

**Joint Opinion  
of Croatian Civil Society Organizations  
on the Progress regarding the Readiness of the Republic of Croatia  
to Close Negotiations in Chapter 23 - Judiciary and Fundamental Rights**

**Zagreb, May 10, 2011**

In February 2011, a group of 15 Croatian civil society organizations<sup>1</sup>, active in the field of human rights affirmation and protection, issued a joint opinion on Croatia's readiness to close negotiations in Chapter 23 – Judiciary and Fundamental Rights. Three months ago we concluded that Croatia was not ready to close negotiations in this specific chapter, since irreversible positive changes in the rule of law and human rights protection could not be witnessed. We have, however, stated that if the Croatian Government and Parliament recognized these issues as political priorities, and implement some of our proposed recommendations; it would be proof of a standing commitment on the part of Croatian authorities to truly embrace European values and standards. In that sense, we found it worrying that it took the Croatian Government more than a month, following our Opinion, to contact us in order to discuss issues raised in our Opinion and to respond to our requests to publicly discuss issues related to the rule of law in Croatia.

**This opinion presents our follow-up assessment, reflecting specifically on the progress, or lack thereof, since February 2011**, in the area of the reform of the judiciary, preventing and combating corruption, human rights protection, political rights, national minority and returnee rights, processing war crimes and cooperation with the ICTY. The opinion is based on the monitoring conducted by CSOs in their respective areas of expertise, the review of official progress reports on Chapter 23, issued on April 6 and April 20, consultative meetings with the President of National Committee for Monitoring the Accession Negotiations and the Minister of Justice in March 2011 and a public round-table organized by the Human Rights House, with the support of Council for Civil Society development held on April 6, 2011.

**Generally speaking, despite some positive changes in specific areas of human rights protection, sustainable return and prosecution of war crimes, many priority areas have still not been adequately tackled, while some of the initiated normative changes have potential negative effects. Furthermore, the initiated legislative changes have not been based on the principles of participation and transparency. Therefore, we still do not see evidence of sustainable mechanisms that would ensure improvements in everyday lives of Croatian citizens, nor are we convinced of reform implementation capacities.**

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<sup>1</sup> B.a.B.e. – Be Active Be Emancipated, Centre for Peace, Nonviolence and Human Rights Osijek, CESI – Centre for Education, Counselling and Research, CMS – Centre for Peace Studies, Documenta – Centre for Dealing with the Past, GOLJP – Civic Committee for Human Rights, GONG, Green Action, Right to the City, SDF – Serbian Democratic Forum and Transparency International Croatia, ZINH - Association of Investigative Journalists of Croatia, with inputs on specific issues from the Association of Roma Women "Bolja budućnost", Bosnian National Community for Zagreb and Zagreb County, and the Youth Initiative for Human Rights.

**We are, nonetheless, aware of the wider political implications of further postponement of Croatia's accession**, in terms of political stability both in Croatia and the entire Western Balkans, which the EU must be considering in its decision-making process regarding the pace of Croatia's accession. Therefore, **should the EC decide to close negotiations in Chapter 23 for political reasons**, rather than on the basis of an objective assessment of the quality of Croatia's policies and implementation capacities in this area, **we emphasize the importance of establishing a formal independent monitoring mechanism** in at least the first three years upon the closing of negotiations, throughout the ratification period and beyond.

**It is, in our opinion, a matter of credibility - not only of Croatia, but also of the EU institutions – and an absence of monitoring the implementation of crucial reforms would make it hard, if not impossible, to justify the longevity of the negotiations process to Croatian citizens, as well as to justify the decision on accession to EU member-states' citizens and tax payers.** The closing of negotiations in this vital Chapter should be understood as an instrumental step in the forthcoming process of formulation of the Accession Agreement and insurance of sufficient public support both in Croatia and across the EU for Croatia's membership in the EU, by means of informed public debates serving as a basis for Croatia's referendum and ratification processes in the national parliaments of the EU member states. We are convinced that Croatian and EU citizens are primarily interested in the quality of the rule of law, governance and human rights protection across our shared continent.

For these reasons, we present our key requests, addressed at the Croatian Government and the European Commission, for additional action to be taken in the scope of the negotiation process and its immediate aftermath. Without tangible demonstration of true and lasting political will and responsibility, the spirit and the purpose of the entire reform process in the Croatian justice sector will be reduced and publicly denounced as sheer ticking of the benchmark boxes.

