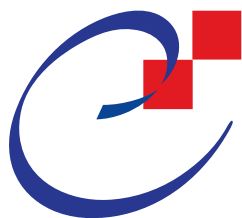


Croatia and the Council of Europe



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Council of Europe
May - November 2018

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Mai - Novembre 2018



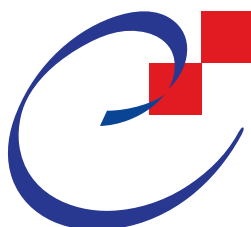
Daniela Petričević Golojuh

Per Aspera

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The Ministry of Foreign and European Affairs of the Republic of Croatia on the occasion of the Croatian Chairmanship of the Council of Europe is publishing a special edition of the book "Croatia and the Council of Europe: Per Aspera" by Daniela Petričević Goljuh, M.A.

Zagreb 2018

Foreword by

Deputy Prime Minister and Minister of Foreign and European Affairs of the Republic of Croatia

*Marija Pejčinović Burić,
M.A.*



Dear readers and friends,

it is my pleasure to welcome you on the pages of the publication of the Ministry of Foreign and European Affairs of Croatia entitled *Croatia and the Council of Europe: Per Aspera* by Daniela Petričević Golojuh.

The book, published in 2015, gives an overview of the development of the Council of Europe and of Croatia's path to its membership and of its activities surrounding this pivotal and fundamental European organization, established in 1949.

On 18 May 2018, Croatia assumed the Chairmanship of the Committee of Ministers of the Council of Europe. Our Chairmanship symbolically closes the circle from the beginning of our membership in 1996, as described in the publication, to our present-day active involvement in the work of the organization. It is, therefore, the right moment to reflect on the Council of Europe and Croatia's contribution to its work.

Croatia established 4 main priorities of its Chairmanship and an ambitious program of nearly 30 events, including conferences, expert meetings and workshops. Most of the events are taking place in Croatia, and include the cities of Zagreb, Rijeka, Dubrovnik, Zadar, as well as the Brijuni islands and the island of Lošinj.

Croatia's priorities are: 1. Fight against corruption; 2. Efficient protection of rights of national minorities and vulnerable groups; 3. Decentralization in the context of strengthening local government and self-government, including the issue of absorption capacities of regions and 4. Protection of cultural heritage and cultural routes.

It is our conviction that the fight against corruption represents a fundamental prerequisite to the development of open and democratic societies. In that vein, Croatia, in cooperation with the Group of States against Corruption (GRECO), will endeavour to encourage better cooperation and synergy among relevant national anti-corruption bodies. Also, after two decades of the Council of Europe activities in the fight against corruption, this is an opportunity for reflection on the progress achieved and giving political guidelines for the future.

Secondly, Croatia pays special attention to the protection of the rights of national minorities, based on the respect for human rights and fundamental freedoms. Croatia considers its national minorities an invaluable and inseparable part of its society and its diversity. In addition, our Chairmanship seeks to promote the protection of human rights of other vulnerable groups. In that sense, various events will be organized on issues such as gender equality in sport, human rights of older persons, the rights of the child in the digital age and others.

Thirdly, we will encourage sharing experience and knowledge on the reform of local and regional self-government in order to ensure high quality, prompt and accessible public services for both citizens and the economy. Local units represent holders of the democratic, economic and social growth of their respective communities. In that regard, it is also important to strengthen their overall capacities, including those for the absorption of financial resources allocated from EU funds.

Lastly, our Chairmanship is also focused on the protection of cultural heritage and cultural routes. Cultural heritage, both tangible and intangible, is a common treasure of the humanity. Croatia has 10 sites listed on the UNESCO World Heritage Sites List and our cultural heritage is important part of our national identity. Croatia will undertake a number of activities that will emphasize the importance of cultural heritage for the society and for preserving our common European heritage. Also, in order to further promote cultural routes we are organizing events highlighting the importance of olive trees and olive oil for the culture and civilisation of the Mediterranean region, to which Croatia belongs.

Finally, we are dedicated to further promoting the work of the Council of Europe and strengthening the organization from within as well as to its cooperating with other international organizations. In this regard, Croatia will be vocal in defending our shared values and commitments and striving to contribute to strengthening peace and security in Europe, thus providing its citizens the full enjoyment of democracy, human rights and the rule of law.

Sincerely yours,


Marija Pejčinović Burić



Priorities of the Chairmanship of the Republic Of Croatia of the Committee of Ministers of the Council of Europe

(18 May – 21 November 2018)



The Council of Europe, an international organisation and a pivotal European institution founded after the Second World War, is a general point of reference of the highest democratic standards in the area of respect for human rights, democracy and the rule of law.

Croatia became a full member of the Council of Europe on 6 November 1996.

With its membership, Croatia confirmed its genuine commitment to all valid democratic values of the Council of Europe, recognising the importance of promoting awareness of the common European cultural identity through the highest standards of protection of human rights.



Croatia, as an active member state, takes part in all common endeavours aimed at finding solutions to numerous issues faced by contemporary Europe – from finding ways to advance the protection of minorities and youth rights, to fighting organised crime and trafficking in human beings. We are aware that only a democratic Europe based on mutual cooperation and open dialogue can be stable, safe and prosperous.

Croatia, for the first time since it became a member of the Council of Europe, will assume the Chairmanship of the Committee of Ministers of the Council of Europe. During its Chairmanship, Croatia will seek to further promote and strengthen democratic values, human rights and the rule of law building on the results of preceding chairmanships.

Guided by the importance for the development of democracy, the rule of law, and cultural identity of Europe, Croatia, through cooperation between competent state administration bodies and broad

consultations at the national level, established the following four topics as the priorities of its Chairmanship:

1. Fight against corruption;
2. Efficient protection of rights of national minorities and vulnerable groups;
3. Decentralisation in the context of strengthening local government and self-government, including the issue of absorption capacities of regions; and
4. Protection of cultural heritage and cultural routes.

1. Fight against corruption

The Council of Europe, besides the three key pillars (protection of human rights, democracy and the rule of law), which represent the fundamental values of this organisation, also deals with a number of specific social topics, among which fight against corruption stands out as a priority. Corruption is a socially unacceptable phenomenon, which directly jeopardises human rights, destroys morals and endangers the stability and economic advancement of the state. In addition to being contrary to the relevant legislation, it is also a deviation from the fundamental principles of society. Therefore, the fight against corruption is a fundamental prerequisite to the development of an open and democratic society, which is strongly supported by Croatia.

Croatia continuously and strategically considers, implements and upgrades its system of anti-corruption measures, starting from the 2002 National Anti-corruption Programme and its Action Plan, the 2006-2008 National Anti-corruption Programme, the 2008 Anti-corruption Strategy, to the current, structurally and methodologically proactively oriented 2015-2020 Anti-corruption Strategy. The current Strategy is focused on preventing corruption through the detection of the corruption risks and the removal of the remaining legislative and institutional shortcomings. The Strategy also promotes integrity and transparency in the work of state bodies and institutions, placing emphasis on the responsibility of persons holding public functions.

Croatia has already achieved significant progress in numerous fields, such as the right of access to information, financing electoral campaigns and political parties, transparency of the work of the executive branch of government and setting up the system for the prevention of conflicts of interests. In spite of the progress achieved in these fields, it is necessary to build awareness of the need to continuously monitor the efficiency of specific solutions, since this is a prerequisite to further advancement.

Croatia, in cooperation with the *Group of States against Corruption* (GRECO), an expert body of the Council of Europe for fight against corruption, will organise a ministerial conference "Strengthening Transparency and Responsibility Aimed at Prevention of Corruption" to be held on 15 and 16 October 2018. The Conference will emphasise and promote complementarity between the traditional national anti-corruption mechanisms and anti-corruption mechanisms of the modern media. Free and independent media, regardless of their form, are of the vitale importance for transparency and responsibility as a means to ensure integrity, and to prevent and monitor corruption.

Thus, the Conference will discuss the key function of the media in promoting transparency and responsibility, as well as the need for the media to protect themselves against corruption. The Conference will endeavour to encourage better cooperation and synergy among relevant national anti-corruption bodies. In addition, the Conference will gather a number of experts and policy creators at the national and international levels. This event, after two decades of the activity of the Council of Europe against corruption, will try to provide an opportunity for reflection on the progress achieved and give political guidelines for the future.

2. Efficient protection of the rights of national minorities and vulnerable groups

One of the main tasks of both the Council of Europe and Croatia is to improve the system for the protection of the rights of national minorities and to ensure a safe and just environment for its implementation, based on the respect for human rights and fundamental freedoms.

Croatia considers its national minorities as a treasure of its community; both its legislative framework and its practice support a multicultural society. National minorities are entitled to the exercise of special rights (individual and collective) such as: use of their language and script, and education in it; use of their emblems and symbols; cultural autonomy; professing their faith and founding religious communities; freedom of association; representation and participation in the public and political life. The right to declare one's affiliation to a national minority is fully respected, discrimination is prohibited and equality of all citizens before the law is ensured. Particularly important to members of national minorities is the participation in the decision-making process and, among other rights, national minorities enjoy the guaranteed right to representation in the Croatian Parliament along with the right to be elected to the representative bodies in the local and regional self-government units.

Considering that this year we are marking important anniversaries at the European level, as part of its Chairmanship Croatia will organise three conferences on the protection and promotion of the rights of national minorities and vulnerable groups. The first of them, entitled "10th anniversary of the entry into force of the Council of Europe Convention on Action against Trafficking in Human Beings", will take place in Strasbourg on 22 May 2018. The aim of the Conference is to give an overview of the impact of the Convention on national legislation, policies and practices, and in particular on improving the situation and the rights of victims of trafficking in human beings. Emphasis will be put on the human rights-based and victim-centred approach of the Convention and the obligations of states regarding further suppression of trafficking in human beings, protection of victims, prosecution of traffickers in human beings and on building up partnership with relevant actors (the so-called "four Ps"). In this respect, the importance of monitoring the entire process, including the GRETA mechanism (which helps to identify the existing and emerging problems), and the ways to overcome challenges in the implementation, will be discussed. The Conference will contribute to a better understanding of the provisions of the Convention and their strengthening as well as to drawing the attention of the public to the phenomenon of human trafficking. This year, the majority of countries will undergo the second round of evaluation conducted by the *Group of Experts on Actions against Trafficking in Human Beings* (GRETA).

Croatia was among the first ten States Parties to the Convention. The objectives of the Convention – prevention of trafficking in human beings, protection of victims, prosecution of perpetrators of the criminal offence of trafficking in human beings and promotion of the coordination of national activities and international protection – were transposed into national documents. These objectives are also contained in the latest protocols (Protocol on Identification, Assistance and Protection of Victims of Human Trafficking; Protocol on Procedures during Voluntary and Safe Return of Victims of Human Trafficking) and numerous measures that are envisaged by the new National Plan for Suppression of Trafficking in Human Beings for the period from 2018 to 2021. All these documents are based on a humane and legal approach and are directed towards protecting victims of trafficking in human beings, especially women and children.

The National Committee for the Suppression of Trafficking in Human Beings (2002) and the Operational Team for the Suppression of Trafficking in Human Beings operate at the national level. The national anti-trafficking coordinator, who is a member of the eponymous EU Network of *National Rapporteurs and Equivalent Mechanisms* (NREMS) was also appointed. A free-of-charge telephone hotline for collecting information from citizens was introduced and two shelters for victims of trafficking in human beings were established, one for adult victims, and the other for children.

Within the framework of the Croatian Chairmanship, in the context of the protection of the rights of national minorities and vulnerable groups, the "Conference marking the 20th Anniversary of the Framework Convention for the Protection of National Minorities and the European Charter on Regional or Minority Languages" will take place in Strasbourg on 18 and 19 June 2018. At this high-level international conference, the planned topics include the

efficiency of implementation of both instruments in the States Parties so far, the political, social, and technological developments affecting the situation of persons belonging to minorities and minority languages today, and innovative responses in the Member States to address these challenges, in particular in the area of language policies and education.

These are the most important instruments of the Council of Europe for the protection of national minorities, which set up high standards, and commit States Parties to implement their principles. Their implementation is monitored by relevant committees and by the Committee of Ministers of the Council of Europe. Through periodical reporting a continuous dialogue between the Council of Europe and the Member States is established and recommendations for advancing implementation are transmitted.

