to eradicate these obstacles through the designing and implementation of comprehensive, long-term and adequately-funded integration policies.

III. Freedom of the media

The Commissioner is concerned that despite the existence in Croatia of a sound legal framework for the protection of media freedoms, an adequate environment for the work of the media has not yet been created. Noting that the criminal offence of defamation can have a chilling effect on the exercise of freedom of expression, the Commissioner encourages the authorities to repeal all criminal provisions against defamation.

Commissioner Muižnieks is worried about the acts of violence which have affected journalists' freedom of expression and their role of "public watchdog" which is valuable in every democratic society. He calls on the authorities to live up to their positive obligation to initiate prompt, thorough and transparent investigations into all cases of physical violence or threats against journalists, and to bring the perpetrators to justice. Sanctions should reflect the seriousness of these offences and be dissuasive. The authorities are also urged to conclude promptly all pending criminal cases relating to assaults on journalists.

The recently reported abrupt and numerous staff changes in public service media and allegations of censorship prompted a number of concerns which the authorities must reflect upon and address. The Commissioner calls on Croatia to ensure that the independence of public service media is preserved and to refrain from any action that could lead to censorship or may be detrimental to public media editorial independence. The government's request for termination of the broadcast regulator's mandate and for the dismissal of its members seemed short of serious reflection and raised concerns of political pressure on this body. The authorities are called upon to fully guarantee the broadcast regulator's independence, including by ensuring that there is no political bias in the domestic procedures for the nomination, appointment and tenure of its members.

Having noted the non-profit media's important positive contribution to pluralism, the promotion of democracy, tolerance and multiculturalism, the Commissioner regrets that the authorities decided to abolish state subsidies for these media. He strongly encourages the authorities to reverse the negative trends which have been perceived as attacks on pluralism and freedom of expression in Croatia.

The report contains the Commissioner's conclusions and recommendations addressed to the authorities of Croatia and is published on the Commissioner's website along with the authorities' comments.

INTRODUCTION

1. The present report¹ follows a visit to Croatia by the Council of Europe Commissioner for Human Rights (hereinafter “the Commissioner”) from 25 to 29 April 2016.² The visit focused on certain major issues concerning transitional justice and social cohesion, the human rights of immigrants, refugees and asylum seekers, and freedom of the media.
2. During his visit, the Commissioner held discussions with national authorities, including the Deputy Prime Minister, Mr Božo Petrov; the Minister of Foreign and European Affairs, Mr Miro Kovač; the Minister of Justice, Mr Ante Šprlje; the Minister of Culture, Mr Zlatko Hasanbegović; the Deputy Minister of the Interior, Mr Davor Blažević; the Deputy Minister of Social Affairs and Youth, Mr Ante Babić; the State Attorney General, Mr Dinko Cvitan; the Assistant Minister for Public Administration, Mr Boris Milošević; and the Deputy Head of the Government’s Office for Human Rights and Rights of National Minorities, Ms Bahrija Sejfić. In addition, Commissioner Muižnieks met with the Ombudsman, Ms Lora Vidović, and the President of the State Council for National Minorities, Mr Aleksandar Tolnauer. He also had meetings with representatives of the Jewish and Serb communities.
3. Meetings were also held with civil society organisations active in the field of human rights, representatives of the media sector and of the international community. In addition, the Commissioner visited the Porin reception centre for asylum seekers in Zagreb, and the Ježevo detention centre for foreign nationals. He delivered a lecture at the Faculty of Law of Zagreb University focusing on the human rights of migrants.
4. The Commissioner wishes to thank sincerely the Croatian authorities in Strasbourg and in Zagreb for their assistance in organising his visit and facilitating its independent and smooth execution. He also extends his thanks to all his interlocutors for their willingness to share with him their knowledge and views.
5. In recent years Croatia has undertaken a number of reforms aiming to strengthen the protection of and respect for human rights. It has improved the legislative and institutional framework for the protection of national minorities and the fight against hate crime, and the legislation pertaining to the media. Since 2008 Croatia has adopted two national human rights action plans, with the current one covering the period 2013-2016.
6. The Commissioner’s visit coincided with the unfolding in Croatia of developments revealing polarisation along ideological lines in politics and in society at large, exacerbated by certain leading politicians’ rhetoric and attempts at historical revisionism. Cuts in public funding for NGOs and national minorities, as well as for non-profit media and independent cultural initiatives have been perceived as attacks on pluralism. National minorities have expressed their serious concern about growing ethnic intolerance in society, and about the authorities’ lack of awareness of its shattering impact on social cohesion.
7. The Commissioner has noted with interest that the President of Croatia, in her address to the nation last May, expressed her serious concerns about the devastating impact of “the escalation of intolerance, hate speech and glorifications of criminal regimes” on society and the very foundation of the state. She called on politicians and citizens to overcome ideological divisions and work together towards a better joint future.
8. The Commissioner has noted with serious concern that, following his visit, the Croatian parliament rejected the 2015 annual reports of the Ombudsman and of the Special Ombudsman for Children. He considers these developments as serious setbacks threatening to undermine the independence of these institutions. Highlighting the important role played by national human rights structures in promoting and protecting human rights and equality and fighting discrimination in a democratic

¹ The cut-off date of this report is 15 June 2016.

² During his visit the Commissioner was accompanied by the Deputy to the Director of his Office, Mr Nikolaos Sitaropoulos and his Adviser, Ms Erliha Bičakčić.

society, Commissioner Muižnieks wishes to express his support for the national human rights structures in Croatia and aims to take all necessary steps within his mandate to facilitate their work.

9. The Commissioner trusts that the aforementioned negative trends can be reversed and invites the government to consider the issues examined in this report and step up its efforts to resolve the shortcomings identified. He would like this report and its recommendations to constitute a fruitful phase of the constructive dialogue he has begun with the Croatian authorities.

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1 MAJOR ISSUES PERTAINING TO TRANSITIONAL JUSTICE AND SOCIAL COHESION

1.1 THE NEED TO END IMPUNITY FOR WARTIME CRIMES AND PROVIDE EFFECTIVE REDRESS TO ALL WAR VICTIMS

1.1.1 RELEVANT INTERNATIONAL AND REGIONAL DEVELOPMENTS AND CO-OPERATION

10. Croatia continues to co-operate effectively with the International Criminal Tribunal for the former Yugoslavia (ICTY), by responding diligently to ICTY's requests for assistance.
11. As regards regional co-operation in this field, the Commissioner commends the signing in June 2013 by the Prosecutor's Offices of Croatia and of Bosnia and Herzegovina of a protocol on co-operation in prosecuting perpetrators of war crimes, crimes against humanity and genocide. In June 2006 Croatia had signed similar agreements with Serbia and Montenegro. In April 2015, under the auspices of the UN, the state prosecutors of Croatia, Bosnia and Herzegovina and Serbia signed the Directions for improving regional co-operation in the prosecution of wartime crimes, the search for missing persons and the establishment of a co-ordination mechanism. In his discussion with the Commissioner, the State Attorney, Mr Dinko Cvitan, underlined the importance for the fight against impunity for wartime crimes of these co-operation documents and their increased use in the region.
12. In November 2015³ the ICTY Prosecutor expressed his concern about the pace and effectiveness of war crimes prosecutions by national authorities in the region. He was concerned about the large backlog of cases in the prosecution offices of the respective countries and the low number of prosecutions of senior and mid-level officials in national courts. The ICTY Prosecutor stressed that those challenges could be successfully addressed and overcome "if there was national ownership of post-conflict justice, appropriately supported by international assistance". He welcomed a recent transfer from Bosnia and Herzegovina to Croatia of investigative files against two war crime suspects, and encouraged the judicial authorities of Croatia to process the transferred cases as expeditiously and effectively as possible.
13. However, in June 2016,⁴ the ICTY Prosecutor noted that the positive trend in regional co-operation in war crimes appeared to be reversing. He stressed that too many politicians and public figures are denying well-established truths, inflaming ethnic tensions and repeating nationalistic slogans of the past. He concluded that, while there had been many positive developments in national war crimes justice and regional co-operation, the political situation throughout the region is moving in the opposite direction.
14. Last April, the President of Croatia sent a letter to the UN Secretary General following the ICTY judgment which acquitted the Serbian politician Vojislav Šešelj of war crimes committed in Bosnia and Herzegovina and Croatia, expressing her serious concern about a potential negative impact of the judgment on reconciliation efforts in the region. She also expressed concern about Serbia's failure to extradite to the ICTY Serbian nationals who had been charged with intimidation of witnesses in the Šešelj case.
15. The ICTY continues to implement in the region, including Croatia, its "[Outreach Programme](#)" aiming to deliver factual information about the Tribunal's work and to contribute to public reflection and debate about dealing with the past. In 2015 lectures on the Tribunal's work were delivered to students in Bosnia and Herzegovina, Croatia, Montenegro, Serbia and Slovenia. "Train the trainers" activities were also carried out to ensure that expert, national NGO partners in the region continue outreach activities after the closure of the Tribunal.

³ Serge Brammertz, [Completion Strategy Report](#), November 2015, p. 14.

⁴ Serge Brammertz, [Completion Strategy Report](#), June 2016.

1.1.2 DOMESTIC WARTIME CRIMINAL PROCEEDINGS

16. The Commissioner wishes to emphasise the importance for the rule of law and reconciliation in the region of the effective prosecution and sanctioning of serious violations of international human rights and humanitarian law. It is by addressing effectively the issue of impunity for wartime crimes that a society can overcome past traumatic experiences and move forward. The lack of justice inflicts additional suffering on victims and has serious adverse effects on the rule of law.
17. Croatia has set up a legislative and institutional framework for the prosecution of war crimes committed from 1991 to 1995. There are four specialised departments within the county courts in Osijek, Rijeka, Split and Zagreb, and specialised war crimes departments in county prosecutor offices and in the regional sectors for investigation of war crimes in the Ministry of the Interior. Following the adoption in 2011 by the Ministry of Justice of a Strategy for the Investigation and Prosecution of War Crimes committed between 1991 and 1995 (the War Crimes Strategy), the State Attorney and the Ministry of the Interior adopted action plans for the implementation of the strategy. The State Attorney has deployed a liaison officer to the ICTY who is tasked with researching the ICTY database for the purpose of domestic prosecution of wartime crimes. Additionally, a database has been set up in the State Attorney's Office which contains information about all wartime crimes committed on the territory of Croatia and the war crimes committed in the region in the 1990s in which the victims are Croats.
18. According to the State Attorney's Office, as of December 2014,⁵ first instance domestic criminal proceedings for war crimes were pending in respect of 642 persons; 589 persons had been convicted for war crimes; and investigations were ongoing in respect of 220 persons. As concerns criminal proceedings against members of Croatian military forces, criminal proceedings were initiated in respect of 119 persons, 44 of whom were convicted for war crimes. In 2015, 23 persons were convicted for war crimes, while seven were acquitted.
19. In his discussion with the Commissioner, the State Attorney, Mr Dinko Cvitan, stressed the importance of regional co-operation, and of the use by national prosecutors of the ICTY database. Stressing that national war crimes investigations in Croatia are carried out according to well-defined and objective criteria, the State Attorney noted that lack of evidence and the complexity of the cases were major challenges in the fight against impunity for wartime crimes.
20. In its 2015 concluding observations⁶ on Croatia the UN Human Rights Committee (HRC) noted with regret the slow pace of investigations into wartime crimes and that few investigations had led to prosecutions resulting in the punishment of those responsible. While taking note of the government's information about the criteria in accordance with which domestic war crimes prosecutions were carried out, HRC was concerned that the selection of cases apparently remained disproportionately directed against ethnic Serbs. A report issued in 2015⁷ by an expert NGO noted that a significant number of war crimes remained uninvestigated thus far. The UN Working Group on Enforced or Involuntary Disappearance (WGEID) has also expressed concerns in this context, noting the lack of effective prosecution of war crimes committed by members of the Croatian military and police forces in 1995.⁸
21. These concerns are reflected in the Court's judgments concerning the lack of effective and independent investigation of crimes committed during the war in Croatia. The supervision of the execution by Croatia of four judgments in the *Skendžić and Krznarić* group of cases (*Skendžić and Krznarić*, *Jularić*, *Jelić* and *B. and others*) is currently pending before the Council of Europe Committee of Ministers under the 'enhanced procedure'. In these judgments the Court found a

⁵ The State Attorney's Office of the Republic of Croatia, [Report on the work on war crimes cases](#) (in Croatian), March 2015.