1. **Swift and thorough disclosure of all negotiation positions and agreements reached between the Government of Croatia with the EC in all chapters, prior to the closing of the negotiations in Chapter 23**, as an indicator of realisation of freedom of information and Governments' real interest in informing the citizens on the contents and obligations of the accession;
2. **Establishment of an effective monitoring mechanism of all obligations deriving from Chapter 23**, located in the Croatian Parliament, engaging parliamentary parties, academia, experts and CSOs and closely cooperating with MEPs and EC experts, with the status of special rapporteur to the EU institutions, on a semi-annual basis, at least three years upon the closing of negotiations. This monitoring mechanism for Chapter 23 should be specified in the Accession Agreement;
3. **Urgent revision of the Free Legal Aid Act**, to align it with the opinion of the Constitutional Court, prevent legal vacuum as of July 16, 2011, and take into account the conclusions and recommendations of an expert study commissioned by the Human Rights Centre in order to ensure full access to justice for the most vulnerable Croatian citizens, experiencing poverty, marginalization and social exclusion.
4. **Substantial changes to the Freedom of Information Act**, establishing an effective mechanism for the test of public interest and ensuring coherence of the Data Secrecy Act;

5. **Effective prevention of conflict of interest by issuing a new call for candidacies for the Commission for the Prevention of Conflict of Interest** where requirements include experience and track-record in combating corruption and conflict of interest;
6. **Stricter sanctioning of attacks on whistle-blowers, journalists and human rights activists in the amendments to the Penal Code;**
7. **Evidence of real-life and real-time employment of members of national minorities in 2011 and the listing of targets over the upcoming two years**, specified by region and state and local institutions, with accompanying financial plan and description of supportive measures, such as public information, training etc.
8. **Urgent amendments and adoption of the Law on Changes to the Law on Areas of Special State Concern in order to ensure that the Government takes full and exclusive responsibility for all compensations stemming out of the unresolved cases of illegal investments in returnee property.** Furthermore, existent legal provisions should be enabling returnees to exchange their property with the State, at an equivalent value, appraised in accordance with its value at the time of original use, prior to war devastation and damages incurred due to irresponsible management by the Government.
9. **Removal of the deadline for applications for purchase of State-owned property on part of former holders of tenant rights**, with property prices equalized on the entire territory of Croatia, in line with the prices paid by holders of tenant rights in mid 1990s.
10. **Political commitment towards establishing a Fund for victims of war crimes and their families**, as well as expense compensation in proceedings for compensation of damages for wrongful death of close family members, in accordance with the UN reparation standards.
11. **Immediate annulment of the Law on Golf Courses**, given its corruptive potential especially in relation to local Government, risks of violation of private ownership rights and the fact that it has turned into a national symbol of state capture by interest groups;
12. **Annulment of the total prohibition of public assembly on St. Mark's Square in Zagreb in the Law on the Amendments to the Law on Free Assembly**, to enable free expression of political views in the premier public space, with outstanding symbolic value and heritage, where citizens can directly communicate with their elected representatives.

## **Reform of the Judiciary**

In our opinion issued in February 2011, we have questioned the political impartiality of the judiciary, criticized the lack of openness of the judicial authorities, and emphasized the inefficiencies of investigative and judicial proceedings regarding attacks on journalists and human rights activists. Furthermore, we pointed out the lack of timely and effective access to justice in administrative procedures related to freedom of information, spatial planning, construction, and environmental protection; warned about the insufficient readiness for the implementation of the General Public Administration Procedure Reform and expressed concerns regarding the capacities of Croatian judicial authorities to implement international conventions and the relevant EU legislation. We also spoke about widespread negative public opinion on the impartiality and credibility of the Constitutional Court, repeatedly reinforced by delays or outstanding expedencies in issuing opinions on constitutionality of government-driven legislation, and a chronic lack of initiative to revise the status of Court's judges appointed by political decree of the parliamentary majority. Three months later, all our main concerns remain.