Croatia ratified both instruments in 1997, and reports regularly on their implementation (four reports on the Framework Convention and five on the European Charter have been submitted so far). Their application is monitored under the Constitutional Act on the Rights of National Minorities, which incorporates the provisions of these instruments.

Special attention is dedicated to the promotion and protection of the rights of members of the Roma national minority. In this context, the conference “From Education to Employment of the Roma”, particularly on the transition of the youth in the crucial period of their lives, will be organised and held in Croatia on the Brijuni Islands on 25-26 September 2018. By presenting the activities directed by mainstream measures toward the NEET population, activities undertaken on the Pan-European level, experiences of EU Member States and candidate countries and other members of the Council of Europe, the remaining challenges and the best practices of the member states will be discussed. The topics of the Conference will draw on the past activities of Croatia, the European Union and the Council of Europe. The Conference will gather about 70 participants, representatives of the *Ad hoc Committee of Experts on Roma and Traveller Issues* (CAHROM), international organisations, the academic community and other experts from competent bodies on the national, regional and local levels, the Roma national minority, experts and the civil society.

One of the greatest challenges is the transition from education to employment. Besides the indisputable success of specific measures in the field of education and employment, and the attention given to this topic in the recent years, the EUMIDIS II (2016) research demonstrates the dimensions of the problem. One of the main concerns remains the discrimination in the field of employment (although reduced in the last five years), as well as a high rate of young persons that are not in education, employment or training (NEET).

The factors significantly influencing the opportunities on the contemporary labour market for a large number of members of the Roma national minority will be discussed. They include low passing rates in education from preschool to post-graduate studies, still low educational achievements and aspirations, insufficient inclusion of all actors (including schools, other public services and parents), particular attention to transitions (e.g. from elementary to secondary school), discrimination and segregation, second chance through lifelong learning for those who have dropped out of school too early, adjustment of the curriculum and qualification frameworks.

The increasing gap between the educational system and the labour market and the concept of the “School as a promoter of social inclusion” will also be discussed and other piloted initiatives for employment or entrepreneurship will be identified. This priority of the Chairmanship of the Republic of Croatia is a continuation of the *Europe Thematic Action Plan for the Inclusion of Roma and Travellers in Europe*.

In 2003, Croatia adopted the National Programme for the Roma, with significant support from the Council of Europe. In 2005, together with a number of European countries, Croatia joined the Decade of Roma Inclusion 2005-2015 and adopted the national Action Plan for Roma Inclusion 2005-2015, which set up goals in the fields of education, health, employment and housing. Following the Agenda EU 2020, Croatia adopted the National Roma Inclusion Strategy 2013-2020 that builds on the National Programme for the Roma, redefining the national priorities, the manners of implementation and the undertaking of special measures in accordance with the changed social and political circumstances. Special attention was devoted to the youth and women because of their exposure to multiple forms of discrimination.

3. Decentralisation in the context of strengthening local government and self-government, including the issue of absorption capacities of regions

Through the reform of the local and regional self-government system, Croatia wishes to strengthen the administrative and financial capacities and autonomy of local and regional self-government units, expand their self-government scope of tasks and strengthen their independence in planning, financing and providing services in accordance with the subsidiarity principle. Considering that the capacities of a certain number of local self-government units are currently limited, resulting in great differences in the number and quality of public services, it is necessary to ensure an efficient implementation of public functions which fall within the competence of local self-government, as well as high quality, prompt and accessible public services from the scope of local self-government for both citizens and the economy. Concrete steps on the local level may provide a path to a developmental breakthrough for Croatia.

Croatia also wishes to strengthen the absorption capacity of the units. This requires coordination and synergic action of all social factors – from ministries, local and regional self-government units to different institutions such as developmental agencies, scientific institutions and the academic community, civil society organisations and others. Integration of the resources of all these institutions and clearly directed coordination of their activities will build up absorption capacities, first of all at the state level, and subsequently at the local and regional levels as well.

Therefore, during its Chairmanship, Croatia will especially encourage the sharing of experiences and knowledge about local self-government reform and the strengthening and build-up of the capacities of local and regional institutions for organisation, management and control of the take-up and spending of resources from EU funds. With a view to finding the best solutions, a conference is scheduled in Dubrovnik on 25 May 2018, on the topic of strengthening local and regional self-government, with an emphasis on decentralisation and cross-border cooperation.

The Congress of Local and Regional Authorities of the Council of Europe has an important role in strengthening the efficiency of local and regional self-government and the improvement of the quality of services provided to citizens at that level. Therefore, close cooperation with the Congress will be encouraged during the Croatian Chairmanship. We share a common vision of local and regional self-government accountable to its citizens and functioning as a driver of economic and social growth of the community.

4. Protection of cultural heritage and cultural routes

Cultural heritage, both tangible and intangible, is a common treasure of the humanity, and its protection and promotion is our joint task in order for us to preserve, bring closer and put into function what the history has left us. During its Chairmanship, Croatia will undertake a number of activities that will emphasise the importance of cultural heritage for the society and the importance of carrying out protection and promotion activities aimed at preserving our common heritage.

By protecting and preserving our cultural heritage, we ensure the survival of cultural values as well as potentials for further development. Care about the cultural heritage, opening the heritage to the public and its restoration contribute to developing the local community and to connecting Member States in order to exchange experience, experts and incentives in the creation of new methods for preserving the heritage and sustainable development of the community. Cultural heritage is also a strong factor of social and economic development (development of tourism, regions, and encouraging decentralisation and employment of local population).

Based precisely on these facts, Croatia has adopted several strategic



documents on the use of Croatian cultural heritage for economic purposes, models for monitoring and managing heritage, strategy for the development of cultural tourism, regional development, environment and space. As a Member State of the European Union in which historical routes interweave, Croatia has entered 9221 cultural assets in its Register of Cultural Assets. Some of these assets have been registered in UNESCO's lists.

At the European level, two recent strategic documents related to the cultural heritage need to be pointed out, namely,

- Recommendation of the Committee of Ministers of the Council of Europe on the European Cultural Heritage Strategy for the 21st century (February 2017)
- Decision of the European Parliament and of the Council of 17 May 2017 on a European Year of Cultural Heritage (2018).

Bearing in mind the fundamental goals and initiatives set by the European Union in the Year of Cultural Heritage, to which significant support is given within the Creative Europe programme, while part of the resources is allocated to research in the field of cultural heritage, our goal is to promote, educate and connect cultural heritage projects and initiatives within the framework of tenders available from EU programmes and funds.

Croatia will carry out a number of activities including conferences, cultural events (exhibitions related to the cultural heritage, landscape and architecture, creative industries), providing cultural heritage with an educational function and the function of developing the local community (signing the territory charter on the island of Cres and opening the education centre in the Moise Palace), and workshops (promotional activities by the Croatian Conservation Institute, including new media in the function of the heritage).

As part of its Chairmanship, Croatia will organise an international conference on 25 and 26 October 2018, dedicated to the underwater cultural heritage of the European Union and the rest of Europe entitled, "Underwater Cultural Heritage in Europe Today" scheduled in Zadar, which will be partly dedicated to the issues of implementing the UNESCO Convention on the Protection of the Underwater Cultural Heritage in Europe. Croatia will also actively participate in promoting the cultural routes of the Council of Europe, marking the "European Heritage Days" on the topic of "The Art of Sharing", and celebrating the International Landscape Day.

First and foremost, the Council of Europe is expected to continuously encourage the preservation of the cultural heritage and, based on the already adopted "European Cultural Heritage Strategy for the 21st Century", to apply the recommendations and realise the set goals.

The year 2018, being the Year of Cultural Heritage, provides an opportunity to stress the importance of the European culture and what the European Union can do for the preservation, digitalisation, infrastructure, research and development of skills. Therefore, the year 2018 presents an opportunity to find answers to challenges such as reduced public budgets for culture, decreased participation in traditional cultural activities, environmental impact on cultural heritage sites, developing value chains and digital transformation.

In June 2016, Croatia became a full member of the Council of Europe Enlarged Partial Agreement on Cultural Routes. Emphasis was placed on the expansion of geographical coverage, the launch of new initiatives, current policies in that field, development of new partnerships, sharing of experiences and progress in the implementation of the European cultural routes.

In order to mark the Croatian Chairmanship of the Committee of Ministers of the Council of Europe, "The European Cultural Route – The Routes of the Olive Tree" was selected as the theme of the conference on the importance of olive oil and olive trees for the culture and civilisation of the Mediterranean peoples, which will take place on the island of Lošinj in November 2018. This Conference is closely connected to the activities being undertaken within the European Cultural Route "The Routes of the Olive Tree" certified by the Council of Europe in 2005.

The European Cultural Route "The Routes of the Olive Tree" contributes to the valorisation of all regions where olive trees have been grown and promotes the manufacture of products related to olive trees connecting them with the local past, history and tradition, which is very important to Croatia. The presence of the olive tree has marked not only the landscape but also the everyday lives of the Mediterranean peoples. Therefore, this conference presents yet another opportunity to

strengthen the continuing dialogue among the civilisations of the olive tree, to improve synergic links between the heritage, tourism and sustainable development, and to strengthen and promote the olive tree internationally for the purpose of developing local, regional, national and the European Union economy.





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Daniela Petričević Golojuh
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Daniela Petričević Golojuh, M. A.
**Croatia and
the Council of Europe -
Per Aspera**

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Contents

Foreword	8
List of acronyms	12
1 Introduction	13
2 Council of Europe - institutions, protagonists and processes	17
2.1 Council of Europe and its beginnings	18
2.2 COE members.....	21
2.3 Role and objectives of the Council of Europe	22
2.4 Institutions of the Council of Europe (organization)	23
2.4.1 The Committee of Ministers	24
2.4.2 The Parliamentary Assembly	26
2.4.3 Congress of Local and Regional Authorities of Europe	29
2.5 Timeline of key events in the history of the Council of Europe.....	31
2.6 Activities of the Council of Europe.....	33
2.7 The convention for the protection of human rights and fundamental freedoms and the European Court of Human Rights in Strasbourg.....	35
2.8. Prior to Croatia's Accession to the Council of Europe	53
2.8.1 The Republic of Croatia is granted a special guest status with the Council of Europe	53
2.8.2. Ad Hoc Committee's first visit to Croatia.....	56
2.8.3. Opening procedure for Croatia's admittance to the full membership	58
2.8.4. First official visit to Strasbourg by Croatia's minister of foreign affairs (1993).....	58
2.8.5. COE expert mission visiting Croatia (1993).....	60

2.8.6. First working visit from Miguel A. Martinez, President of the Parliamentary Assembly of the Council of Europe (1994)	62
2.8.7. Croatia's admittance to the Council of Europe postponed.....	64
2.8.8. Accepted draft Resolution on Croatia submitted by the Committee on Political Affairs	67
2.8.9. Accepted recommendations of Parliamentary Assembly regarding the refugees and exiles, and reconstruction on the territory of former Yugoslavia.....	68
3 Council of Europe and Croatia.....	71
3.1 Admission to the Council of Europe	72
3.1.1 Proposal of the Committee on Political Affairs for Croatia's admission to the Council of Europe	72
3.1.2 Croatian admission to the Council of Europe discussed in Strasbourg	74
3.1.3 Decision on Croatian admission to the Council of Europe, 24 April 1996.....	75
3.1.4 Speech of the President of the Croatian Parliament before the Parliamentary Assembly upon Croatia's accession to the Council of Europe.....	78
3.1.5 General disappointment - Croatia's accession to the Council of Europe postponed	81
3.1.6 Thessaloniki - resolution on Croatia, accession procedures to the Council of Europe.....	82
3.1.7 Croatian government responds to the Memorandum of the Council of Europe.....	84
3.1.8 Press release of the COE's Public Relations Service on the final accession of Croatia into the Council of Europe.....	88
3.2 Criteria for Croatia's full COE membership - 21 points (prerequisites for Croatia's accession)	90

3.3	Republic of Croatia – Full COE member (6 November 1996)	93
3.3.1	The speech by Mr. Daniel Tarschys, the Secretary-General of the Council of Europe	93
3.3.2	The speech by Mr. Mate Granić, Minister of Foreign Affairs of the Republic of Croatia	94
3.3.3	The letter by Mr. Franjo Tuđman, Croatian President, addressed to Croatian people	96
3.4	Post-accession cooperation between the Republic of Croatia and the Council of Europe	100
3.4.1	Croatian delegation's first Strasbourg session	100
3.4.2	COE's second summit, Croatia's first	102
3.4.3	The first monitoring of the implementation of commitments taken by The Republic of Croatia when admitted	104
3.4.4	Recommendation to abolish permanent monitoring of human rights in Croatia adopted	106
4	Conclusion	108
5	Literature	111
	Index	114
	About the author	116
	Illustrations	118

Foreword

Attaining membership in the Council of Europe, the oldest pan-European organization, way back on November 6, 1996 represented not only one of Croatia's first more significant accomplishments in the field of foreign policy but also and more importantly – a confirmation of the clear commitment of our country to the enhancement of democratic standards, respect of human rights and the rule of law, whereby Croatia became a full- fledged member of the “club” of states adhering at the international level to the unique mechanism of protecting human rights that stemmed from the European Convention on Human Rights.