⁶ UN Human Rights Committee: [Concluding observations on the third periodic report of Croatia](#), 30 April 2015, para. 11.

⁷ Dokumenta, Report on war crimes monitoring in 2014, May 2015 (in Croatian): <http://www.documenta.hr/assets/files/Godisnji%20izvjestaji/pracenie%20sudjenja/Izvie%C5%A1taj-o-pra%C4%87enju-su%C4%91enja--2014.pdf>.

⁸ UN Working Group on Enforced or Involuntary Disappearance (WGEID), Report on Croatia, 17 August 2015, available at: <http://www.ohchr.org/EN/Issues/Disappearances/Pages/Visits.aspx>.

number of shortcomings in relevant domestic war crime investigations, including the absence of serious efforts to establish the identity of the perpetrators, and failure to bring to justice direct perpetrators of the crimes. It also highlighted the lack of independent investigations because they were carried out by agents in police stations in which the police officers who were suspected to have been implicated in the events surrounding the disappearance or killing of the applicants' family members were stationed.

22. In its decision of 8 June 2016, the Committee of Ministers noted, in the light of the relevant statistics provided by the authorities, that progress in the investigation of war crimes at domestic level had been rather slow and that there were still a large number of investigations pending. The authorities were urged "to intensify their efforts with a view to bringing the on-going investigations to an end while bearing in mind the relevant Convention standards, in particular that of effectiveness". The Commissioner has noted that as of June 2016 ten applications similar to the aforementioned cases were pending before the Court.⁹
23. The Commissioner notes that the use of war crime trials *in absentia* continues, an issue that was addressed in his predecessor's 2010 report.¹⁰ This practice is related to the fact that the alleged perpetrators of war crimes who live in Serbia, Bosnia and Herzegovina or Montenegro, are not accessible by the Croatian authorities because these countries (along with Croatia itself) continue to ban extradition of their own nationals. Even though the Criminal Procedure Code (CPC) now provides for a possibility for retrial in such cases, the Court has found certain shortcomings in the implementation of the pertinent provisions of the CPC. In its 2015 judgment in [Sanader v. Croatia](#) the Court found a violation of Article 6 ECHR, due to a domestic court's failure to grant the applicant a reopening of the criminal proceedings in which he was tried *in absentia* and sentenced to twenty years' imprisonment for war crimes against prisoners of war. The Court held that although the CPC contained no substantial requirements in this regard and allowed for automatic reopening, the domestic court had interpreted it in such a way that the persons convicted *in absentia* should be granted a retrial only if they were under jurisdiction of the Croatian authorities and they resided in Croatia.
24. In the government's [action plan](#) concerning the execution of this judgment submitted last March to the Committee of Ministers it is noted that the Ministry of Justice considered that similar violations could be prevented, at least, by clarifying the requirements for reopening of criminal proceedings in the circumstances similar to that of the applicant, while amendments to the CPC have been under consideration to that end. The Commissioner is looking forward to receiving more information on this issue from the authorities.
25. Concerning capacity-building of legal professionals in this context, the joint EU/ICTY Training Project for National Prosecutors and Young Professionals from the former Yugoslavia is implemented in the region, including Croatia. In September 2015, a new group of six young legal professionals from Bosnia and Herzegovina, Croatia and Serbia commenced their 5-month internships in the ICTY. Furthermore, training for prosecutors working on war crimes cases is part of the lifelong training courses organised by the Croatian Judicial Academy.
26. As regards the protection of witnesses in this context, even though a legislative and institutional framework has been put in place, some issues remain to be addressed effectively by the authorities. WGEID¹¹ has underlined that additional efforts are needed to ensure effective witness protection and to encourage more people to disclose information, including information related to possible burial places, mass graves and potential perpetrators. It has also stressed that the laws and programmes pertaining to the support and protection of witnesses needed to be strengthened and systematised,

⁹ Committee of Ministers, [Skendžić and Krznarić group v. Croatia](#) 1259th Meeting, 7-9 June 2016.

¹⁰ In his 2010 report on Croatia, the Commissioner welcomed the authorities' efforts aimed at rectifying past, war-related crime judgments and reviewing the ones delivered *in absentia*. He stressed that as a matter of principle, persons convicted *in absentia* should have access to an effective remedy, in accordance with the fair trial standards established by the European Court of Human Rights.

¹¹ UN Working Group on Enforced or Involuntary Disappearance (WGEID), Report on Croatia, 17 August 2015, available at: <http://www.ohchr.org/EN/Issues/Disappearances/Pages/Visits.aspx>, p. 14.

paying particular attention to the protection of women witnesses. Noting that witness support is crucial both prior to testimony at trial and for a period after the trial, WGEID underlined that witness support and protection should not be limited to a short period of time before the person appears in court.

1.1.2.1 THE APPLICATION OF AMNESTY TO WARTIME CRIME CASES

27. In 1996 Croatia adopted a General Amnesty Law which granted general amnesty from criminal prosecution and trial to the perpetrators of criminal offences committed “during the aggression, armed rebellion or armed conflicts, or in connection with the aggression, armed rebellion or armed conflicts in the Republic of Croatia” committed between 17 August 1990 and 23 August 1996. The law excluded from amnesty cases concerning serious violations of human rights and humanitarian law and for acts which were not related to the conflict.
28. However, it is noted that the UN Committee against Torture (CAT) expressed concern at the fact that among the 22 326 persons who were granted amnesty, a number of individuals may have benefited from amnesties for acts of torture. UN CAT called on Croatia to ensure that “all persons, including senior police officials, military personnel and political officials, suspected of complicity in and perpetration of war crimes and crimes against humanity were brought to justice”.¹²
29. The Commissioner recalls the case-law of the Court, in particular its 2014 judgment in *Marguš v. Croatia*.¹³ Therein the Court noted that there is a growing tendency in international law “to see amnesties for serious human rights violations as unacceptable because they are incompatible with the unanimously recognised obligation of States to prosecute and punish grave breaches of fundamental human rights”. It added that “even if it were to be accepted that amnesties are possible where there are some particular circumstances, such as a reconciliation process and/or a form of compensation to the victims, the amnesty granted to the applicant in the instant case would still not be acceptable since there is nothing to indicate that there were any such circumstances”.

1.1.3 PROVISION OF ADEQUATE AND EFFECTIVE REPARATIONS TO WAR VICTIMS

30. All victims of serious violations of international human rights and international humanitarian law have the right to adequate, effective and prompt reparation for the harm they have suffered. In this context the Commissioner recalls the [2005 UN Basic Principles and Guidelines](#) on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (‘2005 UN Basic Principles and Guidelines’), and the 2011 Council of Europe Committee of Ministers [Guidelines](#) on eradicating impunity for serious human rights violations. These principles and guidelines usefully highlight various forms of remedies that need to be introduced or applied at national level in order to provide effective redress to victims. They underline that reparation should be proportional to the gravity of the violations and the harm suffered by victims.
31. The Commissioner is concerned that many civilian war victims in Croatia remain without effective and adequate reparation. As noted by HRC, individuals trying to obtain compensation for human rights violations during the war continue to face difficulties in obtaining justice in domestic courts.¹⁴ Even though some victims have obtained compensation for war crimes, attempts by many victims’ families to receive compensation caused by the loss of their family members through private lawsuits against the state have reportedly failed.¹⁵ Moreover, reports indicate that in many of these cases the plaintiffs were not exempted from the payment of substantial court fees. A positive, recent development was a

¹² UN Committee Against Torture, [Concluding observations on the combined fourth and fifth periodic reports of Croatia](#), 18 December 2014, para. 11.

¹³ Judgment of 27 May 2014. The case concerns the criminal conviction in 2007 of a former commander of the Croatian army of war crimes against civilians committed in 1991, who had been granted amnesty for those crimes.

¹⁴ UN Human Rights Committee: [Concluding observations on the third periodic report of Croatia](#), 30 April 2015, p. 4.

¹⁵ Commissioner for Human Rights, Issue paper on post-war justice and durable peace, 2012, p. 27.

2016 judgment of the municipal court in Sisak that awarded € 86 000 to the family of an ethnic Serb civilian killed by the Croatian police in 1991, following a conviction of the perpetrator of the crime.¹⁶

32. Against this background, the Commissioner was pleased to note the entering into force in June 2015 of the *Law on the Rights of Victims of Sexual Violence during Armed Aggression against the Republic of Croatia in the Homeland*, which recognises rape as a war crime. The law regulates the status of civilian victims of war related crimes of sexual violence and provides, *inter alia*, for compensation and other forms of reparation, including medical rehabilitation and psychosocial support. It extends free legal aid to this group of victims, and foresees a monthly allowance as well as the payment of a one-off compensation in serious cases.
33. Notwithstanding these positive developments, the Commissioner noted the concerns expressed by experts about shortcomings in the law, relating in particular to a restrictive description of sexual violence. Notably, the law does not include all forms of sexual violence provided for in the ICC Statute, the ICTY Statute and the 1949 Geneva Conventions, which encompass sexual violence in the form of torture or degrading treatment. Experts have noted that this may deter some victims from submitting their requests for reparation. The Commissioner was informed of an expert NGO's initiative aimed to challenge the constitutionality of the law due, *inter alia*, to these shortcomings. Concerning the implementation of the law, as of May 2016, 146 requests for recognition of the status of victim of sexual violence were submitted. Of the 90 requests which were decided upon, 76 were positive, 13 were negative and proceedings were terminated in one case. More than € 900 000 (6 979 131 Croatian kuna) in compensation has been allocated to sexual violence victims in this context.
34. According to information available to the Commissioner, at least five of the rejected requests concerned Croatian women who were raped by members of Serb military forces during the war in the 1990s' in Republika Srpska, Bosnia and Herzegovina, but have obtained no reparation whatsoever. Stressing that these women are left with no access to reparation, experts have highlighted the need for Croatia and Bosnia and Herzegovina to provide adequate redress to these victims.
35. The Commissioner is of the opinion that legislation similar to the aforementioned law should be adopted for all civilian victims. In 2016¹⁷ the Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM) welcomed the reported intention of the Ministry of Justice to prepare a draft law on the rights of all civilian victims of war. The Commissioner would appreciate receiving information about the follow-up to this initiative.