In the meantime, the appointment of 62 judges carried out in accordance with the old Law on State Judicial Council, resulted in 27 appeals (44%) submitted by April 26, 2011 to the Administrative court, on the grounds of legality of appointment (mostly related to disrespecting the order list for appointments deriving from the total points received by each judge)<sup>2</sup>. The fact that the judges themselves appeal the appointment procedure supports our claim of questionable impartiality of the judiciary and certainly does not support the Government's claims that the appointments are based on the application of uniform, transparent, objective and nationally applicable criteria. As this is a *conditio sine qua non* for the rule of law, **we remain adamant that the reform of the judiciary be continuously monitored by an independent cross-sectoral and interdisciplinary official monitoring and reporting mechanism** in at least the first three years upon the closing of negotiations, throughout the ratification period and beyond.

We propose that this instrumental monitoring function be nested in the Croatian Parliament, by means of restructuring of the existent special working body – the National Council for Monitoring Anti-Corruption Strategy Implementation, whose mandate and structure would be modified to ensure strong mandate, competences and credibility in monitoring the track-record and necessary follow-up reform actions and obligations deriving from the accession process in Chapter 23 and related reform areas. In order to close the monitoring gap between domestic and EU institutions, we propose this specialized monitoring body of the Croatian Parliament be given the status of special rapporteur to the EU institutions.

**The proposed *National Council for Monitoring Anti-corruption, Rule of Law and Fundamental Rights* would be mandated to produce and present semi-annual reports with independent assessments and recommendations, resulting in binding parliamentary conclusions to the government, regarding the following critical issues:**

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<sup>2</sup> Based on the statement of the spokesperson of the Administrative Court Lidija Prica, reported in the article by Slavica Lukić "Ogorčeni suci Upravnom sudu: Nećemo zatvoriti Poglavlje 23 jer se politika i dalje miješa u pravosuđe" (*Embittered judges to the Administrative Court – We will not close Chapter 23 because politics interferes with the judiciary*), published in Jutarnji list on May 5, 2011 also available at <http://www.sudacka-mreza.hr/dokument.aspx?DocID=2750>

1. **impartiality** of the appointment, promotion and disciplinary procedures related to judges and public prosecutors;
2. **effects** of the implementation of the judicial reform measures, defined in different strategic documents and action plans;
3. **effects** of the anti-corruption policy implementation;
4. **efficiency and effects** of the war-crime processing before domestic courts and the broader process of dealing with the past and peacebuilding, with special focus on sustainable return and development of pots-war areas;
5. **effectiveness of the institutional system** for the promotion and protection of human rights, including political, social, minority, and environmental rights, and their status.

The monitoring body would be comprised of representatives of parliamentary parties, academic community, experts and relevant CSOs, with the structure and procedural-set-up that disables dominance of the ruling parties or opposition. Hence, we propose that it be chaired by a member coming from academic, expert or CSO community and comprised of six parliamentarians (with equal ratio of ruling and opposition members) and seven non-partisan members from other institutions.

The appointment procedure should be clearly defined both for parliamentary members (previous political and expert activities in the area of judicial reform and human rights should be taken account) and external members, based on nominations on part of leading academic and expert institutions as well as leading CSOs with proven track-record in policy monitoring and advocacy in the of judicial reform, anti-corruption, human rights, war crimes and peacebuilding. In producing its reports and formulating conclusions and recommendations, the Council would consult and cooperate closely with Ombudsman Institution(s) and relevant university departments throughout Croatia. Close cooperation with EU experts and parliamentarians is also envisaged.

### **Prevention of and Combating Corruption**

Despite the Government's claims that high-level corruption is being dealt with successfully, issues regarding the selectiveness of investigative and prosecutorial proceedings still remain. No investigations have taken place in the case of numerous, repeated and enduring allegations of corruption in the City of Zagreb and the Ministry of Sea, Transport and Infrastructure, while only four<sup>3</sup> valid convictions in high-profile cases and lack of seizures of illegally obtained property indicate that significant further efforts are necessary to achieve results in this area.

Furthermore, there have been no developments concerning the protection and support to whistle-blowers, investigative journalists, and human rights activists, while the exemplary case of state capture in the Law on Golf Courses is still not perceived as an area of any concern in the context of corruption by Croatian political elites, as well as, seemingly, the Constitutional Court which still has not issued its opinion on the Law's constitutionality, requested by a coalition of CSOs in February 2009, and again in October 2010.