Although from today's perspective the great majority of Croatian citizens take for granted Croatia's membership in the Council of Europe and their possibility to appeal to the European Court for Human Rights and do not contemplate too deeply on the matter, it is certainly worthwhile pointing out that the road to membership in the European Council was in no way easy, and in light of the then circumstances of armed conflict, namely, immediate post-conflict period, current transitional period and democratic consolidation, it lasted relatively long (over three years) whereas its course was more meandering than straightforward. For the author is this Introduction who was a direct participant in the process through his professional engagement in the Croatian diplomatic service, thinking back to those times, calls to mind at the same time a clear association of the occasionally complex processes of adopting and incorporating the relevant standards of the Council of Europe in the domestic legislation and legal practice, an undoubtedly demanding process of harmonizing domestic legislation with the legal practice of the European Convention on Human Rights but also a specific need of “changing the way of thinking” of the wider public in the context of perceiving the importance of adopting and consistently respecting democratic standards and the actual promotion and protection of human rights in everyday life. Regardless of the undeniable challenges and undisguised and at times unexpected difficulties, both objective and subjective in character, Croatia, its citizens and society at large successfully passed this “exam” too, and joined the Council of Europe, as the 40th Member State, continuing in that way at the same time the process of the democratic consolidation of the country.

In a significant part of the reference literature and in numerous articles the Council of Europe is often characterized as a unique and successful example of a transforming “soft power” in the fields of enhancing democratic processes, adopting democratic standards, respect and promotion of human rights and consolidation of the rule of law. This “power” of the Organization

is discernable throughout its history – both in the context of the founding states in the period immediately following World War II and in the period of the Council of Europe’s “second youth” after the fall of the “iron curtain” and initiation of the process of integrating the Central and East European States in the membership of the Organization.

Unquestionably, from today’s perspective Croatia certainly represents a graphic example of the success of this transforming power of the Council of Europe, as a state that has- in the course of a little under 20 years of membership in the Organization – achieved considerable and quite concrete advancement in the strengthening of internal democratic processes and standards, respect of human rights and the rule of law and has successfully distinguished itself as an active partner and participant in a series of specific activities of the Council of Europe, in all the dimensions of its work (intergovernmental cooperation, parliamentary cooperation, cooperation between local and regional authorities, cooperation between judicial bodies, civil society) which has also been recognized in the conclusions and results of relevant bodies for monitoring the implementing of set obligations. Even today, Croatia is continuing with undiminished enthusiasm to partake in the activities within the Council of Europe by its constructive contribution to the numerous activities of the Organization both on the political and expert levels and through the timely and consistent implementation of the decisions of the European Court for Human Rights.

In today’s context, when Croatia has attained one of its crucial strategic goals – accession to the European Union – the membership and activity of our country in the Council of Europe as well as the very perception of this oldest pan-European Organization in wide public opinion have been pushed, somewhat undeservedly, to background. Although, speaking objectively such a course of events is understandable and immanent to a number of other Central and East European countries which have become EU members during the last decade, it remains an indisputable fact that in the field of promoting and protecting fundamental rights, the EU continues to the greatest degree to rely on the very standards, expertise and results of the mechanisms of monitoring the implementation of the Council of Europe’s obligations in spite of recent progress in the development of their own standards and mechanisms, achieved before all within of the context of the Lisbon Agreement.

Indeed, the recent disturbing trends of the strengthening of various forms of extremism, non-tolerance and discrimination in states and societies throughout Europe, something that unfortunately Croatia is also

not exempted from, place in the foci of attention once more the necessity of addressing jointly these pressing problems and taking corresponding action at the (pan)European level, whereby the role of the Council of Europe remains crucial in these processes which certainly represents not only a particular new impetus for the Organization but also an indisputable challenge that can be overcome only with the specific contributions of Member States and full synergy both on the national and European levels. The potential contribution of Croatia in this field remains significant.

On November 6, 2016 we shall mark the 20th anniversary of Croatia's membership in the Council of Europe. The twenty-year membership period clearly testifies to the giant steps and results achieved in the fields of enhancing democratic standards, respect of human rights and the rule of law in the country which certainly represent a specific confirmation of the democratic maturing of Croatian society. The road was neither easy nor simple and required the engagement of the authorities and citizens but would have certainly been much more difficult without the corresponding impetuses, assistance and support of the Council of Europe. The book written by Daniela Petričević Goljuh "Croatia and the Council of Europe: A Thorny Road" represents a valuable, almost documentary aide-memoire and testimony of Croatia's early days on its unstoppable path to democratic consolidation and the first, trail-blazing steps of our country within the context of membership in the Council of Europe and participation in the relevant mechanisms and activities, representing at the same time a significant contribution to the marking of the 20th anniversary of Croatia's membership in the "club" of democratic countries.

The Council of Europe shall maintain its role of a pivotal European institution and specific "watch-dog" with a mandate in the fields of democracy, human rights and the rule of law which remain the cardinal values on which contemporary Europe is founded. Twenty years of membership in the Council of Europe and the efforts, energy and enthusiasm invested in the process of democratic consolidation as well as the significant results achieved remain a warranty of Croatia's commitment to furthering the promotion of these fundamental European values and continuation of active contribution to the activities and achievements of the Organization.

Miroslav Papa
Ambassador Extraordinary and Plenipotentiary,
Permanent Representative of the Republic of Croatia
to the Council of Europe

LIST OF ACRONYMS

CARDS – Community Assistance for Reconstruction, Development and Stabilisation

CLRAE – The Congress of Local and Regional Authorities of the Council of Europe

ECHR –The European Convention on Human Rights

EU – The European Union

GREL – The Rapporteur Group for Relations with the Countries of Central and Eastern Europe

HDZ – Croatian Democratic Party

HIDRA – Croatian Information Documentation Referral Agency

HND – Independent Croatian Democrats

HNS – Croatian People's Party

HRT – National media outlets

HSLs – Croatian Social Liberal Party

HSP – Croatian Party of Rights

HVO – The Croatian Defence Council

OSCE –The Organization for Security and Co – operation in Europe

PHARE – Pologne, Hongrie Aide a la reconstruction economique

RH – The Republic of Croatia

USA – The United States of America

SR Yugoslavia – Federal Republic of Yugoslavia

Soviet Union – The Union of Soviet Socialist Republics

UN – The United Nations

UNPA – United Nations Protected Areas

UNPROFOR – United Nations PROtection FORces

UNTAES – United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium

COE – The Council of Europe

1

Introduction

Gaining full membership in the Council of Europe was of critical importance for initiating negotiations of the Republic of Croatia with the European Union. The ultimate proof of this is the fact that no country became a member of the European Union without becoming a full member of the Council of Europe beforehand. Therefore, the need for examining Croatia's path to the Council of Europe is vital for comprehending its accession to the European Union.

The first part of the book *Croatia and the Council of Europe – Per Aspera* presents certain aspects of European integration, from the establishment of the Council of Europe as the first intergovernmental European integration after World War II. It deals with the period of the formation and institutional strengthening of the Council of Europe as well as with the main protagonists of the process.

It also sets forth a chronology of major events in the COE history. An important part of this segment is the chapter on the Convention for the Protection of Human Rights and Fundamental Freedoms and on the European Court of Human Rights in Strasbourg as the most important components of COE activities. It is followed by an account of the period preceding Croatia's accession to the Council of Europe (from its guest status, admittance process for full membership, to the adoption of the draft resolution and recommendations of the COE Parliamentary Assembly for Croatia).

The second part of the book deals with Croatia's accession to the Council of Europe. It not only defines the basic guidelines and terms but also analyses the process of integration of the Republic of Croatia in the Council of Europe. Such clarifications are necessary for understanding better the course of integration and final admission of the Republic of Croatia to the Council of Europe. It was believed at the time that Croatia would quite quickly access the Council of Europe. However, the process encountered numerous complications and it took as many as four and a half years. Croatia spent this accession period in a purgatory of sorts, shedding the remains of the past and adapting to European standards. It is therefore essential to point out that the experience with the Council of Europe should not be neglected even after Croatia's accession to the European Union.

The Council of Europe and the European Union should be seen as two faces of the same process that actually leads to the Europeanization of politics in order to be able to act through both integrations on the world scene. Europe and the European Union, and therefore, the Council of Europe can survive only by preserving their democratic qualities and their openness whereas the unity of the continent can be achieved through the recognition of the diversity and richness of individual national and regional identities which are its constituent parts. Therefore accession to European integrations implies accession to a community whose principle is unity in diversity. Examining all the relevant

literature one comes to the conclusion that the COE sessions are attended by a heterogeneous group of stakeholders, namely, people who genuinely share these basic goals and who, on behalf of their national parliaments and countries, truly wish to implement them and change matters in the name of and to the benefit of their states and political communities, i.e. institutions. When one considers Item 21 which Croatia had to fulfill in order to meet the criteria set by the Council of Europe, it can be concluded that it actually relates to European principles or, better put, to standards of European behavior. On the other hand, in regard to 35 Chapters of the negotiations with the European Union, the requirements presented a more complex, somewhat bureaucratically entangled procedure, making it hard to discern the principles among the numerous regulations. It could consequently be said that the Council of Europe acts according to the criteria of political harmonization, while the European Union regulates two additional areas - economic, legal and administrative criteria in which the regulations are even more complex. Croatia had to fulfill all the requirements from these complex fields too. Moreover, all the countries intending to become full members of the European Union must meet not only political but these other more complex criteria as well. Both Europe and the European Union alongside the Council of Europe can survive and justify their role only if they preserve democratic principles, if they do not suffocate their members with bureaucratic hypertrophy, authoritative rivalry and imposition of solutions, meaning that all identities should be given relevance and the possibility to express themselves. Hence, the new European identity which is being developed should be complementary to the individual identities of the participants in the process.

It can therefore be concluded that the European Union is a singular phenomenon in the modern world, and this new Europe requires all its components. Europe can use its advantages and assets only if it acts jointly towards other political and economic entities and associations, preserving in the process its uniqueness, and thereby contributing to the development and affirmation of universal values. This is why Croatia's full membership in the Council of Europe was crucial for the initiation of negotiations with the European Union. Without meeting the accession criteria for the Council of Europe, the European Union could not have even begun negotiations with Croatia for full membership. In that sense, the Council of Europe is a kind of "purgatory" from elements foreign to democracy as a political community, founded on pluralism, respect for human rights and dignity of the individual. The process of "purging" implies not only the transition which political institutions and protagonists undergo, but also the transition in people's consciousness. The road to European integration implies a complex process of the adapting an isolated set of values and awareness to a new integrated, highly complex entity. Every society has to pass that road if it

wishes to be integrated into global processes. Other European nations have also passed it (Germans, French, Italians and others). Croatia continued to transverse the road of institutional and political adjustment and succeeded in doing so, particularly regarding changes in social awareness and the gradual shedding of the burden of stereotypes and clichés, of which people were often unaware of.

The period of accession to the Council of Europe itself is an important part of Croatian political history. It was not sufficient for the country to free itself from Yugoslavia, it was necessary to become Europeanized. In the present day globalized world a small country like Croatia cannot stand isolated, especially not without its own energy resources and sustainable industry. Living only from tourism is not possible. These are the basic reasons which, in addition to historical reasons, spurred Croatia, as a maritime country with export potential, on the fast track to European integration on which it confirmed its European political and value related affiliation.