1.1.4 MISSING PERSONS

36. According to information provided by the authorities, as of May 2016 Croatia is still searching for 1 999 missing persons related to the 1991-1995 conflict (1 573 missing persons and 426 remains of persons who were killed during the war). Croatia has not yet acceded to the International Convention for the Protection of All Persons from Enforced Disappearance. Enforced disappearance is not codified as an autonomous offence under criminal legislation. Therefore, the prosecution of the crime of enforced disappearance and the determination of the criminal responsibility thereof can occur only in the context of investigations into crimes against humanity and war crimes.
37. The Commissioner is pleased to note that the resolution of the pending cases of missing persons in the region has been put high on the authorities' agenda. It is included in the National Programme for the Protection and Promotion of Human Rights in Croatia 2013 - 2016, and remains one of the priorities in bilateral relations with Serbia. The government's Commission on Detainees and Missing Persons and the Directorate for Detained and Missing Persons in the Ministry of Veterans' Affairs deal with issues pertaining to missing persons.
38. The Commissioner reiterates the importance of regional co-operation for clarifying the fate of missing persons and for bringing to an end the suffering of the victims, in particular the families of missing persons. He considers that the signing by Serbia, Montenegro, Croatia and Bosnia and Herzegovina in

¹⁶ Balkan Insight, [Croatia Pays Compensation for Police Murder of Serb](#), 19 January 2016.

¹⁷ Advisory Committee on the FCNM, Fourth Opinion on Croatia, May 2016, p. 13.

August 2014 of a [declaration](#) highlighting these states' primary responsibility in addressing the issue of missing persons is an important political commitment. However, he has noted information indicating that this commitment still remains to be translated into practice.

39. In this respect, the Commissioner notes that following its 2015 visit to the region, including Croatia, WGEID reported¹⁸ that progress in the search for missing persons in the region had slowed down significantly in recent years and that many relatives of missing persons would die without knowing the truth about the fate of their loved ones. It was also noted that progress in this field was hampered because of the lack of exchange of information and evidence across borders and the lack of effective investigation and prosecution of war crimes. WGEID noted that another challenge has been that between 3 000 and 5 000 bodies that have been exhumed have not yet been identified.
40. Noting with concern the lack of transparency regarding the methodology used in the selection of regions for investigation and exhumations, HRC has called on Croatia to ensure that all the exhumation activities are based on objective criteria and conducted in a transparent manner.¹⁹ WGEID has also noted concerns in this regard expressed by representatives of associations of missing Serbs in Croatia.²⁰ The Commissioner has noted some recent encouraging developments in this respect, including the exhumation in December 2015 from a mass grave in Gornje Selište, Croatia, of dozens of bodies of ethnic Serbs believed to have been killed during the military operation "Storm".
41. The Commissioner is concerned about the lack of a human rights based approach by Croatia in addressing the question of missing persons. The lack of legislation regulating the status of missing persons and guaranteeing the rights of victims is a significant obstacle to the enjoyment by the missing persons' relatives of their economic and social rights, including property rights. In the absence of such an approach, the only possible way for relatives of the disappeared persons to qualify for any compensation or pension as a war victim is to legally declare the disappeared relative dead. Many relatives reportedly refuse to legally declare their disappeared family member dead in the absence of any information on their fate or whereabouts, a situation which may amount to re-victimisation of relatives and a form of ill-treatment.²¹

1.1.5 FORCIBLY DISPLACED PERSONS DUE TO THE 1991-1995 CONFLICT

1.1.5.1 GENERAL

42. According to UNHCR, as of June 2015, 32 855 refugees from Croatia remained registered in the region, the majority of them in Serbia (about 26 000). As of December 2015, the authorities and UNHCR had registered 133 242 Serb minority returns to Croatia - more than half of those who fled the country before 1995.
43. In 2014, UNHCR issued a recommendation for the cessation by the end of 2017 of refugee status of persons displaced by the 1991-1995 conflict in Croatia. UNHCR has recommended that recognised refugees from Croatia and/or those on a pathway to citizenship retain their refugee status pending their transition to a permanent residency status or citizenship. The recommendation took into account positive dynamics in the region, including strengthened regional co-operation, effective voluntary returns and reconciliation efforts.
44. The Commissioner noted that, notwithstanding the important steps taken by the authorities to ensure adequate conditions for return, most of the remaining refugees from Croatia reportedly prefer to remain in their host communities and integrate locally.²² He notes the number of remaining challenges in this field and agrees with UNHCR²³ that further efforts are needed to ensure effective

¹⁸ WGEID, 2015 report mentioned above, p. 5.

¹⁹ UN Human Rights Committee: [Concluding observations on the third periodic report of Croatia](#), April 2015, p. 4.

²⁰ WGEID, 2015 report mentioned above, p. 9.

²¹ Ibid. p. 15.

²² UNHCR, [Second Progress Report](#) - Implementation of the Durable Solution Process (Sarajevo process) for refugees from Croatia displaced by the 1991-1995 conflict, including cessation of refugee status, September 2015, p. 2.

²³ Ibid. p. 1.

implementation at all levels of laws, policies and programmes aimed at remedying the effects of displacement and reducing discrimination, and the removal of unnecessary administrative obstacles disproportionately affecting returnees. This is related in particular to access to housing and basic services including water, electricity and healthcare, issues relating to nationality and civil status, and access to legal aid.

1.1.5.2 ACCESS TO HOUSING

45. The Commissioner noted with interest the legislative steps taken by the authorities since his predecessor's visit in 2010 to ensure access to adequate housing for returnees. These include the adoption in 2013 of the Decision of Housing Care for Returnees - former occupancy/tenancy rights (OTR)²⁴ holders outside the Areas of Special State Concern²⁵ and of the Decision on Purchase of State Owned Apartments in urban areas. Moreover, in 2013 the government established a State Office for Reconstruction and Housing Care which deals with requests submitted in the context of the Housing Care Programme (HCP), which provides for housing for former OTR holders who exercise their right to return. According to UNHCR, as of March 2016, 17 500 applications under the HCP were lodged, of which 8 930 were successful and some 8 200 persons have received housing care. 149 082 housing units have been reconstructed under the state reconstruction programmes.
46. However, some remaining issues of concern have been brought to the Commissioner's attention. UNHCR estimates that there remain some 10 700 returnees and potential returnees, who await various types of housing assistance. In addition, there are nearly 500 refugees, returnees and IDPs still living in temporary private accommodation. Moreover, minority returnees who wish to purchase the apartments which were allocated to them pursuant to the aforementioned 2013 Decision on Purchase of State Owned Apartments in urban areas are faced with the slow processing of their requests and high real-estate prices. As of March 2016, some 1 500 purchase requests had been addressed to the State Office for Reconstruction and Housing Care, 308 contracts were finalised and 80 contracts were signed.
47. In their discussion with the Commissioner, representatives of ethnic Serbs stressed that they felt discriminated against as compared with Croats who returned in the late 1990s and encountered a much more favourable real-estate market. The Commissioner learned that, in March 2015, in co-operation with UNHCR, the authorities prepared a draft decision providing for more favourable prices, however as of March 2016 the decision was not adopted. He would appreciate receiving additional information about the authorities' plans in this regard.
48. Croatia participates in the Regional Housing Programme (RHP),²⁶ which aims to provide durable housing solutions for the most vulnerable displaced families in the region. In December 2013 a framework agreement was signed between Croatia and the Council of Europe Development Bank, which manages the RHP fund. The Commissioner was informed that about 3 500 households in Croatia were initially targeted by this programme, however due to limited donor pledges only 1 000 households will benefit from it. The selection of beneficiaries for the first two sub-projects in Croatia, in Korenica (29 apartments) and Knin (40 apartments), as well as for the purchase of 101 apartments inside the Areas of Special State Concern has been completed. The construction of a home for elderly

²⁴ This form of housing represented 70% of housing units in the former Yugoslavia. The OTR status had many characteristics of that of ownership as the occupancy/tenancy right was kept for one's lifetime. Until 1995 most OTR holders were able to transform their right into ownership by paying a symbolic sum. This however was not the case for a large number of refugees, mostly ethnic Serbs, whose rights were terminated when they fled during the armed conflict. Ethnic Serbs in areas that were outside government control lost their right *ex lege* when the conflict ended.

²⁵ This decision aimed at providing the former OTRs who do not own a house or an apartment, or have not sold, exchanged or alienated their private property since 1991, or have not obtained a status of a protected lessee with permanent housing solutions.

²⁶ The Regional Housing Programme aims to provide durable integration or return solutions (local integration or voluntary return) for 73 592 refugees and IDPs in Bosnia and Herzegovina, Serbia, Croatia and Montenegro. It is endorsed and supported by the European Commission, the USA, the UNHCR and the OSCE, and managed by the Council of Europe Development Bank.

persons in Glina is also planned. As of April 2016 the housing needs of 90 displaced families were met under the RHP in Croatia.

49. The Commissioner was pleased to note the reported high sustainability of the returns taking place in the context of RHP. However, a need for better coordination between the State Office for Reconstruction and Housing Care and state administration offices at the county level in Croatia was stressed by the Commissioner's interlocutors. Moreover, some RHP beneficiaries have not yet received administrative decisions confirming their right to housing care, and the authorities have been urged by UNHCR to facilitate this process.

1.1.5.3 CERTAIN ISSUES CONCERNING THE INTEGRATION OF RETURNEES

50. In 2010 the Commissioner underlined his concern about the situation of ethnic Serb refugees and IDPs and called on the Croatian authorities to take all necessary measures to make these persons' sustainable return possible by facilitating their access to citizenship, housing, property and employment. Croatia was encouraged to ensure the full participation of minority members in all relevant action planning and decision making, in accordance with Council of Europe standards. The Commissioner stressed that an affirmative action policy was needed with respect to returnees and the reconciliation of communities, as such measures would strengthen the inherent pluralism, social cohesion and stability in Croatia.
51. The lack of economic integration of returnees in some areas in Croatia remains an issue of deep concern. As noted by the Advisory Committee on the FCNM, there are areas in Slavonia where access by minority returnees to public services such as electricity, gas and water is intermittent and where no investment into the severely damaged infrastructure appears to have been made since the end of the war.²⁷
52. The Commissioner is concerned that the number of representatives of national minorities employed in the public service remains insufficient. Even though national minorities account for 7.6% of the population, only 3.4% is employed in the public service, while a decrease in their employment in recent years has been noted.²⁸ The Ombudsman has noted that the goal of the employment of 5.5% of national minorities in the public service, which was set in the Action Plan on the Employment of National Minorities in the Public Service 2011-2014, had not been achieved, and a new action plan had not been adopted.²⁹ In their discussions with the Commissioner, the authorities acknowledged this situation, stressing that the underlying problems include the negative impact of the economic crisis on employment, a government moratorium on employment in the public service, and lack of public service posts in the areas where minorities live.
53. Concerning national minorities' access to employment more broadly, the Commissioner has noted with concern that persons belonging to the Serb minority face difficulties in accessing the private labour market due to discrimination. Moreover, the Advisory Committee on the FCNM has reported a sense of nationalism that is perceptible in a number of private companies and employment providers "who want to be seen as loyal to Croatia and do not want to be reproached of 'doing ethno-business' by hiring persons belonging to national minorities."³⁰
54. There are remaining challenges for returnees who do not have Croatian nationality and need to regularise their residence status upon return to Croatia, an issue addressed by the previous Commissioner. Even though the regularisation process continues, the financial burden imposed on returnees appears to be significant. UNHCR has continued to assist the most vulnerable returnees with free legal aid and partial coverage of administrative fees. From November 2014 to June 2015, UNHCR and its three legal aid partners assisted some 200 returnees in regularising their status in Croatia. Concerns have been expressed by the Commissioner's interlocutors that a certain number of

²⁷ Advisory Committee on the FCNM, Fourth Opinion on Croatia, 30 May 2016, p. 33.