On the positive side, in combating corruption and conflict of interest in political campaigning, the State Election Commission has announced the employment of three staff members to monitor the transparency of financing election campaigns, while some parties have already opened special bank accounts, in accordance with the recently amended Law on Financing Political Parties. In the design

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<sup>3</sup> Two members of the Croatian Privatisation Fund, former deputy prime minister, and one former Ambassador, as reported by the Croatian Government, in its first progress report on Chapter 23, adopted on April 6, 2011.

of the *Rules of Procedure Regarding Documenting and Issuing Receipts for Donations and Membership Fees, Reports on Donations Received for Campaigning and Financial Reports for Campaigning*, the Ministry of Finance has sent the draft to the interested CSOs, yet within a five day time-frame, including the Easter weekend and one day public holiday. The proposed draft Rules of Procedure do not adequately regulate reporting in advertising during campaigns, as parties are not obliged to specify the media, the amount of media time or space, the amount of money spent nor discounts negotiated.

Public interviews for the selection of candidates to be appointed to the Commission for the Prevention of Conflict of Interest transformed into a national, day-long entertainment show, as short-listed candidates could not give examples of the conflict of interest. Nonetheless, their candidacies were approved by the Parliamentary Committee for Nominations as the candidates all satisfied the formal conditions. We find the very issue of insistence on formal requirements (e.g. university degree, length of employment) with no requirements regarding specific expertise or track record in disclosing or combating corruption and conflict of interest to be problematic. Therefore, we have concluded that competence and independence of Commission members are not considered to be relevant criteria and that the intention of the Law on Prevention of Conflict of Interest will not be met yet again. Our demand concerning the change in the voting procedure in the Commission itself, from majority to two-third majority decision-making has not been addressed either.

In the broader context of freedom of information, no changes have taken place in the political and administrative „cultures of silence“, perhaps best illustrated by the prime-minister’s recent public claim that all information about the EU, including those on closed EU chapters can be obtained by contacting the Ministry of Foreign Affairs and European Integrations<sup>4</sup>. A simple phone call to the Ministry’s toll free EU Info number proved that the contents of specific chapters will be made public once the negotiations are closed, while repeated requests for disclosure of the negotiation documentation, posed both by civil society organizations, as well as by the president of the National Committee on EU accession, remain ignored.

In the case of the Freedom of Information Act itself, on March 23, 2011, the Constitutional court has annulled the newly enacted changes to the Freedom of Information Act as they were not passed with a qualified majority. Despite the CSOs’ demands that the Government seizes this opportunity to improve the Law in a participatory manner and to ensure an adequate mechanism for testing public interest and coherence with the Law on Data Secrecy and the Law on General Administrative Procedure, the Government sent into parliamentary procedure the very same version of the Law that was passed in December 2010, and annulled by the Constitutional Court for procedural reasons. Hence, the changes to the Law will again fail to meet the requirements regarding an independent test of public interest.

At the same time, the Agency for the Protection of Personal Data, as the mandated body, reported on the implementation of the Freedom of Information Act in 2010, stating that, despite their legal requirement, only 22% of public bodies submitted their reports for 2010, and concluded that the law still suffered from “children’s diseases”, which we consider to be an embarrassing conclusion seven years after the enactment of the Law. We are however pleased with the fact that in its first report since becoming the mandated body, the Agency pointed to the same issues that relevant CSOs have been emphasizing for years, including the relevance of data in the reports prepared by

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4 Reported on T-portal, on May 3, 2011, „Pokvareni EU telefon: Kosor lažima uzvraća Pusički“, [www.t-portal.hr](http://www.t-portal.hr)

the previously mandated Ministry of Administration. In that context, a definite step forward is the preparation of an analytical report containing accurate and unskewed data and criticising rather than praising the implementation of the Law.

### **Protection of Human Rights**

In the area of human rights protection, some changes, both positive and negative, occurred in the past three months. A positive example is the case of civilian oversight of the police forces, whereby the new Law on Police, enacted in March 2011, proscribes that complaints against actions of police are, in the second instance, dealt with by a Commission comprised of one member of the Ministry of Interior and two members appointed by the Parliamentary Committee for Human Rights, following nominations by CSOs, the expert public and NGOs. This is a significant improvement in comparison to the draft law which proposed full control over these appointments to the minister of interior. On the other hand, from the efficiency angle, it is questionable whether only three people would be able to provide effective oversight over the entire police force.