Owing to its position and traditional links Croatia was an important connecting point between Central Europe and other European regions. The same was true in the economic field, in maritime affairs, trade and exchange of people and ideas. In Europe and in the world of dynamic changes Croatia could not take on the role of Switzerland a country successful for centuries. It is oriented toward Europe as its natural environment in which the prosperity of each component is a condition for universal prosperity. It is important to point out that the Council of Europe, namely, the process of the admission of Croatia to the Council of Europe as a precondition for its membership in the European Union is one of the important phases in the building a society according to European principles. It included the relinquishing of the relics of authoritarianism and totalitarianism. The Council of Europe played a fundamental role in the realization of the European dream in the initial phase of Croatia's transition.

In any case, full membership in the European Union was very much worth the while. Croatia's accession to the European Union opened up a new era in the development of Croatian society, the economy and political life. In addition to the funds for various types of grants, primarily for regional development, education, training, infrastructure, health care, etc., the possibilities offered by the European Union concept also have philosophical and political dimensions. Mention and commendation should certainly be made of the Croatian negotiating structures who directed all of their energies to the conscientious and effective conclusion of the negotiations and fulfillment of all complex tasks, i.e. all items contained in 35 Chapters, (*acquis communautaire*). As a result the national legislation has been successfully harmonized with the standards of the European Union wherein the utmost consideration was given to the preservation of Croatian national identity and protection of state interests.

2

Council of Europe - institutions, protagonists and processes

2.1 Council of Europe and its beginnings

The Council of Europe is an intergovernmental international organization founded with the aim of ensuring peace, freedom and security.

The international organization of the Council of Europe was founded on 5 May 1949 by signing the Treaty in London¹ (hence the name the Treaty of London). It was created shortly after all the horrors of World War II as a result of the aspiration for the much needed European peace and unity.

A famous speech by Winston Churchill should be mentioned at the very beginning. In Zurich in 1946 said: "We must build a kind of United States of Europe."² "Winston Churchill was one of the first persons who indicated the direction of development of post-war Europe. His speech on 19 September 1946 at the University of Zurich is considered one of the greatest visionary speeches ever held in the political history of Europe."³ This very speech was the stimulus for stronger unity among European states in the European Economic Community, now the European Union, and above all the stimulus to found the Council of Europe. The Council of Europe is also the oldest European international organization. Its headquarters are in Strasbourg, France, the Alsace region.⁴ It should be mentioned that the headquarters location was not an arbitrary choice, since the region itself was the subject of a dispute between France and Germany on several occasions. As in the meantime the dispute got resolved, the aim was to show the reconciliation of European countries in the new union, as stated in Article 1 of the COE Statute; "to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage."⁵ Was Winston Churchill still alive he would certainly be proud of his conclusions and presentations addressed to the academic youth in 1946 at the University of Zurich; "I am now going to say something that will astonish you. The first step in the re-creation of the European family must be a partnership between France and Germany."⁶ "The words

¹ Signed by ten states founders

² In 1946 on the occasion of the 50th anniversary of his historical speech, the first Churchill Conference took place, afterwards held every year, organised by the European Institute in Zurich

³ Jasna Omejec, Vijeće Europe i Europska unija, institucionalni i pravni okvir, Novi informator, Zagreb 2008

⁴ Alsace, the smallest region in the continental France has two départements (Bas-Rhin département in the north and Haut-Rhin in the south), situated in the very east of France on the border with Germany and Switzerland

⁵ Miomir Matulović i Berislav Pavišić, Dokumenti Vijeća Europe, Institucionalni okvir, Ljudska i manjinska prava, lokalna samouprava, kazneno pravo, Pravni fakultet sveučilišta u Rijeci, Rijeka 2001

⁶ Pascal Fontine, Europa u 12 lekcija, the European Union, 2006

of Winston Churchill echoed across Europe. He, along with Duncan Sandys, supported his idea of united Europe via the Anglo-French United European Movement in 1946 which became the platform for the coordination and organization of different beliefs created after World War II, all in favour of the unification of Europe.”⁷ So the first Committee for the Coordination of European Movements took place on 17 July 1947, and the second, called The Joint International Committee for European Unity, three months later. The name was retained all the way to “the Congress of Europe” in The Hague in 1948. “The structure of the United States of Europe, if built well and sincerely, will be such to make the material strength of a single state less important. Small states will be equally important as the large ones and will gain their position through the contribution to the common goal...”⁸ Only in this way can France regain its leading moral and cultural role in Europe. Europe cannot experience a revival without spiritually strong France and without spiritually strong Germany. Since the Council of Europe promotes democracy, respect for human rights and the rule of law in its member states, the protection and promotion of these values in the COE is not only an internal matter of the states’ governments, but also the mutual responsibility of all the member states. The very task of this organization is equalizing the standards of democracy and protection of the rights of individuals, both in their own country and internationally. It also participates and influences the resolution of political, social, legal and economic problems.

Furthermore, the Council of Europe particularly insists on the establishment and protection of parliamentary democracy, the rule of law, the rights and fundamental freedoms. It also develops, unites and protects democratic system in Europe.⁹

The purpose of the subsequent text is an overview of the position, the role, the organization and the fulfilment of the COE membership requirements and Croatia’s final accession to the most important European integration, the European Union, which was, of course, a result of its membership in the Council of Europe. It also provides a brief overview of some of the Eastern European member states and their admittance to the Council of Europe.

Particular attention will be focused on the accession of the Republic of Croatia to the Council of Europe, i.e. the chronology of Croatian entry to the Council of Europe. Of course, great attention will be paid to the insurance

⁷ Jasna Omejec, *Vijeće Europe i Europska unija, institucionalni i pravni okvir*, Novi informator, Zagreb 2008

⁸ Interview: Ivo Škrabalo, former Croatian MP, the interview took place in October 2006

⁹ Matthias Herdegen; *Europsko pravo*, Pravni fakultet Sveučilišta u Rijeci, Rijeka 2003

of fundamental human rights and freedoms and the procedure for their protection, within the framework of the Council of Europe. It is also highly important to note that the European Convention on Human Rights has the most important role among all ratified and signed Conventions. The Council of Europe today has 45 members. The Republic of Croatia was granted a full membership on 6 November 1996 as the 40th member. The official languages of the Council of Europe are English and French (Council of Europe / Conseil de l'Europe). In the COE Parliamentary Assembly, which we will speak of in the following sections, German, Italian and Russian are used as working languages in addition to English and French. However, during the discussion the use of other languages is allowed, if necessary.

The first founders of the Council of Europe were ten European countries:

- Belgium,
- Denmark,
- France,
- Ireland,
- Italy,
- Luxembourg,
- Norway,
- The Netherlands,
- United Kingdom and
- Sweden.

Any European state can become a full COE member if it guarantees the protection of human rights and fundamental freedoms to everyone within its jurisdiction and if accepts the rule of law.¹⁰ It is certainly an important fact that all the EU countries are also members of the Council of Europe. Still, the Council of Europe should not be equalized with the European Union, since these two organizations are completely different.

“The Council of Europe is a regional (European) international organization of political character, operating on the principles of institutionalized cooperation based on the international public law contract signed between sovereign states.”¹¹

¹⁰ Miomir Matulović and Berislav Pavišić, *Dokumenti Vijeća Europe, Institucionalni okvir, Ljudska i manjinska prava, lokalna samouprava, kazneno pravo*, Pravni fakultet sveučilišta u Rijeci, Rijeka 2001

¹¹ Jasna Omejec, *Vijeće Europe i Europska unija, institucionalni i pravni okvir*, Novi informator, Zagreb 2008

2.2 COE members

For the purpose of a chronological layout of the member states' accession to the oldest international organization, the Council of Europe, all 47 member states and the date of their full membership will be listed below:

1949 (founders)

Belgium, Denmark, France, Ireland, Italy, Luxembourg, Norway, the Netherlands, the United Kingdom and Sweden

August 1949 ... Greece and Turkey

1950 Iceland and Germany

1956 Austria

1961 Cyprus

1963 Switzerland

1965 Malta

1976 Portugal

1977 Spain

1978 Liechtenstein

1988 San Marino

1989 Finland

1990 Hungary

1991 Poland

1992 Bulgaria

1993 Estonia, Lithuania, Slovenia, Slovakia,
the Czech Republic, Romania

1994 Andorra

1995 Latvia, Albania, Moldova, Macedonia,¹² Ukraine

1996 the Russian Federation, the Republic of Croatia

1999 Georgia

2001 Armenia, Azerbaijan

2002 Bosnia and Herzegovina

2003 Serbia

2007 Montenegro

It has to be mentioned that Monaco applied relatively late for the COE membership, while the newest member, Montenegro, accessed as late as 11 May 2007.

¹² Macedonia accessed as the Former Yugoslav Republic of Macedonia

The following countries have observer status¹³ with the bodies for cooperation of the COE member states' governments:

- ★ The United States - observer status with the Committee of Ministers of the Council of Europe
- ★ Canada - observer status with the Committee of Ministers and the Parliamentary Assembly of the Council of Europe
- ★ Mexico - observer status with the Committee of Ministers and the Parliamentary Assembly of the Council of Europe
- ★ Israel - observer status with the Parliamentary Assembly
- ★ The Holy See, the Vatican City¹⁴ - observer status at the Parliamentary Assembly
- ★ Japan - observer status with the Committee of Ministers of the Council of Europe

“The Committee of Ministers of the COE in its 92nd session, held on 14 May 1993 adopted Statutory Resolution 93(26) on observer status. The resolution was adopted as part of institutional reforms within the COE, driven by the changed political situation in Europe and the world that called for increased cooperation between the Council of Europe and non-member states which share the ideals and values of this organization.”¹⁵

2.3 Role and objectives of the Council of Europe

The biggest role of the Council of Europe for sure is promoting democracy, respect for human rights and the rule of law in member states. The work in this international organization is solely focused on the individual and the protection of fundamental rights of individuals. Among other things, the COE role is to take part in all important issues of the European society and be active both in maintaining and promoting European cultural heritage.

The aim of the Council of Europe as set forth in the Statute is “to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress.”¹⁶ It will be achieved by “the

¹³ Government representatives of those states which have observer status may participate in the COE activities and ask questions but cannot vote. A similar situation is with special guest status, which basically provides the same rights as full members (except within the Assembly Committee on the honouring of obligations and commitments), except the right to vote and to be represented in elections.

¹⁴ Vatican does not wish to become a member state

¹⁵ Jasna Omejec, *Vijeće Europe i Europska unija, institucionalni i pravni okvir*, Novi informator, Zagreb 2008

¹⁶ Miomir Matulović and Berislav Pavišić, *Dokumenti Vijeća Europe, Institucionalni okvir, ljudska i manjinska prava, lokalna samouprava, kazneno pravo*, Pravni fakultet sveučilišta u Rijeci, Rijeka 2001

conclusion of conventions and common action in economic, social, cultural, scientific, legal and administrative matters and in the maintenance and further realisation of human rights and fundamental freedoms.”¹⁷ Today the Council of Europe is particularly committed to the following aims, which are at the same time the main COE aims:

- ★ Protection of human rights, pluralist democracy and the rule of law
- ★ Promotion of European cultural identity awareness and encouragement of its development and diversity;
- ★ Looking for solutions to problems faced by the European society (minorities, xenophobia, intolerance, environmental protection, cloning, AIDS, drugs, organized crime, etc.);
- ★ Development of democratic stability in Europe by supporting political, legislative and constitutional reforms.¹⁸

Speaking of Item four of the COE goals, what it refers to in particularly is helping former socialist countries, i.e. Eastern European countries in establishing democracy through the said reforms, based on various cooperation programmes such as; Demosthense, Themis, Lode and Demo-Droit.