²⁸ Ombudsman of Croatia, 2015 Annual Report (in Croatian), p. 28.

²⁹ Ibid.

³⁰ Advisory Committee on the FCNM, Fourth Opinion on Croatia, 30 May 2016, p. 34.

returnees whose 'returnee status' was granted retroactively continue to face problems in obtaining access to free medical insurance.

1.1.5.4 THE ENJOYMENT BY MEMBERS OF THE SERBIAN MINORITY OF THEIR LINGUISTIC RIGHTS

55. Article 12 of the Constitutional Law on the Rights of National Minorities (the Constitutional Law) provides that members of a national minority which accounts for one third of the population of a local community have a right to the official use of their language and script. According to the authorities there are two cities (Vukovar and Vrbovsko) and 25 municipalities in Croatia where national minorities are entitled to exercise this right.
56. In its Recommendation [CM/RecChL\(2015\)2](#) on the application of the European Charter for Regional or Minority Languages by Croatia the Committee of Ministers recommended, as a matter of priority, that Croatia continue its efforts to promote awareness and tolerance vis-à-vis minority languages, in all aspects, including usage of signs and traditional local names with inscriptions in Cyrillic script, based on the conclusions of the Committee of Experts.³¹
57. While bilingual Cyrillic and Latin signs have reportedly been placed on public institutions in Vrbovsko, Gračac and Plaški, the Commissioner is concerned that in the city of Vukovar³² this issue has been highly politicised and remains a chronic stumbling block in interethnic relations. The introduction of bilingual signs on public institutions in the city of Vukovar has prompted nationalistic and violent incidents in recent years. The Commissioner deplores that in 2014, following one such incident, an online call for a boycott of shops and businesses owned by ethnic Serbs in Vukovar "until the Cyrillic script has been removed from public places" was published along with the list of those shops.
58. The Constitutional Court of Croatia has rendered several decisions concerning this issue. In August 2014 it dismissed as unconstitutional a request submitted by a veteran organisation from Vukovar to hold a referendum as to whether the provisions of the Constitutional Law providing for the official use of national minorities' languages should be amended by replacing the existing 'one third threshold' with 'a 50% threshold'.³³ The Constitutional Court ordered the City Council of Vukovar to regulate the use of the Serbian language and script "while giving due consideration to the specific circumstances in Vukovar and the needs of the majority ethnic Croat population, while ensuring adequate conditions for respectful and rightful treatment of the Serbian national minority there". In August 2015 the City Council of Vukovar amended its Statute and adopted a decision which temporarily suspended the official use of the Cyrillic script in bilingual plates on official buildings, with a possibility to abolish the suspension when satisfied with "the level of tolerance, solidarity and dialogue among the citizens of Vukovar". This 'evaluation' of 'the level of tolerance' is to be carried out annually.
59. On 3 September 2015 the Ministry of Public Administration requested the Constitutional Court to decide whether the aforementioned decision of the City Council was in conformity with the Constitutional Court's decision of 18 August 2014. As of June 2016 the decision in this case was awaited.
60. In his discussions with the authorities the Commissioner was informed that a draft Law on Local and Regional Self-government, prepared in 2015 by the Ministry of Administration, provided for the possibility of dissolving local councils in cases of frequent acts that are contrary to the legislative framework, which would cover the aforementioned situation. However, the six month deadline for introducing the draft law into parliament has expired and the draft is no longer valid. The authorities seemed not to be in favour of giving effect to the above law and dissolving the local council. The Commissioner was informed by the authorities about a forthcoming EU-funded project which will

³¹ European Charter for Regional or Minority Languages, Application of the Charter in Croatia, 5th monitoring cycle, [Report](#) of the Committee of Experts, adopted in September 2014.

³² According to the 2011 census 9 654 (34.87%) citizens of Vukovar are ethnic Serbs.

³³ The referendum was preceded by a number of violent incidents during which the bilingual plates on official buildings in Vukovar were broken by individuals, many of them war veterans. Some of the perpetrators have been prosecuted.

focus on better monitoring the implementation of the Constitutional Law and on raising public awareness about the rights of national minorities.

1.1.5.5 STATELESSNESS

61. Croatia is party to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. However, it has not yet acceded to the 1997 European Convention on Nationality (signed in 2005) and the 2006 Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession.
62. According to the authorities, as of May 2016 there were 23 stateless persons in Croatia. However, in addition to these 23 stateless persons, UNHCR has registered 2 850 persons with non-determined citizenship who are at risk of statelessness, including Roma without temporary or permanent residence status in Croatia.³⁴ The precise data on stateless persons are not available due to the lack in Croatian legislation of a statelessness determination procedure. The Commissioner has been informed about UNHCR's plan to carry out a mapping of statelessness in Croatia.
63. The authorities' commitment aimed at preventing statelessness undertaken at the 2011 ministerial intergovernmental [conference](#) on refugees and stateless persons is reflected in the National Strategy for Roma Inclusion 2013-2020 and an accompanying action plan. A positive development was the adoption in 2013 of amendments to the 2012 Aliens Law which provided for simplified conditions for obtaining temporary or permanent residence. As a result, there is no longer a need for applicants to present the property ownership certificate in order to register their residence, or to provide medical insurance evidence. Also, any debt incurred with the State Tax Administration Office regarding health insurance fees is no longer an obstacle to obtaining residence. Conditions for obtaining residency based on humanitarian reasons were also simplified.
64. Notwithstanding these positive steps, the Commissioner remains concerned that Roma still lack personal identity documents, and that Roma children's birth or residence are reportedly not systematically registered. A lack of effective access to legal aid and high administrative fees remain serious obstacles.

1.1.5.6 ACCESS TO LEGAL AID

65. Effective access to legal aid is of pivotal importance for the enjoyment by minorities, stateless persons and other vulnerable groups of their human rights. While the adoption in 2014 of a new Law on Free Legal Aid, which provides for revised criteria and a simplified procedure for accessing legal aid was a positive step, the annual budget allocation for legal aid remains insufficient. According to the latest CEPEJ evaluation report, Croatia is among the Council of Europe member states with the lowest annual public budget allocation for legal aid.³⁵
66. Concerns in this context have been expressed by the European Commission against Racism and Intolerance (ECRI) and the Ombudsman. ECRI has noted that the new legal aid law was a significant improvement and should facilitate access to legal aid for vulnerable groups, but without increased and continuous financial support allocated to the providers of free legal aid the scheme would not function properly. On her part, the Ombudsman has stressed that due to insufficient numbers of public administration officers dealing with legal aid cases, such proceedings sometimes last up to 95 days, often after the expiry of relevant legal deadlines. She has also noted a need for public awareness-raising in this context.³⁶

³⁴ This includes relevant data from the 2011 general census and the Ministry of Interior's data on the persons registered as stateless or of undetermined citizenship. During the 2011 general census 16 975 persons declared themselves as Roma, accounting for less than 1% of the population of Croatia (4 284 889).

³⁵ CEPEJ, Report on "European judicial systems, 2014 (2010 data): efficiency and quality of justice", p. 46. In 2012 Croatia's annual public allocation for legal aid per inhabitant in Euros was 0.4, ranking second last before Albania which allocated 0.2 Euros.

³⁶ Croatian Ombudsman, [2015 Annual Report](#) (in Croatian), p. 16.

67. Against this background, the Commissioner was pleased to note the information provided by the Minister of Justice, Mr Ante Šprlje, about a planned budgetary increase of 15% for legal aid.

1.1.5.7 OTHER MAJOR PENDING ISSUES ADVERSELY AFFECTING SOCIAL COHESION AND THE RETURN PROCESS

68. The Commissioner is seriously concerned by reports of ethnic intolerance and of hate crime, including hate speech, and their negative impact on social cohesion and reconciliation efforts. Concerns in this context have been expressed by HRC, the Advisory Committee on the FCNM, and the Ombudsman who has noted that the authorities' failure to adequately recognise, prosecute, sanction, and publicly condemn hate crimes exacerbates the atmosphere of intolerance and national minorities' feeling of insecurity.³⁷ In 2015, representatives of national minorities adopted a [declaration](#) in which they noted an escalation of intolerance and ethnocentrism in Croatia.
69. Among the steps taken by the authorities against hate crime were the adoption in 2011 of the Hate Crime Protocol and the establishment of a track record system to monitor the offences that could be considered as hate crime. In January 2013 a new Criminal Code provision (Article 89) entered into force which defines hate crime as a criminal offence committed on grounds based on race, skin colour, religious affiliation, national or ethnic origin, disability, sex, sexual orientation or gender identity. Article 325 of the Criminal Code provides for a criminal offence of public incitement to violence and hatred, and includes a provision related to approval, minimisation or denial of genocide and other serious violations of human rights and violations of humanitarian law. Moreover, the law provides that hate motivation is an aggravating circumstance of an ordinary criminal offence.
70. According to information provided by the authorities, in 2014 there were 11 unresolved cases of hate crime from previous years and 10 new cases were registered. There were six convictions for hate crimes while three persons were acquitted. Concerning the criminal offence of public incitement to hatred and violence, in 2014 eight such cases were registered, and three persons were convicted and received suspended prison sentences. These convictions concerned hate speech on the Internet against LGBTI persons.
71. In 2015 there were nine unresolved cases of hate crime from previous years and eight new cases. There were seven criminal convictions for hate crime, while one case was dismissed. As regards hate speech, in 2015 three new cases were registered. Seven perpetrators of this crime were convicted and were given suspended sentences. These convictions also concerned online hate speech against LGBTI persons. Most of the aforementioned cases concerned hate crimes linked to the victims' ethnic, national or religious background.
72. The Ombudsman has noted that the official hate crime data show a significantly lower number of cases compared to a 2016 report of the Serb National Council which noted that in 2015 there were 189 cases of hate crime, including hate speech. While noting that the reasons for this discrepancy may be found in diverging methodologies for the registration of hate crimes, the Ombudsman underlined that civil society's data should not be ignored by the authorities, given that, due to a lack of trust, or out of fear, victims often report such incidents only to NGOs. In its 2016 Fourth Opinion on Croatia, the Advisory Committee on the FCNM stressed that the very low official numbers of hate crime rather reflect an insufficient application of the available legal framework.
73. A number of the Commissioner's interlocutors expressed serious concern about the lack of effective prosecution and of public condemnation by the authorities of the public use of Nazi-era slogans such as "Za dom spremni" ("For homeland ready").³⁸ The most serious recent incident, which resonated internationally and resulted in financial sanctions against the Croatian Football Federation,³⁹ related to the appearance in 2015 of a swastika at a football stadium in Split. This case remains unresolved to date. The Commissioner was informed by the authorities that from 2010 to 2015 misdemeanor courts

³⁷ Croatian Ombudsman, [2015 Annual Report](#) (in Croatian), p. 26.

³⁸ This salute was used during the Second World War by the Ustasha regime, and is considered as an equivalent to the Nazi salute "Sieg Heil".

³⁹ Balkan Insight, [UEFA Punishes Croatia for Football Match Swastika](#), 23 July 2015.

rendered final judgments in 16 cases related to the public use of “For homeland ready”. In 15 of these cases the perpetrators were convicted and in one case the perpetrator was acquitted. The Commissioner noted with concern that, according to the information provided by the authorities during his visit, the perpetrators of these offences received fines amounting to about € 100.