In respect to the demanded revisions of the **Free Legal Aid Act**, on April 6, 2011, the Constitutional Court annulled some of its articles, on the grounds of their counter-constitutionality. At the same time, the Ministry of Justice introduced several operational changes to improve the implementation of the current law, including increasing the fees for attorneys to 50% of the regular fee, making a list of attorneys prepared to take cases and somewhat simplified the forms to be filled by applicants. Beyond these incremental procedural improvements, the Ministry of Justice refuses to embark on comprehensive revision of the Law, without which the Government risks legal vacuum, as of July 16, 2011, regarding the regulation of issues, such as eligibility and areas of legal aid provision, which have been addressed in the binding opinion of the Constitutional Court. The Ministry has been insistent on ignoring the conclusions and recommendations of an expert study commissioned by the Human Rights Center, indicating the need to revise the entire Law due to its overarching implementation problems, also validated from other sources<sup>5</sup>. Such a stance disables an open and meaningful discussion, which would ensure the establishment of a mechanism that truly enables access to justice to the most vulnerable groups in the society. We want to highlight that the amendments procedure of the Free legal Aid Act has also been envisioned in the revised Action Plan for the Reform of the Judiciary and that the entire negotiation process has not significantly improved access to justice for the most vulnerable Croatian citizens, experiencing poverty, marginalization and social exclusion.

Regarding the capacities of the Ombudsman's Office to effectively monitor the status of human rights, the working group for legal drafting of the amendments to the Ombudsman Act has been formed, but the process is characterized by both procedural and conceptual risks. Due to the refusal of the chair of the working group - Ministry of Justice, the working group did not undertake any type of consultations with the relevant stakeholders, including formal consultations with specialized Ombudsman Offices that are to be merged with the Ombudsman's Office, according to the draft proposal. The time-frame for the work of the working group is just two months, even though there is no objective reason for this kind of restriction, which can potentially significantly downgrade the quality of the working group's outcomes. At the conceptual level, strengthening human and financial

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<sup>5</sup> We strongly disagree with the stand of the leading Ministry official who repudiates the relevance of the whole study by dismissing one of the study's authors, prof. Alan Uzelac, due to the fact that the Faculty of Law is also one of many providers of free legal aid services, through its legal clinic. At the same time, Mr Uzelac was invited by the Constitutional Court to provide expert analysis on the constitutionality of the Free Legal Aid Act, and is now serving as a member of the newly elected State Judicial Commission.

resources would just be nominal, given that the intention is to merge specialized ombudsman offices with the People's Ombudsman. Namely, a significant amount of new obligations would be added to the office, likely resulting in adverse effects to the main intention of strengthening the capacities of People's Ombudsman Office. The risk of merging existing ombudsman offices can also lead to a lower level of visibility of services that current offices offer to marginalized social groups, as well as lower the quality of fulfilling and reporting on the national and international human rights obligations.

At the same time, two very recent first instance court rulings question the ability of the system to implement the anti-discrimination legislation. Namely, on May 2, 2011, the law suits against the President of the Croatian Football Association and the President of the football club Dinamo were dismissed. The former stated publicly that "gay football players have no place in the national team as long as he is president" and that "luckily, football is only played by healthy people", whereas the latter stated that "he would never engage a gay player". The courts found in one case that engaging the players is formally the mandate of the Football Association rather than its President and in the other that it was a matter of right to personal opinions and attitudes. Even more concerning is that Croatian courts misinterpreted case law from European Court of Justice in the case C-54/07 *Centrum voor gelijkheid van kansen en voor racismebestrijding v. Firma Feryn NV* (2008) ECR I-05187 finding this case irrelevant for the complaint. It is noteworthy also that the People's Ombudsman ordered the Ministry of Education, Science and Sports, the Croatian Olympic Committee and the Croatian Football Association to investigate whether there were breaches of the Law on Sports and other relevant regulation in these two cases, none of these institutions reacted.

The proposed Criminal Act amendments, in the segment of criminal acts motivated by hatred represent an example of progress. However, the list of grounds on which hate crimes are possible is reduced to race, skin colour, religion, national and ethnic background and sexual orientation, but excludes the rest of the categories listed in the Antidiscrimination Act. At the same time, no changes are envisaged regarding the stricter classification of assaults against human rights defenders, whistle-blowers and journalists, despite repeated requests on part of human rights and journalist associations.