2.4 Institutions of the Council of Europe (organization)

The Council of Europe is organized in a democratic manner and has no supranational authorities. As a regional, intergovernmental organizations of political character, the Council of Europe acts through:

- ★ The Committee of Ministers
- ★ The Parliamentary Assembly
- ★ The Congress of Local and Regional Authorities of Europe
- ★ The Secretariat

“Although the COE members are national states, the Council of Europe itself is not just a mere union of member states, but a distinct legal entity with its own bodies, officials and administrative apparatus. It has its legal will, relatively independent of its members, and is a holder of its own rights and obligations.”¹⁹

¹⁷ Miomir Matulović and Berislav Pavišić, Dokumenti Vijeća Europe, Institucionalni okvir, Ljudska i manjinska prava, lokalna samouprava, kazneno pravo, Pravni fakultet sveučilišta u Rijeci, Rijeka 2001

¹⁸ Služba za odnose s javnošću Vijeća Europe, Vijeće Europe aktivnosti i postignuća, Diplomatska akademija Ministarstva vanjskih poslova RH, prijevod Andrea Halambek MVP RH, Zagreb, January 2001

¹⁹ Omejec, Vijeće Europe i Europska unija, institucionalni i pravni okvir, Novi informator, Zagreb 2008

2.4.1 The Committee of Ministers

The main decision-making body of the Council of Europe is the Committee of Ministers. It meets twice a year at the level of ministers of foreign Affairs, since it consists of foreign ministers of 45 member states. The Committee of Ministers also consists of their deputies - permanent government representatives to the Council of Europe in Strasbourg. They have the same decision-making authority as the ministers of foreign affairs, meet at least twice a month at the ambassadorial level and monitor the implementation of the COE activities. Their meetings are complemented by meetings of the deputies of permanent representatives and by meetings of the reporting groups responsible for the detailed analysis of specific issues before the final decision is made.²⁰ Most decisions are made by a two-thirds majority vote, while a simple majority is sufficient for procedural issues.

The Committee of Ministers is chaired by ministers who rotate every six months. Sessions at the ministerial level are usually held in May and November. The Committee of Ministers decides on the activities of the Council of Europe based on the recommendations of the Parliamentary Assembly and the Congress of Local and Regional Authorities of Europe, and on the basis of proposals of intergovernmental committees and expert conferences. It is also the governing body in which issues of individual states faced by the European society are equally discussed so the discussions of the Committee include all the issues which require jointly agreed solutions at the European level.

Furthermore, the Committee of Ministers discusses common political problems apart from defence²¹, it discusses European cooperation, adopts the activities program and the COE budget. In the cooperation with the Parliamentary Assembly the Committee is responsible for controlling the honouring of obligations and commitments of member states, and for the preservation of the values the Council of Europe was built on. Therefore, one can conclude that after all the considerations, whether dealing with current political issues or issues of the European cooperation, the member states' foreign ministers must give a necessary political stimulus to the organization's activities. In relation to the adoption of final decisions, it might happen that not all member states share the same positions or solutions, and do not support some of the projects. In this case, the Committee of Ministers has the option of completing the project through partial

²⁰ Miomir Matulović and Berislav Pavišić, *Dokumenti Vijeća Europe, Institucionalni okvir, Ljudska i manjinska prava, lokalna samouprava, kazneno pravo*, Pravni fakultet sveučilišta u Rijeci, Rijeka 2001

²¹ Defence is the only area not discussed by the Council of Europe. It also refers to economy matters

agreements, which allows only some of the member states supporting the project to implement a joint action in some fields. On the other hand, the extended agreements enable the member states to realize their cooperation with countries which are not COE members through permanent structures of the organization. From the above mentioned conclusions can be drawn on the flexibility of the work structure in the Committee of Ministers. But let us go back again to the decision-making of the Committee of Ministers. After the Committee of Ministers adopts certain decisions, they are submitted to the governments of the member states as recommendations or European conventions or agreements binding only for those states which gave their consent to be bound by them, i.e. whose parliaments ratified them.²² To date, about 202 international agreements (including protocols) have been concluded within the Council of Europe, most important of which being; “the European Convention on Human Rights²³, the European Convention on the Human Rights and Fundamental Freedoms, the Convention against Torture, the European Social Charter, the European Cultural Convention, and the Framework Convention for the Protection of National Minorities.” Committees of governmental experts prepare the content, i.e. the texts of conventions, as well as of recommendations.²⁴

In order to achieve the interaction of political interests with technical consideration and consideration from various scopes dealt with by this intergovernmental organization, committees of governmental experts are responsible to the Committee of Ministers. One of the most important responsibilities of the Committee of Ministers is surely the control of the implementation efficiency of conventions and agreements in member states. It particularly refers to the conventions relating to human rights, among which, by all means, the most important being the Convention on Human Rights. Furthermore, the Committee of Ministers has a collective responsibility for the actual honouring of obligations and commitments taken by the member states by adopting the Statute of the Council of

²² Miomir Matulović and Berislav Pavičić, Dokumenti Vijeća Europe, Institucionalni okvir, ljudska i manjinska prava, lokalna samouprava, kazneno pravo, Pravni fakultet sveučilišta u Rijeci, Rijeka 2001

²³ At the same time the most important and oldest Convention. The act of its adoption legally formalized the idea of European countries about establishing uniform protection of human rights and individual political freedoms which with the rule of law are the basis of true democracy. Apart from it, numerous protocols have been passed, among which Protocol No. 11 bears great importance. It introduced a permanent judicial institution - the European Court of Human Rights.

²⁴ The Committee of Ministers may adopt recommendations addressed to member states on issues not regulated by international agreements. Although they are not binding for the member states, the Statute of the COE authorizes the Council of Ministers to demand from the member states' governments to “be notified on the undertaken actions “ on the basis of the recommendations. They refer to those issues commonly agreed to represent the common law.

Europe. So, by adopting the Statute of the Council of Europe the member states undertake to accept the principles of the rule of law, the principle which guarantees to every person within its jurisdiction human rights and fundamental freedoms. They also undertake to greater cooperation and unity, as well as to actively promote economic and social progress.

If a certain member state should seriously breach the obligations of the Statute of the Council of Europe, the Committee of Ministers may suspend its right to be represented, ask for its withdrawal, or in the worst case decide to exclude it from the membership in the Council of Europe.

2.4.2 The Parliamentary Assembly

The Parliamentary Assembly of the Council of Europe²⁵ is a debating and advisory body. It consists of representatives of 45 national parliaments of the member states. Depending on the number of political parties and the number of citizens of each state, each parliament elects between 2 to 18 representatives. The Parliamentary Assembly now has a total of 582 members - 291 MPs and 291 deputies. MPs and their deputies are elected by the national parliaments among the MPs of each country.²⁶

The members of the Parliamentary Assembly meet four times a year in a plenary session lasting one week.²⁷ The Assembly sessions are public and are held in a large semi-circular hall of the European palace in Strasbourg. In the Parliamentary Assembly the members are divided into five political groups, as follows;

- ★ Socialist Group
- ★ Group of the European People's Party
- ★ European Democratic Group
- ★ Liberal and Democratic Reformist Group
- ★ Group for the European United Left

Of course, some MPs do not want to belong to any of the above mentioned groups. "Political groups are obliged to respect and promote the COE values, in particular political pluralism, human rights and the rule of law. In order for a group to be found, a decision of at least 20 representatives from at least six different national delegations is required."²⁸ The Parliamentary Assembly

²⁵ Its first session was on 10 August 1949

²⁶ The Council of Europe, the Parliamentary Assembly of the Council of Europe, translation by the Croatian National Parliament, Zagreb, May 1998

²⁷ Head of Croatian Parliamentary Delegation to the Parliamentary Assembly of the Council of Europe from 2012 was Mp Mr Gvozden Srećko Flego

²⁸ Jasna Omejec, Vijeće Europe i Europska unija, institucionalni i pravni okvir, Novi informator, Zagreb 2008

elects the president among its members, who holds office for three years. The President, Vice President and the Chairman of five political groups form the Bureau of the Assembly. Furthermore, the Assembly elects the Secretary General of the Council of Europe, as well as his deputy, the Secretary of the Assembly and the European Court of Human Rights judges. In relation to their work and the scope, the Parliamentary Assembly creates its own agenda. It discusses aspects of international politics and all current issues regarding problems of modern society. Furthermore, it discusses European and world affairs. The members of the Parliamentary Assembly of the Council of Europe do not represent their governments but speak on their own behalf, i.e. they represent the opinion of their party or the group they belong to. How important and significant the work of the Parliamentary Assembly of the Council of Europe is, is testified by the fact that some sessions were attended by prominent world statesmen who, with their presence and speeches, contributed to important discussions. For example; John Paul II, Helmut Kohl, Hosni Mubarak, Yasser Arafat, King Juan Carlos...²⁹ The activities of the Parliamentary Assembly are prepared by specialized committees dealing with legal, political and social issues, human rights, healthcare and family, agriculture and rural development, economic development, migration, refugees, parliamentary relations and public relations, equality between women and men, environment, regional planning and local authorities, science and technology, culture and education, as well as monitoring the honouring of obligations and commitments of member states.³⁰ The Assembly also organizes various manifestations in which diverse international non-governmental organizations participate and contribute in the form of advisors through specialized committees. The Assembly holds a variety of symposiums, parliamentary forums of international organizations such as; The European Bank for Reconstruction and Development, The Organisation for Economic Co-operation and Development, some institutions of the United Nations. In addition, it holds regular conferences, public parliamentary debates which try to find solutions to urgent European problems (violence, drugs, immigration, environment...) in the form of dialogue of recognized experts and parliamentarians. Discussions and recommendations of the Parliamentary Assembly are the origin of many COE activities, as well as of

²⁹ By their participation in the meetings of the Parliamentary Assembly of the Council of Europe these eminent, world-famous figures again confirmed the importance of this body, and showed the world how valuable the debates held in the Parliamentary Assembly about important European and world affairs really are.

³⁰ The Council of Europe, the Parliamentary Assembly of the Council of Europe, translation by the Croatian National Parliament, Zagreb, May 1998

the activities of the Committee of Ministers and are especially significant for the fact that the Parliamentary Assembly MPs present them again in their parliaments, thus also influencing the governments of their own countries. In other words, the texts adopted by the Parliamentary Assembly provide the main guidelines for the Committee of Ministers, national governments, parliaments and political parties. Numerous international, more famous under the name of European agreements were initiated by the Assembly. For sure the European Convention on Human Rights signed in Rome in 1950 should be pointed out as the most famous. All these agreements are the basis of Europe's legal systems. At the end of this chapter, I would like to emphasise the particular importance of the Parliamentary Assembly in its contribution for faster integration of the countries of Central and Eastern Europe into the European democratic family, and for encouraging greater, mutual parliamentary cooperation of all European countries.

It is for this reason that the Parliamentary Assembly in 1989 introduced the status of "special guest"³¹, which enabled the countries of Central and Eastern Europe, i.e. countries still not full COE members to participate in plenary sessions of the Parliamentary Assembly and in meetings of specialized committees and in such a way accelerate and facilitate their accession to the Council of Europe. It could be said that special guest status is at the same time the preparation for admittance to full COE membership. The Parliament of Belarus enjoyed special guest status in the Parliamentary Assembly of the Council of Europe from September 1992 to January 1997, but it was suspended since Belarus did not respect human rights.

"Croatia has five representatives in the Parliamentary Assembly of the Council of Europe, to whom five deputies are appointed. Since March 2008 the Delegation of the Croatian Parliament in the Parliamentary Assembly of the Council of Europe has had the status of a working body of the Croatian Parliament. Within the Croatian Parliament there is the Interparliamentary Cooperation Committee, which together with the Foreign Policy Committee takes care of the implementation of the Croatian Foreign Policy within the framework of interparliamentary cooperation with other countries and international organizations in matters of mutual interest".³²

³¹ In order to facilitate the process of accession of Central and Eastern European countries, in 1989 the Assembly introduced the status of "special guest" applicable to all national legislative assemblies of those European non-member states that have ratified or acceded to the Helsinki Final Act. In the circle of the Assembly and its Committees special guests have the same rights as full members, except the right to vote and to be represented at elections.

³² Jasna Omejec, *Vijeće Europe i Europska unija, institucionalni i pravni okvir*, Novi informator, Zagreb 2008.