74. The Commissioner underlines the importance of continuous training for legal professionals and law enforcement officials on human rights standards concerning the fight against hate speech, xenophobia and racism. In this respect he notes that in 2015 ECRI welcomed the training provided by the authorities to the police, especially regarding hate crime. However, ECRI has noted that there were gaps in the continuing training of judges in applying the new Criminal Code provisions on combating racism and racial discrimination as well as the Anti-Discrimination Act, and concluded that its 2012 recommendation in this regard had only been partly implemented.⁴⁰
75. On a positive note, the Commissioner welcomes the participation of Croatia in 2013 in the Council of Europe No Hate Speech Movement, with a national campaign entitled “NO to Internet Hate Speech”, which targeted in particular children and young people. In addition, Croatia participates in the Council of Europe on-line training course “Fight against racism, xenophobia and homophobia”, [launched](#) last May, which was developed in the context of the Council of Europe HELP programme, in co-operation with the Judicial Academy of Croatia.

1.2 CONCLUSIONS AND RECOMMENDATIONS

76. The Commissioner urges Croatia to end impunity by effectively prosecuting and sanctioning wartime crimes, in line with the 2005 UN Basic Principles and Guidelines and the [2011 Council of Europe Committee of Ministers’ Guidelines on Eradicating Impunity for Serious Human Rights Violations](#).
77. The Commissioner considers that the lack of full accountability for serious violations of international human rights and humanitarian law committed during the 1990s’ wars in the former Yugoslavia is a serious impediment to the process of achieving justice and lasting reconciliation in the region as a whole. Underlining the importance of effective regional co-operation in this regard, the Commissioner welcomes the signing of the protocol on co-operation in prosecuting perpetrators of wartime crimes between Croatia and Bosnia and Herzegovina and of the Directions for improving regional co-operation in the prosecution of wartime crimes in January 2013 and in April 2015 respectively. He urges all states in the region to step up their co-operation in order to remedy the reported reversing trend in this context.
78. All persons convicted *in absentia* should have access to an effective remedy, in accordance with the fair trial standards established by the European Court of Human Rights. The Commissioner welcomes the authorities’ commitment to undertaking legislative steps to ensure that this right is effectively ensured.
79. The authorities are called upon to address the remaining shortcomings in the witness protection system, paying special attention to women witnesses.
80. Everyone claiming to be a victim of wartime crimes should have effective access to justice and be provided with effective remedies, making full reparation possible. While he welcomes the adoption by Croatia of the Law on the Rights of Victims of Sexual Violence during Armed Aggression against the Republic of Croatia in the Homeland, the Commissioner calls on the authorities to reflect upon and address the reported shortcomings in the law and its implementation. The authorities are urged to adopt further measures to ensure that all civilian victims of wartime crimes are provided with prompt, adequate and effective reparation, in line with internationally established standards.
81. The Commissioner welcomes the signing in 2014 by Serbia, Montenegro, Croatia and Bosnia and Herzegovina of the declaration on missing persons. He underlines that additional efforts are needed to resolve the pending cases of missing persons in the region. He calls on the authorities to continue with

⁴⁰ ECRI, Conclusions of the implementation of the recommendations in respect of Croatia subject to interim follow-up, 9 March 2015.

determination their efforts, at national and regional level, in line with their obligations stemming notably from Article 2 and 3 of the ECHR. The authorities are called upon to ensure effective protection of the human rights of families of missing persons. Useful guidance can be found in the Commissioner's 2016 [Issue Paper](#) on missing persons and victims of enforced disappearance in Europe.

82. Croatia is urged to continue in a determined and principled manner to remedy the effects of displacement by addressing the pending issues related to refugees' access to economic and social rights, including adequate housing. The Commissioner supports the Regional Housing Programme and the constructive role played by the authorities in this context. The remaining issues concerning the administration of the programme in Croatia need to be effectively resolved by the authorities.
83. The Commissioner is concerned that 2 873 persons, primarily Roma, remain stateless or at risk of statelessness in Croatia. He calls on Croatia to redouble its efforts in resolving the remaining cases of undocumented Roma and to ensure systematic registration upon their birth of all children. Croatia is also urged to accede to two important Council of Europe treaties: the 1997 [European Convention on Nationality](#) and the 2006 Council of Europe [Convention for the Avoidance of Statelessness in relation to State Succession](#).
84. The Commissioner underlines that effective access to justice, particularly by persons who are in an economically weak situation, cannot be achieved without an efficient system of legal aid. He urges the authorities to strengthen the legal aid system, in particular by ensuring adequate budgetary allocations to that end.
85. The Commissioner urges the authorities to take resolute action in fighting crimes motivated by hatred, racial or ethnic discrimination. Such crimes need to be adequately qualified and effectively prosecuted and effective, dissuasive penalties need to be imposed on the perpetrators. The authorities are invited to draw on the guidelines contained in [ECRI's General Policy Recommendation No. 11](#) on combating racism and racial discrimination in policing and reflect upon and develop a strategy to promote inter-ethnic dialogue and reconciliation and cherish diversity in society as a whole. Continuous training for legal professionals and law enforcement officers on applying the provisions on combating racism and racial discrimination, as well as the anti-discrimination legislation, need to be ensured.
86. In this context, the authorities and political leaders at all levels are urged to condemn firmly and unequivocally all instances of hate speech and ethnic intolerance, in line with the Council of Europe Committee of [Ministers Recommendation No.R\(97\)](#) on hate speech and with ECRI's [General Policy Recommendation No. 15 on combating hate speech](#).
87. Lastly, the Commissioner is concerned about the lack of effective implementation of the Constitutional Law on the Rights of National Minorities in respect of the use by the ethnic Serb minority of their language and Cyrillic script. He calls on the authorities to abide by the rule of law by ensuring that the constitutional right of this minority to use their language and script in official contacts with local authorities, where applicable, is fully guaranteed, in line with the relevant recommendations made by the Advisory Committee on the FCNM and the Expert Committee of the European Charter for Regional and Minority Languages.

2 HUMAN RIGHTS OF IMMIGRANTS, REFUGEES AND ASYLUM SEEKERS

2.1 GENERAL BACKGROUND

88. The Commissioner's discussion with the authorities and other interlocutors on issues related to immigration and asylum were held in the aftermath of the closure of the Balkan route used by migrants, including asylum seekers, in 2015 and 2016. The Commissioner has noted that from September 2015 to March 2016, 658 729 migrants transited through Croatia. According to UNHCR, no instances of refoulement or ill-treatment of migrants were detected during these transits.
89. The Commissioner commends the authorities' humanitarian approach in dealing with migrants and the solidarity shown by NGOs and ordinary citizens. He also notes with satisfaction the Ombudsman's proactive approach in bringing concerns relating to the human rights of migrants to the authorities' attention, concerning in particular access to adequate information, accommodation and health care. This work was complemented by important synergies of the ombudsmen in the region, including joint visits to migrant reception centres and awareness-raising activities. One such activity was the adoption in November 2015 of a national human rights structures joint [declaration](#) on the protection and promotion of the human rights of refugees and migrants, to which the Commissioner's Office contributed.
90. The Commissioner considers as an important positive development the closure by the authorities last April of the winter transit/reception centre for migrants in Slavonski Brod, given a number of concerns that NGOs and some international organisations had brought to the Commissioner's attention prior to his visit, concerning in particular the living conditions there. Following the closure of the camp, the migrants accommodated therein were moved to the Porin reception centre and the Ježevo detention centre, which were both visited by the Commissioner (see below *Issues related to asylum reception conditions, migrant detention and integration*).
91. The Commissioner's attention was drawn to a draft Law on Amendments to the Aliens Law (the draft Aliens Law) that contains certain positive provisions, such as an expanded list of alternatives to detention and the broadening of the scope of vulnerable persons. However, the Commissioner regrets that the draft law contains provisions which criminalise assistance to irregular migrants and that no exception is made with regard to humanitarian assistance, despite his suggestions to the authorities to refrain from this approach. Moreover, unlike the current law,⁴¹ the draft Aliens Law also criminalises attempts to commit this offence. The Ombudsman⁴² and NGOs have expressed their concerns about possible serious negative effects of these provisions, in particular when migrants' lives and health are at stake. At the time of the drafting of this report the examination of this draft law was pending in parliament.

2.2 OVERVIEW OF THE ASYLUM LAW AND PRACTICE FRAMEWORK

92. According to UNHCR, Croatian asylum legislation is in line with the relevant international and European standards in this field. In order to bring the asylum legislation fully in line with the recast EU legislation, in 2015 the authorities enacted the Law on International and Temporary Protection (the Protection Law), which replaced the 2003 Asylum Law. The Protection Law provides for a regular and an accelerated asylum procedure, for both of which the Service for Foreigners and Asylum, a department of the Ministry of the Interior, is responsible. Asylum appeals are dealt with by four regional administrative courts (Zagreb, Osijek, Split and Rijeka). An administrative appeal in principle has an automatic suspensive effect.

⁴¹ Article 225 paragraph 3 of the current Aliens Law provides that any individual assisting foreign nationals in crossing the border or transiting through the country, or during their stay in Croatia may be sentenced to 60 days' imprisonment or receive a fine of 23 000 HRK (about € 3070).

⁴² Ombudsman's [comments](#) on the draft Aliens Law, sent to the Ministry of the Interior on 21 April 2016.

93. The Commissioner regrets that despite his predecessor's recommendation in this regard, asylum seekers continue to lack access to legal aid in first instance asylum proceedings. Legal aid in these proceedings is currently provided by a UNHCR implementing partner.
94. According to Eurostat, Croatia is among the EU countries with the lowest rates of first time asylum applicants: 1 193 persons applied for asylum in 2012; 1 089 in 2013; 453 in 2014; and 211 in 2015.
95. In 2016 the number of asylum seekers in Croatia increased as the transit to Western European countries became more difficult. As of 10 May 2016, 391 persons sought asylum in Croatia. According to information provided by the authorities there are currently 318 asylum seekers in the country: 168 of them in Porin; 44 in the reception centre for asylum seekers in Kutina; 34 in private accommodation; and 72 in the Ježevo detention centre.
96. According to UNHCR, of 5 040 persons who sought asylum in Croatia from 2004 to 2016, 179 were granted international protection (107 persons received refugee status and 72 subsidiary protection).⁴³ The main countries of origin of these persons were Afghanistan, Somalia, Algeria and Syria. The asylum recognition rate remains low: in 2015 the recognition rate for refugee and subsidiary protection at first instance was 22% and 1% on appeal (while the EU average was 52% for first instance decisions, and 14% for final decisions on appeal).⁴⁴
97. The Commissioner noted the information provided by migration experts that one of the main reasons for the low recognition rates is the fact that most asylum seekers leave the country before a relevant asylum decision is rendered. However, concerns were expressed by the experts that due to administrative court judges' lack of adequate expertise in asylum, negative decisions are rendered even in cases where an appeal should be upheld. A need for training administrative judges on relevant international and European standards in this field was highlighted.
98. In this context, the Commissioner has noted with satisfaction three upcoming training courses on asylum and migration for judges of administrative courts and commercial courts, including a seminar and a round table in July 2016, organised by the Judicial Academy and the Croatian Law Center, and a regional seminar for judges of Croatia, Bosnia and Herzegovina, Montenegro, "the former Yugoslav Republic of Macedonia" and Serbia in October 2016, organised by the Judicial Academy and the Konrad Adenauer Foundation.
99. As regards the application of the 'Dublin Regulation', according to the authorities, since its accession to the EU Croatia has received 3 974 requests⁴⁵ under the 'Dublin procedure' (3 607 requests to "take charge" and 367 "take back" requests.⁴⁶) Croatia has forwarded 78 requests to "take charge" and 411 "take back" requests to other EU member states. As of May 2016, 146 persons were returned to Croatia, while Croatia returned nine persons to EU member states under the 'Dublin procedure'. The Commissioner was informed by the authorities that about 10% of the asylum seekers who transited through Croatia have had their fingerprints taken and registered in the EU asylum fingerprint database (EURODAC).