From the point of view of transparency, we find it very disturbing that the Croatian Government still did not publish the closed negotiation chapters with the EU, the Action Plan for closing Chapter 23, as well as a whole spectrum of strategic and operational documents related to war crimes outlined in the First Report of the Government of the Republic of Croatia on meeting the closing benchmarks in Chapter 23. Similarly, the complete translation of the *acquis communautaire* in Croatian is still not publicly available.

### **Political Rights**

In the area of political rights, Croatia's legislation still impedes the right to free assembly and expression of political views in front of the Parliament and Government buildings and there are no changes regarding this issue, yet the Law is inconsistently implemented. Namely, it is noteworthy that despite the legal prohibition several protesters were not removed nor prosecuted for demonstrating at St. Mark's square before the mass citizen protests against the Government started. Once the mass demonstrations in March 2011 took place, a significant amount of repression was used to prevent protesters to reach St. Mark's square.



The Proposal for amending the Law on Referendum was sent into parliamentary procedure, yet the proposed changes do not touch upon the very strict conditions regarding citizens' initiated referenda - 10% of registered voters must sign the referendum petition within a two week period at local level and within 30 days at national level.

At the same time, no revisions to the voters' lists have been proposed, although a significantly larger amount of voters in comparison to the total number of citizens are registered, further complicating the initiation of a referendum by citizens themselves. Despite the illegal discrepancy in the number of voters per election unit for quite some time, the Government only recently started debating the amendments to the Law on Electoral Units. Although these amendments are necessary, the timing is far too late, as the Constitution prohibits any changes to the laws regarding elections in the year preceding the election.

### **National Minority Rights**

In our last opinion, we have highlighted significant improvements in the effective protection and promotion of constitutionally guaranteed rights of national minorities in Croatia over the past decade. Nevertheless, some critical issues remain open - ensuring equal treatment of all national minorities in the electoral process and timely closing of gap between legal provision and actual underemployment of national minorities in state and local administration. Both of these issues have already been raised by Croatian civil society organisations.

On April 8, 2011 the Government adopted the new Action Plan on Implementation of Constitutional Law on National Minorities for the period 2011-13, which includes a chapter on employment of national minorities, in line with Article 22 and accession obligations. The Plan sets the three-year target of increasing the ratio of employees from national minorities in state administration from the current ratio of 3,92% to 5,5% by the end of 2011, without any specification of the expected improvements in the coverage of different national minorities or particularly deficient institutions, sectors or regional and local communities. It is noteworthy that at present there is only one Roma person employed in the entire state administration. The Plan, however, does not envisage any specific measures for realising the objective. Instead, the Plan proscribes the adoption of another Plan on employment of national minorities, by April 30, 2011. The overall impression of the contents of the Plan is the predominance of bureaucratic and analytical exercises without explicit relevance to the actual improvement of the employment structure in state and local administration, i.e. by prioritizing state institutions or local government units, with defined annual targets. It is particularly worrisome that the Government has actually admitted that baseline data and the monitoring mechanisms on employment of national minorities are deficient. There is no information available on actual contents of the announced Plan on Employment of National Minorities in State Administration, nor have the leading CSOs representing interests of national minorities been consulted in the process of its alleged formulation. **It is our conclusion, therefore, that there is no visible change in political will and action to eliminate existent discrimination and create much needed employment opportunities for national minorities. The hasty hyper-production of action plans seems to be the reflection of the Governments' understanding of its obligations in this particular area of the negotiation process in the scope of Chapter 23.**

Regarding the controversial provision of the Law on Elections of Members of Parliament, adopted on December 15, 2010, which envisions a different election procedure and representation of national minorities with more or less than 1.5% population (i.e. the Serbian minority and all others), it is important to note that several requests to the Constitutional Court for the assessment of the

constitutionality of the provision, submitted by different CSOs and other actors, have not been processed over the past three months, despite the fact that Croatia is in the parliamentary election year. On April 11, 2011, the Constitutional Court held an advisory expert discussion on the issue, also open to specialised CSOs. The Court announced further international and domestic consultations due to a lack of agreement among the judges on the nature of the problem. The delays in clarifying this highly politicized issue may indicate that the Constitutional Court is under undue influence of the ruling coalition that has dictated the controversial provision, in favour of the biggest political party representing the Serbian national minority. **Hence, a more appropriate solution preventing unequal treatment of different national minorities in the election process and its impact on their actual political representation should be found.**

### **Returnee Rights and Sustainable Return**

Over the past three months there have been some improvements in removing barriers to sustainable return, in several cases directly in line with the priority measures proposed by civil society organizations (CSOs). Positive changes relate to former tenant rights of returnees, while some progress in tackling 11 cases of illegal investment in returnee property has not resulted in an adequate solution. There is no progress in removing administrative barriers for returnees without Croatian citizenship, nor are there any visible improvements in economic and social conditions in post-war areas.