2.4.3 Congress of Local and Regional Authorities of Europe

The Congress of Local and Regional Authorities of Europe is an advisory body of the Council of Europe. It was founded by the Committee of Ministers in 1994 as the replacement for former Permanent Conference of Local and Regional Authorities. It represents local and regional authorities.³³

The Congress of Local and Regional Authorities consist of 291 representatives and 291 deputies, who are directly responsible to the local and regional authorities of the member state.³⁴ National delegations represent different types of local and regional authorities, as well as a variety of political powers in the government bodies. They meet once a year in plenary session in Strasbourg. The Congress consists of two chambers, one of which represents the Chamber of Local Authorities and the other represents the Chamber of Regions. Every second year the chambers elect the President and the Bureau, whereas the President of the Congress is elected from both Chambers in rotation. The COE officials help the Head of the Secretariat of the Congress, who is responsible for his work. For the purpose of addressing specific matters related to activities and efficiency and flexibility improvement, the Congress and both Chambers can set up ad hoc working groups.³⁵ According to the model of the Parliamentary Assembly, the main task of the Congress is the promotion of local and regional democracy and interregional cooperation in Europe. The main objective of the Congress is to ensure that local and regional authorities participate in the Council of Europe and also in the creation of European unification.

In short, the goal of the Congress is to strengthen democratic structures at the local level and help new democracies to establish effective local and regional authorities. It is local and regional self-government that is considered the basis of the decentralization and democracy of every state and the aspiration for the unity of Europe, based on the cooperation within regions also across national borders. Bearing in mind this very circumstance, the Congress adopted the Second Protocol to the European Convention on Transfrontier Co-operation, its aim being the promotion of inter-territorial cooperation between local and regional authorities. The First Protocol defined the legal framework for cooperation between municipalities and regions on both sides of borders. Among other things, the Congress is active

³³ It is an advisory body, abbreviated as "CLRAE"

³⁴ Public Relations Department of Council of Europe, Activities and Achievements of Council of Europe, the Diplomatic Academy of the Ministry of Foreign Affairs of the Republic of Croatia, translated by Andrea Halambek

³⁵ The work organisation of these ad hoc working groups is regulated by the Rules of Procedure

in addressing all political issues related to local and regional authorities, local and regional autonomy, matters of healthcare, environmental protection, spatial planning, urban planning, education, culture etc.

The Congress also monitors activities of member states in terms of the application of the principle of local democracy stated in the European Charter of Local Self-Government. Should a serious problem occur in the functioning of local and regional democracy of some member states, the Congress sends its reporters who, if necessary, draw up a report on the issue. In order to strengthen local and regional self-government, the Congress adopted the European Charter of Regional Self-Government invoking the transfer of authorities, freedoms and democratic structures to. The Congress calls for regional authorities to be supplied with sufficient financial resources, as well as a sufficient number of civil servants so that they could independently lead their activities without undue interference and activities of the states.³⁶

Numerous professional organizations advise The Congress of Local and Regional Authorities. It participates in the organization of various conferences in relation to specific regions, for instance the Mediterranean and the Baltic regions, mountainous regions, etc., and works to protect and develop them. Regarding the energy policy, pollution, insecurity in cities and urban areas, the Congress looks for and promotes new solutions to the problems faced by large cities, all in accordance with the European Urban Charter. The Congress adopted the European Landscape Convention. Finally it should be mentioned that young people are also inspired to work for social change in their communities, cities, regions, and are encouraged to actively participate in decision-making which affects them, all pursuant to the Charter on the Participation of Young People in Local and Regional Life. Each member state has a certain number of representatives in the Congress of Local and Regional Authorities; Croatia for example has five. In relation to the Congress of Local and Regional Authorities of Europe it should be noted that Local Democracy Agencies were established as part of the retirement process in the former Yugoslavia as early as in 1993. Their task was to operate through partnerships between certain authorities in the region with local and regional authorities from other parts of Europe and promote democracy and respect for human rights. Also, as in the former Yugoslavia at that time the burning question was accommodation and assistance to refugees, the main task of the Agencies was to improve the position of refugees and help with the restoration of public services.

³⁶ The Congress monitors the way member states apply the principles of local democracy stated in the European Charter of Local Self-Government.

2.5 Timeline of key events in the history of the Council of Europe

If we go back 50 years, we can follow a timeline of key events in the history of the Council of Europe, namely:

- ★ On 5 May 1949 in London, ten countries³⁷ signed the Treaty of London establishing the Council of Europe “for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress”
- ★ In 1950 in Rome, the Convention for the Protection of Human Rights and Fundamental Freedoms was signed as the first international legal instrument for the protection of human rights.
- ★ The protection of the rights of every citizen of EU member states and the strengthening of democracy and the rule of law represent the fundamental values on which the Council of Europe relies.
- ★ In December 1955, the Council of Europe’s Committee of Ministers adopted a symbol and an anthem for the organization, namely the European blue flag with twelve stars³⁸ and the Ode to Joy by Ludwig van Beethoven respectively.
- ★ In 1959, the European Court of Human Rights was established, “ensuring the observance of the engagement undertaken by the contracting states in relation to the Convention and its protocols.”
- ★ In 1977, the Palace of Europe was inaugurated in Strasbourg by French president Giscard d’Estaing.³⁹
- ★ In 1983, Protocol No. 6 concerning the abolition of the death penalty was added to the Convention on Human Rights. Since the adoption of the Protocol no death penalty has been carried out in 40 of the member states of the Council of Europe.
- ★ In 1989, the organization established a special guest status within the Parliamentary Assembly of the Council of Europe in order to help the countries of Eastern Europe reach European standards following the fall of communism. After the fall of the Berlin Wall in 1989, the Council of Europe began its strong expansion into the countries of Eastern Europe, Hungary being the first country to join in 1990.⁴⁰

³⁷ Belgium, Denmark, France, Italy, Ireland, Luxembourg, the Netherlands, Norway, Sweden and the United Kingdom

³⁸ A circle of twelve stars symbolising the unity of the European nations

³⁹ Present-day seat of the Council of Europe

⁴⁰ For this reason, the main ceremony commemorating the Council of Europe’s 50th anniversary was held in Budapest

- ★ The Vienna summit conference was held in 1993, bringing together for the first time heads of state and governments of the member states of the Council of Europe. The second summit was held in Strasbourg in 1997.
- ★ In 1998, a new European Court of Human Rights was established, uniting the previous court and the European Commission (which had been established in the meantime).
- ★ In 1999, the Council of Europe adopted the 'Budapest Declaration' for a greater Europe without dividing lines, which addresses the outline of the continent and activities of the organization in the 21st century.

Foreign ministers of 41 member states committed themselves in the Budapest Declaration to consolidating the stability of the continent based on democratic institutions, to strengthening the political, legal, social and cultural cohesion of Europe, and to observing both the rule of law in a democracy and the protection of human rights. Assistance was extended to member states engaged in democratic institution-building for the purpose of reaching uniform standards of democratic development. The ministers committed themselves to fighting terrorism, racism, xenophobia, nationalism, discrimination against minorities, and intolerance. During the first 50 years of its existence, the Council of Europe adopted not only the fundamental Convention on Human Rights, but also 173 conventions and charters covering the broadest areas of everyday life of European citizens such as: The fight against drug use, organized crime, corruption and money laundering, torture, racism, terrorism and xenophobia, together with the protection of rights of minorities, social rights, rights of children and youth.

2.6 Activities of the Council of Europe

The Council of Europe's activities address all major issues facing European society, except for the issue of defence. Thus, its scope of work could best be described as based on the following fields of activities:

- ★ fundamental human rights and freedoms,
- ★ mass media,⁴¹
- ★ cooperation in the field of law and legality,
- ★ social and economic issues,
- ★ health care,
- ★ sports,
- ★ culture,
- ★ education,
- ★ issues concerning youth,
- ★ local and regional authorities, and
- ★ environmental issues⁴²

In relation to the Council of Europe's activities, the importance of legal cooperation in its work should be noted. The Council of Europe covers three important key areas, namely:

- ★ Harmonization of national legislation, observing the principles of democracy, human rights and the rule of law.
- ★ Improving the work of the judicial system, thus ensuring faster and simpler judicial proceedings. And,
- ★ finding common solutions to legal and ethical issues (brought about as a result of scientific and technological progress) and adopting legislation addressing the issues of modern day society.

Thus, it could be concluded that the work of the Council of Europe plays a significant role in developing common European legislation, partly as a result of reasons mentioned previously, but primarily owing to the fact that it has initiated numerous European agreements, and directly contributed to harmonization of European legal systems. All this is based on the Council of Europe's two most important international legal instruments; international treaties and recommendations.

⁴¹ Independent and pluralistic media are of the utmost importance for the functioning of the Council of Europe's activities

⁴² Member states of the Council of Europe are facing various issues in the field of environment and physical planning, natural and technological disasters which can often be dealt with only at international levels.

‘By ‘treaty’, the Council of Europe means an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.’⁴³ Treaties of the Council of Europe contain conventions, framework conventions, agreements, charters, codes, and protocols amending or complementing the main text of a treaty. All legal instruments are also called “European treaties” as defined by the ‘Vienna Convention’ on law of international treaties. The treaties are multilateral, establishing legal standards in member states. Every state which signs and ratifies an international treaty is bound to comply with its rules and should integrate them into its national economy. Conventions and agreements are the most frequent types of treaties signed. The sole difference between a convention and agreement lies in the fact that ‘European convention’ is usually subject to a deposit of an instrument of acceptance (mostly ratification), whereas an agreement may be signed without depositing such an instrument. The Republic of Croatia is a party to over 90 international treaties. The Council of Europe has 202 international treaties, including protocols.

Conventions have full legal force and may govern all issues between member states. Furthermore, they are binding for the states which ratify them and are such a powerful instrument of legal cooperation between the member states that one multilateral convention of the Council of Europe may replace dozens of bilateral conventions between member states. However, conventions and agreements are to be distinguished from the so-called partial agreements which are not international treaties but a particular form of co-operation within the organization.

“Partial agreements allow member states of the Council of Europe to abstain from participating in a certain activity advocated by other member states. From a statutory point of view, a partial agreement remains an activity of the organization in the same way as other programme activities, except that a partial agreement has its own budget and working methods which are determined solely by the members of the partial agreement. In accordance with the Statutory Resolution 93(28) on partial and enlarged agreements of 1993, two conditions have to be met in order to set up a partial agreement: First, an authorization by the Committee of Ministers for the establishment of a partial agreement and secondly, a resolution setting up a partial agreement which contains fundamental provisions of

⁴³ Jasna Omejec, *the Council of Europe and European Union, institutional and legal framework*, Novi Informator, Zagreb, 2008

the agreement and is adopted only by those states which wish to do so.”⁴⁴ However, in addition to Conventions, the Committee of Ministers can also adopt recommendations addressed to governments of member states, providing them with guidelines for amendments to national legislation. This is a more efficient and practical manner of resolving new issues.⁴⁵

2.7 The convention for the protection of human rights and fundamental freedoms and the European Court of Human Rights in Strasbourg

The principle of upholding human rights is a cornerstone of the Council of Europe itself. As early as 1948, at the meeting held in The Hague, ‘the Congress of Europe’ served as a litmus test for the establishment of the Council of Europe. From 8 until 11 May 1980, between 800 and 1000 delegates from around Europe, as well as the observers from Canada and the USA gathered in The Hague for the historic ‘Congress of Europe’.⁴⁶ The Congress was organized by the International Committee of the Movement for European Unity and chaired by Winston Churchill. Its aim was to examine ideas about development of a united Europe to be created through economic and political programmes.

‘The Congress supported the creation of a European Assembly and European Special Council tasked with the preparation of political and economic integration of the European countries.’⁴⁷ “In its Message to Europeans, adopted at the final plenary session, the Congress conveyed the following messages:

- ★ We desire a Charter of Human Rights guaranteeing liberty of thought, assembly and expression as well as the right to form a political opposition,
- ★ We desire a Court of Justice with adequate sanctions for the implementation of this Charter.”⁴⁸

⁴⁴ Jasna Omejec, the Council of Europe and European Union, institutional and legal framework, Novi Informator, Zagreb, 2008

⁴⁵ The Council of Europe Directorate of External Relations, the Council of Europe’s activities and achievements, the Academy of Diplomacy at the Ministry of Foreign Affairs of the Republic of Croatia, translated by Andrea Halambek, Ministry of Foreign Affairs of the Republic of Croatia, Zagreb, January 2001

⁴⁶ Jasna Omejec, the Council of Europe and European Union, institutional and legal framework, Novi Informator, Zagreb, 2008

⁴⁷ Jasna Omejec, the Council of Europe and European Union, institutional and legal framework, Novi Informator, Zagreb, 2008

⁴⁸ Jasna Omejec, the Council of Europe and European Union, institutional and legal framework, Novi Informator, Zagreb, 2008

“The Resolution adopted by the Congress, at the proposal of its Political Committee, also emphasizes the following:’ The Congress (6) is convinced that in the interests of human values and human liberty, the Assembly should make proposals for the establishment of a Court of Justice with adequate sanctions for the implementation of Charter (of human rights) thus ensuring that any citizen of the associated countries has redress before the court, at any time and with the least possible delay, of any violation of his rights as formulated in the Charter.”⁴⁹ Furthermore, the Resolution, adopted at the Congress, stated the following: “This Congress considers that Union or Federation should be open to all European nations democratically governed and which undertake to respect a Charter of Human Rights.” It also decides that a Commission should be set up to undertake immediately the double task of drafting such a Charter and of laying down standards to which a State must conform if it is to deserve the name of a democracy. Soon after these events, the European Convention for the Protection of Human Rights and Fundamental Freedoms was adopted.⁵⁰ It was signed on 4 November 1953 in Rome by member states of the Council of Europe and entered into force in 1953. To this day it represents one of the most effective and significant international instruments for the protection of human rights at the regional level.