2.3 ASYLUM SEEKER RECEPTION, MIGRANT DETENTION AND INTEGRATION

2.3.1 ASYLUM SEEKERS' ACCESS TO RECEPTION FACILITIES

100. Croatia currently has 700 places in two open reception centres, in Zagreb and Kutina. Two transit centres for temporary accommodation of migrants are under construction, in Trilj and Tovarnik.

⁴³ The countries of origin of asylum seekers were Afghanistan (1 200), Somalia (510), Syria (382) and Serbia/including Kosovo (315).

⁴⁴ Eurostat, [Asylum decisions in the EU](#), 20 April 2016.

⁴⁵ The majority of these requests came from Austria (2 158), Switzerland (900) and Germany (244), followed by Slovenia (46), the Netherlands (28), Sweden (26), Belgium (19) and France (18).

⁴⁶ In the context of the Dublin regulation 'take charge' concerns a request to another member state to recognise responsibility for an asylum application, while 'take back' concerns a request to another member state to accept receive back an asylum applicant.

101. The Porin reception centre in Zagreb, which was visited by the Commissioner, is a former hotel which has been given for temporary use to the Border Directorate of the Ministry of the Interior. It has the capacity to accommodate 600 persons, primarily asylum seekers. At the time of the Commissioner's visit, 195 asylum seekers, and 47 migrants subject to deportation⁴⁷ resided there. These persons included Syrians, Iraqis, Afghans and Moroccans. The irregular migrants were accommodated in the closed section of the reception centre and their freedom of movement was limited, with them being obliged to return to the centre by 10 pm.
102. The Commissioner noted that the living conditions in the Porin reception centre were good overall. He could, however, sense the feeling of frustration among the residents, in particular young men. Staff members informed the Commissioner that psychosocial assistance is provided at the centre, while specialised psychiatric care is available in a local psychiatric hospital. The Commissioner was informed that a number of social activities and language courses were provided to the residents by many dedicated staff members and representatives of non-governmental organisations. However, several residents stressed the need to increase the number of Croatian language lessons which currently stand at two hours a week. The Commissioner has also noted that there were 20 children of school age at the centre who had not been registered in schools.
103. The reception centre in Kutina, with a capacity of 100 persons, hosts members of vulnerable groups, including families with children, unaccompanied and separated children, single mothers and persons with disabilities. As of March 2016, 77 asylum seekers were accommodated there. Some 30 asylum seekers, who have sufficient funds, have found private accommodation in Croatia.

2.3.2 DETENTION OF MIGRANTS

104. The 2015 Law on International and Temporary Protection guarantees freedom of movement for asylum seekers and other foreign nationals transiting the country. However, it provides for a possibility to restrict asylum seekers' freedom of movement if necessary for the examination of the asylum applications, in particular if there is a risk of absconding. Detention may also be imposed in order to establish and verify the identity and nationality of an asylum seeker, for the protection of national security and public order, and to prevent any abuse of the asylum procedure if there is a reasonable suspicion that protection was requested to forestall deportation.
105. The 2011 Aliens Law provides that migrant detention is to be used as a measure of last resort and upon an individual assessment. Unaccompanied minors can be detained, separately from adults, for the shortest possible period if the necessity of such a measure is established on the basis of an individual assessment. Alternatives to detention, provided for by the law, include residence-related or time-related restrictions on freedom of movement, and the obligation to surrender identity or travel documents. Restrictions to freedom of movement, other than detention, may last up to six months.
106. The same Law provides for detention of foreigners in order to ensure their presence in the deportation procedure, if they represent a threat to national security and in case of a criminal conviction for crimes prosecuted *ex officio*. Furthermore, detention can be used if a foreign national fails to leave Croatia within prescribed deadlines or in order to assess a migrant's age. The law provides that detention shall not exceed six months. In exceptional cases detention may be extended for another 12 months. Detained migrants can challenge the grounds of their detention before an administrative court.
107. The Ježevo detention centre, near Zagreb, is currently the only migrant detention facility in Croatia. It was constructed in 1997 and has a capacity of 140 persons. It comprises two buildings, an old one and a new building for the accommodation of vulnerable persons, including families with children pending their deportation. At the time of the Commissioner's visit, 91 irregular migrants⁴⁸ were accommodated in the old building where twelve persons shared a room, while the new building was empty. In his

⁴⁷ These remained stranded in Croatia following the closure of the Balkan route.

⁴⁸ The main counties of origin are Afghanistan, Albania, Algeria, Eritrea, Morocco and Pakistan.

discussion with the authorities, the Commissioner urged the former to use the new building and move some of the migrants there from the overcrowded rooms in the old building.

108. The persons accommodated in Ježevo included migrants in respect of whom a deportation procedure was pending, and asylum seekers who requested asylum during deportation or who had requested asylum previously but had their freedom of movement restricted because they violated the law. According to the authorities the average length of stay at the centre is 23 days. However the Commissioner encountered migrants who had been there for more than four months. A list of NGOs providing legal aid is available in the centre. There are two social workers there and medical staff visit the centre twice a week. Emergency health care is also available at the centre.
109. The Commissioner noted with regret that, despite his predecessor's recommendations,⁴⁹ the authorities continue to oblige migrant detainees subject to deportation to pay for their accommodation and removal. The Commissioner was informed that in practice this concerns about 20% of migrant detainees in Ježevo. This possibility, as well as a possibility to retain all funds from a foreign national to cover costs of deportation, is provided for in the 2011 Aliens Law. The Commissioner is concerned that these provisions remained in the pending draft Aliens Law.

2.3.3 SITUATION OF UNACCOMPANIED MIGRANT CHILDREN

110. Croatia remains a transit country for unaccompanied migrant minors, as most of them reportedly leave the country before their asylum claim is decided upon by the first instance asylum body. According to the Ministry of Interior, 320 unaccompanied migrant children were registered in Croatia in 2014, and 302 in 2013. In 2015, only four of 149 registered unaccompanied minors applied for asylum. In 2014 and 2015, 10 unaccompanied minors were granted international protection. Unaccompanied migrant children who have not applied for asylum are accommodated in the residential home for children and young people in Osijek, a facility hosting children with behavioural problems. As of April 2016 nine unaccompanied minors were accommodated in Osijek, two of them having stayed there for more than seven months.
111. The Migration Policy 2013-2015 provided for the appointment of special guardians for unaccompanied minors. In 2014, 50 experts were appointed by the Ministry of Social Policy and Youth. Reports have indicated that the guardianship system needs to be improved.⁵⁰ In particular it has been reported that special guardians lack the necessary training on how to act in the best interests of the child and that the criteria for the appointment of guardians are unclear. A tailor-made training course for special guardians was organised by UNHCR, the Ministry of Social Policy and Youth and the Croatian Red Cross in November 2014. A follow-up training course and a guardian handbook are reportedly planned to be developed this year. The Commissioner would appreciate receiving more information about the authorities' plans in this context.
112. The Commissioner draws the authorities' attention to the concerns expressed by the Group of Experts on Action against Trafficking in Human Beings (GRETA) in its 2016 Second Evaluation Round [Report](#) on Croatia. The report noted an increase in the number of unaccompanied migrant minors who disappeared from reception centres for asylum seekers within days of their placement there. In 2014, 75 unaccompanied migrant children who were registered in Croatian reception centres for asylum seekers reportedly disappeared within a few days. GRETA noted that there had been no recorded cases of victims of trafficking in human beings amongst asylum seekers, including unaccompanied children. The Croatian authorities have been urged to intensify their efforts to prevent child

⁴⁹ On 26 July 2010 the Commissioner's predecessor sent a letter to the authorities, upon their request for advice, in which he reiterated his concern at the fact that migrant detainees subject to deportation in Croatia have to pay for their accommodation and at the imposition of an entry ban on them in case of non-payment. He stressed that to impose on migrants, in addition to their detention, the payment of the costs relating to their detention is a measure clearly at variance with international and European standards and he recommended that it be discontinued.

⁵⁰ Human Rights Watch, [Submission](#) to the Human Rights Committee on Concerns and Recommendations on Croatia, March 2015.

trafficking, including by addressing the vulnerability of unaccompanied children and children placed in child care institutions and avoiding that they go missing.

113. Concerning training in this field, GRETA has noted that officials processing asylum seekers' files had received some training on identifying victims of human trafficking. However, only two training courses were organised in 2013 for border officers on identifying victims of trafficking amongst irregular migrants. Underlining the importance of improving the identification of trafficking victims amongst irregular migrants and asylum seekers, GRETA has urged Croatia to provide staff, including medical staff, of asylum and reception centres with adequate training in this context

2.3.4 SOCIAL INTEGRATION OF MIGRANTS

114. The Migrant Integration Policy Index (MIPEX) [2015](#) ranked Croatia 30th out of 38 countries (EU member states plus Australia, Canada, Iceland, Japan, South Korea, New Zealand, Norway, Switzerland, Turkey and the USA). According to MIPEX, newcomers to Croatia face "barely halfway favourable policies for their integration". MIPEX has stressed that future policies and funds need to address the areas missing in Croatia's current integration strategies: work-related language courses, access to vocational training and study grants, targeted education support for children beyond language learning, health entitlements/access and a migrant health plan, discrimination against non-EU citizens and political participation.
115. The aforementioned findings are corroborated by the assessments of the Ombudsman and the Croatian Institute for Migration and Ethnic Studies.⁵¹ The Ombudsman has noted that once enrolled in mainstream education, migrant children receive assistance in learning the Croatian language, but no support is provided for learning any other subjects. The Croatian Institute for Migration and Ethnic Studies has called for increased access to vocational training by non-EU citizens, including through access to study grants for permanent residents and family migrants. A need to increase political participation of non-EU citizens by extending local voting rights to permanent residents was noted. The Institute also stressed that the authorities should guarantee equal healthcare entitlements for all categories of migrants, including undocumented migrants. It was also noted that for permanent residence and naturalisation, language requirements should be made more attainable for non-native speakers of all educational levels.
116. The Migration Policy 2013 – 2015 and the "Action Plan on the removal of obstacles to the exercise of particular rights in the area of the integration of foreigners 2013-2015" have both expired. The Commissioner was informed by the authorities that a working group has been established to develop a national action plan on the integration of migrants. He is looking forward to receiving more information on this issue.
117. During his visit the Commissioner discussed issues pertaining to the social integration of migrants, in particular in light of the authorities' commitments under the EU resettlement and relocation programmes to accept 1 618 refugees. He was informed that the first 50 refugees should be relocated to Croatia by next July; 30 of them from Turkey, 10 from Italy and 10 from Greece. The authorities informed the Commissioner that they intended to ensure an equal geographical distribution of refugees within the country, taking into account GDP and population density. A road-map has been prepared to ensure that there is no administrative overlapping in this context, while an operational plan for integrating these refugees was under preparation.
118. The Commissioner has noted a recent judgment in [Pajić v. Croatia](#),⁵² in which the Court found a violation of Article 14 in relation to Article 8 ECHR concerning the authorities' refusal of the applicant's request for a residence permit in Croatia for the purposes of family reunification with her same-sex partner. The Court noted that while the 2011 Aliens Act provided for such a possibility for heterosexual partners, same-sex couples were tacitly excluded from its scope, which amounts to a

⁵¹ Croatian Institute for Migration and Ethnic Studies, [Integration of migrants in the EU, with a focus on Croatia: strategic positions of the Institute for Migration and Ethnic Studies](#) (in Croatian), February 2016.