Former holders of tenant rights have also been listed among eligible applicants for purchase of government housing in municipalities of Vukovarsko-srijemska and Osiječko-baranjska counties, according to the Regulation passed in February 2011. **In order to fully remove administrative barriers and discrimination in this area, we propose that the deadline for applications be removed and the property prices be equalized on the entire territory of Croatia, in line with the prices paid by holders of tenant rights in mid 1990s.**

On March 30, 2011 the Constitutional Court decided on the annulment of the provisions of the Law on Agricultural Land, including those that had enabled the government to temporarily confiscate the uncultivated arable land, without knowledge or consent of owners, many of whom are returnees and residents of post-war areas. On March 3, 2011 the Government also adopted the Decision on housing care of returnees, former holders of tenant rights outside areas of special state concern, with the extended deadline for applications until December 9, 2011.

It is encouraging that the Government has eventually addressed the issue of 11 cases of illegal investments in property of returnees, in the current Proposal of Changes to the Law on Areas of Special State Concern. **Yet, the proposed solution is far from acceptable**, as it positions the State as creditor of original owners, instead of the State taking full responsibility for compensation of costs generated during the period when the property was under State control and management, including the decision to allocate it to temporary users. We think that the Government should take full responsibility for damage compensations and compensations for length of procedures and all disputes with ex temporary users, while existent legal provisions should be kept which enable owners to transfer ownership of their property to the state and become owners of another property of of equivalent value, appraised in accordance with its value at the time of original use, prior to war devastation and damages incurred due to irresponsible management by the Government. Agreement and adoption of a fair solution to

the problem of illegal investments in property of returnees represents an urgent matter, considering the fact that the proposed Law on Changes of the Law on Areas of Special State Concern is on the agenda of the current parliamentary session, ending on May 20, to be adopted in the shortened, urgent procedure.

**It is particularly concerning that the announced changes to the Law on Foreigners have still not been adopted**, as they should provide permanent residence status to returnees who are eligible for reconstruction, housing and return support but do not have Croatian citizenship, enabling them timely access to social rights, application for citizenship and full reintegration.

#### **Prosecution of War Crimes and Cooperation with ICTY**

In line with our key demands in the area of prosecution of war crimes we find the proposal of the amendments to the Law on Implementation of the Statute of the International Criminal Court, adopted in the Parliament on May 6, to be an improvement. Namely, according to these changes, the county courts in Osijek, Rijeka, Split and Zagreb will get the (exclusive) jurisdiction in the new cases of prosecution of war crimes. The courts authorized by Criminal Procedure Act will still proceed with the cases that started before this law is enacted, but with the possibility for the President of the Supreme Court, on the Chief State Attorney's proposal, to approve the transfer of specific cases to one of the four newly specialised courts. Furthermore, the changes regulate the use of evidence collected by the ICTY in domestic trials if they are collected in line with the Statute and Rules of Procedures and Evidence of the ICTY. If fully implemented, this new legal stimulus could have strong positive effects.

On the other hand, we find the still non-addressed issue of trial expense compensation in proceedings for compensation for damages for wrongful death of close family members an impediment to the rule of law. We therefore stand by our demand that the State immediately establishes a legal mechanism in accordance with the UN reparation standards.

Finally, as a negative and a disturbing change that occurred after our Joint Opinion in February, we find the Government's and even the President's reaction to the first instance judgment in the case against Gotovina, Čermak and Markač. Their statements openly criticise the judgment and in that sense have imperilled the principal of the rule of law and independence of judiciary. We see these recent developments as a missed opportunity for Croatian political elites and the general public to start the process of societal dealing with the past and establishing all facts about war crimes. From the point of view of the rule of law, it is particularly disturbing that ex-president Mesić's legally grounded actions in cooperating with ICTY were questioned, and that even the Government announced and only later backed out from the investigation in the case of transcripts delivery to the ICTY.