The overall historical importance of the European Convention for the Protection of Human Rights may be summed up in several points, namely:

- ★ It is the first international, comprehensive legislation for the protection of human rights.
- ★ It established the first court of human rights and a procedure to be followed in case of violation of rights under the Convention.
- ★ It remains the most developed system among existing regional systems for the protection of human rights.
- ★ Through activities of the European Court of Human Rights, an extensive and branched out case-law has been developed, influencing the development of numerous standards for the protection of human rights.⁵¹

Motives and circumstances leading to the adoption of the Convention should also be mentioned, such as grave violations of human rights and the worst atrocities imaginable committed in Europe during World War II.

⁴⁹ Jasna Omejec, *the Council of Europe and European Union, institutional and legal framework*, Novi Informator, Zagreb, 2008

⁵⁰ European Convention on Human Rights

⁵¹ Luke Clements, *European human rights, Taking a case under the convention*, Sweet & London Maxwell 1994

The European Convention for the Protection of Human Rights is surely a regional response to such serious violations of human rights.

'The excellence of the system for the protection of human rights and fundamental freedoms guaranteed by the Convention is reflected in the fact that the rights under the Convention are nowadays recognized by the world as 'Convention rights', and the protection system as the 'Convention system'.⁵² Therefore, both the Council of Europe, the institution where the Convention was drafted, and the European Union⁵³ were established as a result of a desire to ensure a stable and permanent partnership between the western countries and Germany. Germany was at the time stable and at peace, guaranteeing European prosperity. The very Preamble to the European Convention for the Protection of Human Rights speaks of a common European heritage of ideals, freedom and the rule of law. The wording of the Preamble indicates another particularly important circumstance which provided an excellent incentive for the creation of the European Convention on Human Rights.

'Reference to the legacy of liberal western democracies and the rule of law as part of the common European heritage indicates also a desire for all non-communist countries to establish stronger connections and unite so as to present a strong barrier to the expansion of communism and increased military and political power of the Soviet Union. By adopting values set forth in the Preamble, the European Convention for the Protection of Human Rights generally sets a clear distinction in relation to the value system fostered by newly formed 'people's democracies' of Eastern Europe."⁵⁴ Before elaborating further, it would be useful to place it in a broader institutional context. This institutional context may sometimes seem confusing, primarily because of similar names and overlapping roles. The Convention is a legal act adopted by the Council of Europe, one of the three most important regional organizations ensuring mechanisms for the protection of human rights.⁵⁵ The European Union and the Organization for Security and Co-operation in Europe (OESS) are the remaining two. It should be noted that the Council of Europe is not to be confused with the European Council ⁵⁶ (Council of Ministers), the latter being one of the EU bodies.

⁵² Jasna Omejec, *the Council of Europe and European Union, institutional and legal framework*, Novi Informator, Zagreb, 2008

⁵³ The European Economic Community at the time

⁵⁴ Interview, Mr Ivo Škrabalo, October 2006

⁵⁵ Luke Clements, *European human rights, Taking a case under the convention*, Sweet & London Maxwell 1994.

⁵⁶ Also called the European 'summit' consisting of heads of states and governments of 27 member states of the European Union meeting in order to define and plan political direction.

When the Council of Europe was founded in the mid 1990s, the primary goal was to promote the values of democracy and the rule of law (the concept of the rule of law in the Anglo-Saxon legal system, and the concept of state of law, *Rechtstaat*, in the German legal tradition.)⁵⁷ “In any case, in its first years of existence, the Council of Europe posed a first-class ideological barrier to the expansion of the Soviet influence in Europe, and one of the fundamental obstacles to the totalitarian and communist regimes in the eastern part of the continent.”⁵⁸ Following the fall of communism, the countries of Eastern Europe, once ideological adversaries, became members in the post-cold-war era, thus turning the Council of Europe into a true pan-European organization. Neutral countries such as Switzerland and Finland also became members of the Council of Europe in the post-cold-war era. Nowadays almost all European countries, including the Russian Federation (since 1995) are members.⁵⁹ Article 3 of the Statute sets out requirements for membership of the Council of Europe, and they are as follows: A country must be a true democracy, accept the principles of the rule of law and human rights protection, and collaborate sincerely and effectively with the Council of Europe in these areas.⁶⁰

Such collaboration definitely implies implementation of the European Convention for the Protection of Human Rights.⁶¹ In addition to the European Convention, other agreements on human rights protection were adopted by the Council of Europe, for example the European Social Charter, the European Convention for the Prevention of Torture and the Framework Convention for the Protection of National Minorities. The fact that economic and social rights are not set out in the European Convention for the Protection of Human Rights brought about a need to adopt the European Social Charter, regardless of the fact that the rights in question are incorporated in the constitutional systems of almost all European countries. As a result, the European Social Charter was adopted by the Council of Europe in 1961. To this day it has not been of any major relevance.

⁵⁷ Luke Clements, *European human rights, Taking a case under the convention*, Sweet & London Maxwell 1994

⁵⁸ Interview, Dr. Žarko Domljan, November 2006

⁵⁹ Interview, Dr. Žarko Domljan, November 2006

⁶⁰ Florence Benoit – Rohmer and Heinrich Klebes, *Council of Europe law, Towards a pan-European legal area*, Council of Europe, June 2006

⁶¹ Florence Benoit – Rohmer and Heinrich Klebes, *Council of Europe law, Towards a pan-European legal area*, Council of Europe, June 2006

The European Convention for the Prevention of Torture was adopted by the Council of Europe in 1987. The primary cause for its adoption lies in the fact that the UN Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted in 1984. The European Convention for the Prevention of Torture sets up the Committee for the Prevention of Torture, a body meeting *in camera* in order to examine the treatment of persons deprived of their liberty. Every country which is a signatory to the European Convention for the Prevention of Torture must allow the Committee members to visit its prisons and detention units. It is customary for these visits to be conducted on a regular and routine basis. In case any rights set forth in the European Convention for the Prevention of Torture have been violated, the Committee makes a public statement (the decision about the statement is made by a majority of two-thirds of its members). For example, such a decision was adopted in 1992 when Turkey was denounced for the activities carried out by anti-terrorist units of the Turkish police force.

Attempts to standardize the issue of national minorities at the level of the Council of Europe have continued since the Council's establishment in 1949. Differences of opinion and unresolved issues still remain, so only the Framework Convention for the Protection of National Minorities was adopted in 1994. Its adoption was also prompted by the UN Declaration on Minority Rights of 1992.

However, the European institutional context of the Convention shows that much like the Council of Europe, as the oldest organization which promoted European integration and adopted the European Convention for the Protection of Human Rights, the European Union has also always striven to transform the continent into a unified area of prosperity and the rule of law, despite having been created primarily as economic union⁶² and having subsequently set up clear political institutions such as parliament.

The European Union is, of course, especially nowadays, a much stronger union, starting to exhibit supranational characteristics. The number of member states is therefore somewhat lower than the one of the Council of Europe, while membership criteria have become stricter and more comprehensive. The present-day European Union consists of 27 member states and still does not include the Balkan countries or countries of the former Soviet Union with the exception of three Baltic Republics. The European Union attaches special importance to the European Convention for the Protection of Human Rights where it enjoys a favourable status,

⁶² The EU traces its origins to the European Coal and Steel Community, established in 1952

despite the fact that it was adopted by another organization, the Council of Europe. This is not because of the fact that all member states of the EU are also members of the Council of Europe and signatories to the European Convention for the Protection of Human, but because the European Court of Justice in Luxembourg, one of the EU bodies, has, ever since its beginning, paid special attention to the European Convention for the Protection of Human Rights.

The European Court of Justice formulated its own doctrine of human rights, based largely on the European Convention for the Protection of Human Rights and case law of the European Court of Human Rights. Ever since 1969 when the European Court of Justice in Luxembourg began to formulate its doctrine of human rights, a number of rulings have been given by the Court confirming the prime importance that the European legislation (European Union law) attached to the standards set out in the European Convention for the Protection of Human Rights and Protocols thereto.⁶³ Such a preferential status given to the European Convention for the Protection of Human Rights in the European Union was formalized in 1977 when the European Parliament passed a declaration confirming the prime importance given by the then still Community to the fundamental rights and freedoms set out in the European Convention for the Protection of Human Rights. In this respect, the European Convention for the Protection of Human Rights has the earmarks of a charter of fundamental rights applied in the European Union, despite the fact that it is not part of the *acquis* (the body of common rights and obligations of the European Union).⁶⁴

However, it should be noted that unlike the European Convention of the Council of Europe and the Charter of Fundamental Rights of the European Union which are considered regional (European) instruments for the protection of human rights, the UN Universal Declaration of Human Rights⁶⁵ is a global international instrument and a precursor to all subsequent global and regional instruments of such a protection. The UN Universal Declaration of Human Rights protects fundamental human rights at the international level.

⁶³ Matthias Herdegen, European Law, Faculty of Law, University of Rijeka, Rijeka 2003

⁶⁴ Matthias Herdegen, European Law, Faculty of Law, University of Rijeka, Rijeka 2003

⁶⁵ adopted on 10 December 1948

The following comparative overview of the European Union and the Council of Europe is presented so as to provide clarification.

The Council of Europe

The Parliamentary Assembly

The COE Committee of Ministers

The European Court of Human Rights in Strasbourg

The European Union

The European Parliament

The European Council (The Council of Ministers of EU)

The European Court of Justice in Luxembourg

Most Statutes of the Council of Europe place importance and emphasis on the respect for and observance of human rights, so much so that a serious violation of human rights and fundamental freedoms would be grounds for suspension, i.e., expulsion of a member state from the Council of Europe. The European Convention on Human Rights is preceded by the Universal Declaration of Human Rights,⁶⁶ and the American Declaration of the Rights and Duties of Man. This led to the idea that the Convention should comprise a list of human rights similar to the list contained in the draft (at the time) of the UN International Covenant on Civil and Political Rights.⁶⁷ However, the compilation of the list began immediately after the adoption of the UN Charter and UN Declaration on Human Rights. In general, however, the European Convention for the Protection of Human Rights, both in theory and in practice, represents a much more comprehensive and more efficient system for the protection of human rights than the International Covenant on Civil and Political Rights. On the other hand, basic components of the International Covenant on Civil and Political Rights, such as the right to self-determination, are not included in the European Convention on Human Rights.⁶⁸

⁶⁶ In Croatian also called '*Opća deklaracija o ljudskim pravima* or '*Univerzalna deklaracija o ljudskim pravima*', depending on a translation; it is the first comprehensive instrument for the protection of human rights, adopted by the United Nations General Assembly in 1948. It was adopted as a resolution, with no binding legal force, with a view of ensuring 'common understanding' of human rights and freedoms set out in the UN Charter. Article 1 solemnly declares that: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." Article 28 also relates to that and proclaims that a state and international community recognize human rights: "Everyone is entitled to social and international order in which the rights and freedoms set forth in the Declaration can fully be realized."

⁶⁷ The International Covenant on Civil and Political Rights entered into force in 1966

⁶⁸ Luke Clements, *European human rights, Taking a case under the convention*, Sweet & London Maxwell 1994

The differences lie primarily in the possibility to implement standards and mechanisms for the protection of the guaranteed rights. Both treaties allow for a possibility of derogations from certain rights, such as freedom of expression, the right to freedom of association and assembly and similar, for the purpose of maintaining public order and national security. However, it should be noted that the European Convention on Human Rights, unlike the International Covenant on Civil and Political Rights, demands that such derogations be necessary in a democratic society, whereas neither international treaty allows for derogations from basic rights, even in time of war or states of emergency threatening the life of the nation.