⁵² Judgment of 23 February 2016.

difference in treatment based on sexual orientation. The Court concluded that no justification had been provided for this by the Croatian government and that there was no objective and reasonable justification for maintaining the blanket exclusion of family reunification for same-sex couples.

2.4 CONCLUSIONS AND RECOMMENDATIONS

119. The Commissioner commends the authorities' humanitarian approach in dealing with migrants, including asylum seekers, during their transit through Croatia in 2015 and 2016. He stresses the need for Croatia to now focus on addressing the remaining shortcomings in its asylum and immigration system, on partaking in the EU-wide refugee reception responsibility sharing, and on enhancing all migrants' effective integration in Croatian society.
120. Underlining the importance of access to legal aid for asylum seekers, the Commissioner calls on the authorities to take all necessary measures, including legislative ones, to enable asylum seekers to have effective access to legal aid in first instance asylum proceedings.
121. The Commissioner is concerned about the existence in the current Aliens Law and in the pending draft Aliens Law of provisions which oblige migrant detainees subject to deportation to pay for their accommodation and removal, and the continuous use of these provisions by the authorities. The Commissioner underlines that detention is part of a state's functions. It is thus a state's own obligation to cover the expenses of such services that serve public interests and to uphold the highest possible human rights standards in this context. The authorities are called upon to repeal the relevant provisions of the Aliens Law and to terminate this practice.
122. The Commissioner welcomes the inclusion in the draft Aliens Law of alternatives to detention. Recalling the Council of Europe Parliamentary Assembly [Resolution 1707\(2010\)](#) on *detention of asylum seekers and irregular migrants in Europe*, he calls on the authorities to move towards an abolition of migrant detention. Of particular importance is the Parliamentary Assembly's recommendation to member states to consider alternatives to detention and provide for a presumption in favour of liberty under national law which should also contain a clear framework for the implementation of alternatives to detention.
123. The Commissioner invites the authorities to create adequate conditions for the effective protection of unaccompanied migrant children in line with the principles set out in the Council of Europe Parliamentary Assembly (PACE) [Resolution 1810 \(2011\)](#) on "Unaccompanied children in Europe: issues of arrival, stay and return" and in [General Comment No. 6 \(2005\)](#) of the UN Committee on the Rights of the Child on the treatment of unaccompanied and separated children outside their country of origin.
124. The Commissioner calls on the authorities to fully implement the recommendations of the Council of Europe Group of Experts on Action against Trafficking in Human Beings, while paying particular attention to those relating to the protection of unaccompanied migrant children.
125. The criminalisation of social and humanitarian assistance to irregularly present migrants encourages intolerance and racism as it punishes people for helping others on the basis of their immigration status.⁵³ Recalling PACE [Resolution 2059 \(2015\)](#) on criminalisation of irregular migrants: a crime without a victim, calling for an end to the threat of prosecution on charges of aiding and abetting irregular migration of persons who rescue migrants, the Commissioner calls on the authorities to repeal the provisions of the Aliens Act pertaining to the criminalisation of humanitarian assistance to irregular migrants and to refrain from introducing similar provisions in the future.
126. Lastly, the Commissioner is concerned about the existence of many obstacles to migrant integration. He stresses the importance for Croatia to develop and implement integration policies that are well justified to migrants and the public, proportionate to help all types of people, including vulnerable and discriminated groups, and proven effective for improving everyone's well-being and shared sense of

⁵³ ECRI, [General Policy Recommendation No. 16](#) of safeguarding irregularly present migrants from discrimination, adopted on 16 March 2016.

belonging. Useful guidance in this context can be found in the Commissioner’s 2016 [Issue Paper](#) “Time for Europe to get migrant integration right”. Croatia is called upon to accede to the [1992 Convention on the Participation of Foreigners in Public Life at Local Level](#).

Embargo until 5 October 2016, 00:01 Paris time

3 FREEDOM OF THE MEDIA

3.1 GENERAL

127. For the last ten years Croatia has been evaluated by international media actors as being partly free as concerns freedom of the press.⁵⁴ In 2016 it fell to 63rd place in the World Press Freedom Index, from 58th place in 2015. These rankings indicate that an adequate environment for the free work of the media has been lacking for many years. However, certain recent steps taken by the government in this field have put Croatia under the international spotlight, and prompted the expression of serious concerns by many stakeholders.
128. The Constitution provides for freedom of expression and freedom of the media, as well as the right of access to information. The 2004 Law on Media and the 2009 Law on Electronic Media were amended in 2013. However, no strategic document concerning media has been adopted yet. The Commissioner has been informed that a media strategy had been under preparation by the previous government, but there has been no follow up to date. The Commissioner would appreciate receiving more information about the authorities' plans in this context.
129. The Commissioner has noted with concern that defamation remains a criminal offence, while imprisonment for defamation was abolished in 2006.
130. A 2015 media monitoring report by experts⁵⁵ found that the main issues of concern in Croatia concerned the weak protection of journalists' rights and working conditions, commercial influence on editorial policies, lack of media literacy policies, and of independence of community media, as well as a lack of narrowly defined state advertising regulations. The report noted that media policies should target these areas to improve the overall conditions of media pluralism in the country.

3.2 MAJOR ISSUES OF CONCERN

3.2.1 PROTECTION OF JOURNALISTS FROM VIOLENCE

131. Since May 2014, 24 attacks against journalists, including physical attacks, death threats and intimidations, have been reported.⁵⁶ In June 2015, the European Federation of Journalists and the International Federation of Journalists submitted an alert on the [Council of Europe's Platform to promote the protection of journalism and safety of journalists](#) concerning the physical attack against Željko Peratović,⁵⁷ chief editor of the 45lines.com portal and a prominent investigative journalist. The criminal proceedings against the perpetrators charged with grave bodily injuries are pending, after the prosecution concluded that there was not sufficient evidence to prosecute them for an attempted murder. It has been reported that Mr Peratović left Croatia permanently and moved to Switzerland due to these developments.
132. In August 2015 the OSCE Representative on Freedom of the Media⁵⁸ called on the authorities to conduct prompt investigations into attacks against journalists and expressed her concern about impunity for old cases of attacks. These cases included the physical attacks on Domagoj Margetić, a

⁵⁴ Freedom House: Freedom of the Press, 2015 [Scores - country entries/ Croatia](#).

⁵⁵ European University Institute, [Media Pluralism Monitor 2015 – Results](#), entry on Croatia.

⁵⁶ Index on Censorship, Croatia, [Unsolved threats and assaults underscore rapid deterioration of media freedom](#), 28 August 2015.

⁵⁷ Peratović was beaten up by three unidentified assailants in May 2015 at his home in Luka Pokupska, near Karlovac. As reported by local and regional media, he believed that the attack was prompted by his article on corruption and the trial of Yugoslav-era senior security official Josip Perković.

⁵⁸ OSCE Representative on the Freedom of the Media: [OSCE Representative calls on Croatian authorities to protect differing and critical voices and to investigate string of attacks on journalists](#), August 2015.

freelance journalist, and on Hrvoje Šimičević,⁵⁹ a journalist for the portal H-Alter in August 2014 and 2015 respectively. She also mentioned the case of death threats to Katarina Marić Banje, a journalist of the newspaper Slobodna Dalmancija; to Drago Pilsel, editor-in-chief of the Autograf website; and to Saša Leković, President of the Croatian Journalists Association.

133. According to information provided by the authorities, as of May 2016 the perpetrators of the attack on Domagoj Margetić were not identified and the criminal investigation was pending. As regards the case of Hrvoje Šimičević, the perpetrators were identified and the prosecutor has initiated misdemeanor proceedings for 'disturbance of public peace and order' which carries a fine or a sentence of 30 days' imprisonment. The authorities have identified in Bosnia and Herzegovina the person who had sent the death threats to Drago Pilsel and informed the public prosecutors of both countries about this. The persons who sent death threats to Saša Leković and Katarina Marić Banje have not yet been identified.
134. The recently reported cases include a series of death threats to Saša Leković following the publication in January 2016 by veteran organisations of a press release in which they accused the Croatian Journalists' Association and Mr Leković, its president, of what they saw as an illegitimate sanctioning of TV Z1 (see section below *Developments related to the electronic broadcast regulator*). Last April Ante Tomić,⁶⁰ a journalist and writer, who had previously been subjected to physical attacks, was attacked again in public. Criticism has been expressed by many media actors about what was published as a reaction to this attack by the Ministry of Culture, which appeared to give legitimacy to the attackers.⁶¹ In his discussion about this issue with the Minister of Culture, Mr Zlatko Hasanbegović, the Commissioner underlined that attacks against journalists needed to be taken with the utmost seriousness and that a clear and strong message that violence against journalists is unacceptable should be sent by the authorities.

3.2.2 DEVELOPMENTS RELATED TO PUBLIC SERVICE MEDIA

135. The Commissioner recalls that the first priority for public service media must be to ensure that their culture, policies, processes and programming reflect and ensure editorial and operational independence. The shift from being the state broadcaster – with strong links to the government, and weaker accountability to the wider audience or civil society – to becoming genuine public service media, with editorial and operational independence from the state requires a significant rise in quality standards and editorial ambition.⁶²
136. The state-owned public broadcaster, Croatian Radio-Television, is funded through advertising and licensing fees. The director general and the members of the supervisory board are appointed by the parliament. Allegations of political influence on and lack of independence of the public service media have been an issue of concern for a number of years. In [2012](#)⁶³ and [2013](#)⁶⁴ the OSCE Representative on the Freedom of the Media expressed her concern about the treatment of journalists and the practice of silencing journalists at Croatian Radio-Television. She stressed that developments in public service media showed that there was indeed a serious problem with the perception of media freedom and freedom of expression in Croatia. She called on the government and the management of Croatian

⁵⁹ The attack on Šimičević reportedly took place following an event in Rijeka, that he was covering, where Croatian and Bosnian women of different nationalities talked about their war experience. This event was followed by a protest organised by veterans and local football supporters.

⁶⁰ Total Croatia News, [Culture Ministry Causes Controversy with Its Response to Attack on Ante Tomić](#), April 2016.

⁶¹ Večernji list, [Kulturnjaci traže ostavku Hasanbegovića zbog „sramotnog prioćenja“ Ministarstva kulture o napadu na Tomića](#), April 2016.

⁶² Council of Europe Committee of Ministers [Recommendation CM/Rec \(2012\)1](#) on media pluralism and diversity of media content, February 2012.

⁶³ This statement relates to the cases of Elizabeta Gojan and Maja Sever, HRT journalists. Ms Gojan faced dismissal for having given an interview to an international media outlet on media freedom in Croatia, while Ms Sever faced disciplinary sanctions for allegedly being unbalanced in the selection of guests for her show. In January 2016 Ms Gojan returned to HRT following a court judgment that found that her dismissal was illegal.

⁶⁴ This relates to the circumstances in which the journalists of HRT Denis Latin, Katja Kušec and Ružica Renić were relieved of their duties there, following a criticism related to their work expressed publicly by the then prime minister.

Radio-Television to refrain from any action that could lead to censorship and threaten editorial independence. Concerns in this context have also been expressed in recent years by the Croatian Journalists' Association.

137. In March 2016 the Croatian parliament dismissed the Director of Croatian Radio-Television, Mr Goran Radman, and appointed a director ad interim for a period of six months. The Commissioner noted with concern that the replacement was carried out without a parliamentary debate on the public broadcaster's annual report, as it was planned, while the dismissal had already been announced by some members of the government.
138. During his visit the Commissioner noted the concerns expressed by media representatives about a series of managerial and editorial changes taking place in Croatian Radio-Television under the interim management. Following the Commissioner's visit, the Croatian Journalists' Association and the Journalists Union⁶⁵ published a statement in which they noted that within two months of the new management of Croatian Radio-Television taking up office, 70 directors, editors, journalists and staff members had been replaced or dismissed. They stressed that given the absence of criteria in accordance with which these changes were carried out, the issue arises as to whether these were politically motivated changes. Concerns were also expressed about what they considered as censorship in the above organisation and shortcomings in the selection and presentation of TV programmes.
139. In his discussion with the Commissioner the Minister of Culture, Mr Zlatan Hasanbegović, stressed that the Law on Croatian Radio-Television was 'inherited' from the previous government, as it was adopted in 2012, replacing the law which provided for less influence of the parliament on the appointment of the public service media management. He also noted that in 2012 there were dozens of managerial and staff replacements at Croatian Radio-Television.

3.2.3 DEVELOPMENTS RELATED TO THE ELECTRONIC BROADCAST REGULATOR

140. Electronic media regulation is carried out by the Croatian Agency for the Electronic Media (the Agency), managed by the Electronic Media Council (the Council). The chairperson and members of the Electronic Media Council are appointed for a five-year term and relieved of duties by the Croatian parliament, upon government proposals. The Council has seven members, one of them being the Director of the Agency who chairs the Council. The Agency is financed by media providers' contributions. The Agency has a fund for pluralism and diversity of electronic media financed with 3% of the collected TV fees. Non-profit electronic media content is supported through this fund.
141. In March 2016 the government proposed to the parliament to reject the annual report of the Agency and the Electronic Media Council for 2014, and to terminate the mandates of the chair and the members of the Council before their expiry. In its [opinion](#) on the annual report the government noted, *inter alia*, that the report was incomplete because it did not state whether the Council carried out a supervision of the use by Croatian-Radio Television of the monthly TV subscription fee and other public funds. The government also noted that the Council failed to inform the government about the existence of reasons to relieve of duty a member of the Council in respect of whom the Commission for conflict of interest established a conflict of interest in December 2014.⁶⁶ On 18 March, Ms Mirjana Rakić, the Director of the Agency and Chair of the Council submitted her resignation.
142. The Commissioner noted with serious concern the view of many of his interlocutors that the termination of the Council's mandate was related to its decision last January to suspend for three days the license of the TV station Z1 for airing views that were considered to constitute hate speech.⁶⁷ This

⁶⁵ Croatian Journalists Association, [Zabrinjavajuće stanje na HRT-u](#): u nepuna dva mjeseca gotovo 70 smjena, programski propusti i izostanak profesionalnih kriterija, May 2016.

⁶⁶ From May 2013 to December 2014 this Council member held two public positions contrary to relevant legislation, being a member of the Administrative Board of the Croatian News Agency and of the Council at the same time.

⁶⁷ The Council found that the anchor of the TV show, Marko Jurić, had incited hatred when he, in his message aired at the very end of the show, warned the citizens of Zagreb not to walk near the Serbian Orthodox Cathedral of the Transfiguration

ban prompted public demonstrations of about 5 000 persons, organised by war veterans and attended by a deputy speaker of parliament. During the demonstrations participants were chanting the slogan "For Homeland Ready" ("Za dom spremni") and were calling for Ms Rakić's resignation using particularly offensive remarks centred on her ethnic (Serbian) origin.

143. In a letter sent on 29 April 2016 to the Prime Minister of Croatia, the Secretary General of the Council of Europe addressed the concerns regarding the challenges to the independence of the public broadcaster and the broadcast regulator, referring to an "alert" posted last March on the [Council of Europe's Platform to promote the protection of journalism and safety of journalists](#) by the European Federation of Journalists, the International Federation of Journalists, Index on Censorship and the Committee to Protect Journalists. In the "alert" these organisations expressed their concern about political pressure on the Croatian public broadcaster and the broadcast regulator. Secretary General Jagland stressed that it was essential to ensure that adequate safeguards, in law and in practice, exist against political bias in the domestic procedures for nomination, appointment and tenure, as well as protection against potentially illegal dismissal with regard to the key position in these bodies. He offered Council of Europe expertise in ensuring that adequate safeguards are duly enshrined in domestic law and implemented in practice.
144. The Commissioner has been informed that the Council has continued to carry out its work in its current composition, including Ms Rakić, who still awaits a formal decision by the government on her resignation.

3.2.4 THE TERMINATION OF NON-PROFIT MEDIA PUBLIC FUNDING

145. The Commissioner underlines that media pluralism and diversity of media content are essential for the functioning of a democratic society and are the corollaries of the fundamental right to freedom of expression and information as guaranteed by Article 10 of the European Convention on Human Rights.
146. Many of the Commissioner's interlocutors expressed concern about the decision of the Minister of Culture, last January, to abolish state subsidies for non-profit media and to dismiss an expert committee for non-profit media. They stressed that as a result of the termination of the above funding, non-profit media working on the promotion of minority rights, such as the newspaper of the Italian minority *the Voice of People*, had their funds cut by 50% this year while they will not receive funding next year.
147. In his discussion with the Commissioner, the Minister of Culture stressed that the state subsidies for non-profit media was a two-year 'experiment' of the previous government which was terminated because media funding should not be the ministry's competence. He also noted that non-profit media continue to be financially supported through the Agency's fund for pluralism and diversity of electronic media. He stressed that the lack of transparency in the allocation of subsidies has led to conflicts among non-profit media.
148. The Commissioner regrets this development, given the reported positive impact on pluralism in Croatia of non-profit media subsidies. He has noted the views that non-profit media were considered as an oasis of critical and professional journalism, focusing on topics ignored by most other media outlets, bolstering the freedoms and rights of minority groups, promoting democracy, tolerance, multiculturalism and pluralism.⁶⁸ Serious concerns have been raised by a number of the Commissioner's interlocutors that this step by the government, along with the cuts in public funding for NGOs, and for independent cultural and publishers, was part of a pattern aimed at undermining pluralism in Croatia.

of the Lord, because "their children could become victims of Četnik slaughter". In his public reaction on Twitter the Commissioner has supported the Electronic Media Council's decision.

⁶⁸ International Federation of Journalists, [Croatia: IFJ asks for review of decision to abolish state subsidies for non-profit media](#), February 2016.

3.2.5 JOURNALISTS' LABOUR RIGHTS AND ETHICAL JOURNALISM

149. The Ombudsman's 2015 Annual Report noted a deterioration of journalists' labour rights in recent years. It also noted that an extensive use by media outlets of temporary contracts was making it easier to dismiss journalists. The Ombudsman concluded that in such a context many journalists resort to self-censorship. The Commissioner was also made aware of these concerns by media representatives that he met, including a representative of the Croatian Journalists' Union.
150. The aforementioned 2015 media monitoring report⁶⁹ underlines the weak protection of journalists' rights and working conditions as some of the major issues of concern in Croatia. According to this expert report progress has been made in protecting journalists' rights with the establishment of the Centre for Freedom of Expression in the Croatian Journalists Association, whose impact, however, was yet to be seen. It noted that, overall, journalists' organisations were not effective in guaranteeing editorial independence and professional standards. In 2015 Freedom House noted that membership in the Croatian Journalists Association continued to decline in 2014, "partly due to a decrease in the number of journalists operating in Croatia's difficult economic environment as well as in the number of working journalists interested in joining a union." A new journalists' association - the Croatian Journalists and Publicists - was established in 2015, headed by the director ad-interim of Croatian Radio-Television. Polarisation along ideological lines in the media sector has become very pronounced.
151. In this context, the Commissioner underlines the need for strengthening ethical journalism and ensuring that the mechanisms for self-regulation are effectively used. He is concerned that the initiatives and actions taken in this regard may be undermined by the reported polarisation in the media sector, which is an issue that requires serious reflection by journalists themselves. This is even more important given the need to address effectively the continued trend of hate speech in the media.⁷⁰

3.3 CONCLUSIONS AND RECOMMENDATIONS

152. The Commissioner is concerned that Croatia has not yet decriminalised defamation. He reiterates that as long as defamation is a criminal offence and journalists can be threatened with disproportionate sanctions and fines, a chilling effect risks limiting the exercise of freedom of expression and of media.⁷¹ The Commissioner encourages the authorities to consider repealing all criminal provisions against defamation and to deal with it through strictly proportionate civil sanctions only.
153. The Commissioner is very concerned by the lack of awareness of the authorities of the adverse impact that attacks against journalists and impunity for such attacks have on freedom of the media, and, as a consequence, on democracy. Recalling the Council of Europe Committee of Ministers 2016 Recommendation CM/Rec(2016)4 on the protection of journalism and safety of journalists and other media actors, the Commissioner urges the authorities to fulfill their positive obligation to protect journalists and other media actors from all forms of attacks and to end impunity for such attacks. The authorities are also urged to unequivocally condemn violence against journalists and refrain from discourse which is detrimental to media freedom and which could lead to journalists ceasing to perform their important role of public watchdogs in European democracies.
154. At the same time, journalists themselves must show a high degree of respect for human rights and abide by the ethical standards of journalism.⁷² Media actors should promote education and systematic training on ethical journalism, usefully drawing upon the Council of Europe's relevant rich expertise

⁶⁹ European University Institute, 2015 Media Pluralism Monitor – Croatia, mentioned above.

⁷⁰ GONG, Report on the monitoring of the hate speech in the media, http://gong.hr/media/uploads/2016_04.pdf (in Croatian), April 2016.

⁷¹ See the Commissioner's [Joint Statement](#) with Frank La Rue, UN Special Rapporteur on the promotion and protection of the rights to freedom of opinion and expression, and Dunja Mijatović, OSCE Representative on Freedom of the Media, Defamation in Italy: a draft law to be changed, June 2014.

⁷² See the Commissioner's [Positions on freedom of the media](#), 2010, and the Commissioner's thematic [webpage on media freedom, independence and diversity](#).

and standards. All media actors need to reflect upon and overcome the polarisation in the media sector.

155. Media are the most important tools of freedom of expression in the public sphere, giving effect to every person's right to seek and receive information. By providing varied and high-quality content, public service media contribute to the reinforcement of democracy and social cohesion, and promoting intercultural dialogue and mutual understanding. As noted in the Council of Europe Committee of Ministers [Recommendation](#) CM/Rec(2012)1 on Public Service Media Governance, the appointments cannot be used for exerting political or other influence over the operation of the public service media. Furthermore, the appointments are made for a specified term that can only be shortened in limited and legally defined circumstances – which should not include differences over editorial positions or decisions. The Commissioner urges the authorities to ensure that the independence of the public service media is preserved and to refrain from any action that could lead to censorship and threaten editorial independence.
156. The Commissioner is seriously concerned about the aforementioned steps taken by the authorities, which have had a serious negative impact on the independence of the broadcast regulator. Recalling the Council of Europe Committee of Ministers [Recommendation Rec\(2000\)23](#) on the independence and functions of regulatory authorities for the broadcasting sector, the Commissioner calls on the authorities to guarantee the broadcast regulator's genuine independence through measures enabling it to perform its functions effectively and efficiently, and by refraining from any action which may undermine its independence.

Embargo until 5 October 2016, 00:01 Paris time