The fundamental rights are specified in the European Convention for the Protection of Human Rights.⁶⁹

The Statute of the Council of Europe was signed on 5 May 1949 by ten countries.⁷⁰ As previously mentioned, the main priority for the establishment of the Council of Europe was drawing up a draft of the Human Rights Charter. The same ten founding members of the Council of Europe signed the Convention for the Protection of Human Rights and Fundamental Freedoms on 4 November 1950 in Rome. The Convention entered into force on 3 September 1953. This raises the question as to why it took three years before the Convention entered into force. The answer is that the member states of the Council of Europe had a number of proposals and great ideas which were never incorporated in the final text of the Convention with the result that it took three years for all members of the Council of Europe to agree upon their inclusion.⁷¹ It was, therefore, agreed that additional Protocols would be concluded in future. Protocols are separate international treaties which are binding only for their signatories. Most protocols refer to procedural issues, and some protocols also guarantee additional rights not set out in the Convention. The protocols guarantee the following additional rights: The protection of property, the right to education, the right to free elections (Protocol I of 1952), prohibition of imprisonment for debt, freedom

⁶⁹ Article 2 The right of every person to his or her life, Article 3 prohibition of torture, inhuman or degrading treatment or punishment, Article 4 prohibition of slavery or forced labour, Article 5 the right to liberty and security, Article 6 the right to a fair trial, Article 7 No punishment without law (*nulla poena sine lege*), Article 8 the right to respect for private and family life, home and correspondence, Article 9 freedom of thought, conscience and religion, Article 10 freedom of expression, Article 11 freedom of assembly and association, Article 12 the right to marry, Article 13 the right to effective remedy before a national authority, Article 14 prohibition of discrimination against any rights and freedoms set forth in the Convention.

⁷⁰ In London, by Belgium, Denmark; France, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden and the United Kingdom.

⁷¹ Interview, Žarko Domljan, PhD, November 2006

of movement and freedom to choose residence, freedom to leave and return to any country, prohibition of collective expulsion of aliens (Protocol VI of 1963), procedural safeguards relating to expulsion of aliens, the right of appeal in criminal matters, the right to compensation for wrongful conviction, the right not to be tried or punished twice (*ne bis ne idem*), and equality between spouses (Protocol VII of 1984). It should be emphasized that not all signatories to the European Convention for the Protection of Human Rights are also signatories to all protocols. Thus, the European Convention for the Protection of Human Rights is surely the most important international treaty, and this importance is undoubtedly one of the greatest achievements of the Council of Europe. This international treaty establishes fundamental, inalienable rights to freedom of every person, and countries undertake to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention. Every country or person, regardless of their nationality, may submit, through an international protection mechanism, an application to judicial bodies in Strasbourg established by the Convention, if the country or person believes that their rights set forth in the Convention on Human Rights have been violated.⁷² With respect to the mechanism ensuring the implementation of the European Convention for the Protection of Human Rights, the Convention itself provides for two types of procedures on the basis of which signatory countries may be held accountable for the violation of the guaranteed rights.

- ★ Applications from any person against a country as provided for in Article 34 of the Convention, whereby person means not only physical person but also nongovernmental organization or other groups, which can be granted the status *ius standi in iudicio*, i.e. persons claiming to be the victim of a violation of the rights set forth in the Convention.
- ★ Applications lodged by one member state i.e., High Contracting Party for any alleged breach of the provisions of the Convention and the Protocols thereto by another High Contracting Part, as provided for in Article 33 of the Convention.

In both previous cases, and so as to ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and Protocols thereto, The European Court of Human Rights was established, in Strasbourg, and functions on a permanent basis. The European Court of Human Rights is an international institution which may hear applications lodged by persons alleging their rights under European Convention for

⁷² Matthias Herdegen, European Law, The Faculty of Law, The University of Rijeka, Rijeka 2003

the Protection of Human Rights have been violated. These applications may, of course, be examined only under certain circumstances. It is a task of every state, i.e. of a High Contracting Party to the European Convention for the Protection of Human Rights, to implement the rights set forth in the Convention in its legislative system and to also ensure effective legal remedies. If a right set forth in the Convention has been violated, and no effective legal protection has been provided by the national legal system, an individual granted *ius standi in iudicio* status,⁷³ has the right to lodge an application before the European Court of Human Rights. The Court can examine applications lodged only against states which have ratified the Convention and the Protocols in question, and which refer to cases within the jurisdiction of public authorities, i.e., entire administration, legislation and judiciary in states which have ratified the Convention and Protocols thereto. It should be noted that the Court does not, under any circumstances, examine applications lodged against individuals or private companies. Furthermore, cases can only be brought to the Court after domestic remedies have been exhausted. Applications must be lodged with the Court within a period of six months from the date on which the final decision was taken by the highest court in the country concerned. If the time-limit for lodging an application by an individual against a High Contracting Party is exceeded, the application is dismissed by the Court.⁷⁴

It should, however, be noted that the procedural condition that all domestic remedies be exhausted does not need to be met if, owing to excessive delays, there is a violation of the right to a fair trial referred to in Article 6 of the Convention, since the Convention stipulates that the proceedings be completed within a reasonable time. The case-law of the European Court of Human Rights defines a period of six years as reasonable time in which a fair trial referred to in Article 6 of the Convention is to be completed.⁷⁵

Following the adoption of Protocol XI to the Convention, proceedings before the European Court of Human Rights in accordance with Article 34⁷⁶ have been made significantly easier since the role of the Court has been extended with respect to admissibility, as the Commission of Human Rights

⁷³ They claim to be direct victims of violation of one or more fundamental rights set forth in the Convention or protocols by one of the countries.

⁷⁴ Rules of the Court of Human Rights

⁷⁵ Interview Mr Ivo Škrabalo, October 2006

⁷⁶ Individual applications

of the Council of Europe⁷⁷ once had greater powers. This is best illustrated in the case of the European Court of Human Rights that became a legal successor of the European Commission on Human Rights. At the beginning of the 1950s neither institution convened regularly, they did it only to examine individual cases; i.e., the European Commission of Human Rights could declare applications admissible or inadmissible, and if the application was declared admissible, the Commission helped in finding a solution. However, when the solution could not be reached, the Commission would decide on the merits of the case and issue advisory opinions stating whether or not there has been a violation of rights in the case in question. Only then could the case be referred to the European Court of Human Rights for a final decision, i.e., judgement to be delivered. Thus the judgement becomes binding for a state, and the claimant is awarded damages and reimbursement of costs. The situation has, however, changed owing to an even larger number of judgements delivered by the European Court of Human Rights.

The Court becomes directly accessible to private individuals and its jurisdiction is binding for all member states. Nowadays, the European Court of Human Rights is also responsible for the preparatory stage of a case; it convenes regularly and delivers judgements. As opposed to admissible applications, every individual application which is contrary to the provisions set out in the Convention and the Protocol is dismissed by the Court. This means that an application submitted under Article 34 of the Convention which is anonymous, has already been examined by the Court, has already been submitted to another procedure of international investigation and contains no relevant new information, or is considered incompatible with the provisions of the Convention or the Protocols thereto, will be declared inadmissible and rejected by the Court.⁷⁸

The greatest number of judgements, almost the entire case-law of the European Court of Human Rights, refers exactly to the procedures under Article 34 of the Convention for the Protection of Human Rights.

The number of complaints has been increasing year after year. For example, the statistics show that in 1981, a total of 404 applications were lodged, whereas thirteen years later, in 1994, there were more than 4000. The time it takes to settle a complaint has also increased. In 1993, the average length of proceedings before the European Court of Human Rights was five years and eight months. This is particularly ironic bearing in mind the fact that the case-law of the European Court established a period of six

⁷⁷ It convened periodically, if necessary, to examine certain issues

⁷⁸ The Rules of Court

years as a reasonable time-limit for the length of proceedings (the right to a fair trial referred to in Article 6 of the Convention) before national courts. From 1953 until 1994, a total of 26041 applications were lodged, of which 2027 were declared admissible, and a violation of human rights under the Convention⁷⁹ was established in 290 of those 2027 cases. Therefore, with a view of strengthening the protection provided by the European Convention on Human Rights, a list of protected rights is being constantly extended and procedures are being improved as a result of experience, practice and an increased number of applications and their complexity. The period of six months for lodging an application before the Court in Strasbourg ends once the Court receives the first application form sent by an individual against a High Contracting Party, providing a brief summary of the facts and their complaints, or once only a completed application form is received. The application is submitted to the Court only by regular mail, in one of the two official languages, English or French. The Registry allocates a file number to a party, which must be mentioned in all subsequent correspondence with the Court.

If the Registry has any enquiries or requests that additional documents or information relating to the complaint be submitted, it is, of course, in the interest of a person lodging the complaint, to submit them without any delay and as soon as possible. The time-limit for the submission of additional documents to the application form, i.e., a timely reply to any enquiry made by the Court, is one year; otherwise the application will be dismissed under the assumption that the application is no longer of interest. If the Court declares the application admissible, it will proceed to examine the case and conduct an investigation with the full cooperation of the states concerned. Furthermore, the Court may help the parties concerned to reach a friendly settlement and should that be the case the Court will decide to strike out the case from its list. If the Court finds that there has been a violation of rights set out in the Convention or the Protocols thereto, the Court may award a just satisfaction to the injured party. The judgements delivered by the Chamber are final. If a party in the dispute finds the final outcome of the judgement unsatisfactory, it has three months following the delivery of a Chamber judgment to request referral of the case to the Grand Chamber, which consists of seventeen judges. First, a panel of five judges of the Grand Chamber decides whether or not the case in question concerns some important issues which might affect the application and interpretation of the Convention and the Protocols thereto and accepts the application. The

⁷⁹ Interview, Mr Ivo Škrabalo, October 2006

case is settled once the Grand Chamber delivers a judgement which is final and is made public. However, if the parties state they will not request a referral of the case to the Grand Chamber or three months following the delivery of the Chamber judgement have expired and the referral to the Grand Chamber has not been requested or if the panel of the Grand Chamber rejects the request, the Chamber judgement becomes final. The Court's final judgement is submitted to the Committee of Ministers monitoring the work of the Court in relation to the execution of judgements, and High Contracting Parties are obliged to comply with the judgement of the Court. The Court may give advisory opinions, but strictly at the request of the Committee of Ministers and in relation to legal issues concerning the interpretation of the Convention and Protocols thereto.

At the plenary court, the Court elects its President, one or two Vice-Presidents, sets up Chambers, and elects the Presidents of the Chambers, elects its Registrar and two Deputy Registrars and adopts the Rules of Court. The President of the Court and Vice-Presidents are elected for a term of three years and may be re-elected. Plenary court is convened by the President of the Court at least once a year in order to deal with administrative and other legal issues or when this is required based on the duties of the President under the Convention. The plenary court may be convened by one third of the members of the Court out of its total number of judges, and a quorum consists of two-thirds of the elected judges. The President of the Court manages the activities and departments of the Court, is responsible, in particular, for the Court's relations with the bodies of the Council of Europe, and also represents the Court.

Furthermore, the President of the Court presides over plenary courts and sessions of the Grand Chamber as well as over sessions of the five-judge panel. The Court has a Registry which assists the Court in its activities. The Court elects a Registrar at its plenary court and the Registrar must be a person of high moral reputation and display legal and managerial knowledge. The Registrar is elected for a term of five years and may be re-elected. The Registrar assists the Court in carrying out its duties and is responsible for the organization and activities of the Registry under the authority of the President of the Court. The Registrar manages the Court's archives, provides responses to media enquiries while maintaining due discretion. With respect to the internal organization of the Registry, it consists of Registrars for certain Sections and their number corresponds to the number of Sections set up by the Court. It also includes administrative and legal divisions. Registry staff members are appointed

by the Secretary General of the Council of Europe with the consent of the President of the Court. The Court hears cases in three-judge Committees, seven-judge Chambers and the Grand Chamber consisting of seventeen judges. The Court's deliberations are confidential and decisions are made by a majority of the judges present. The judges are elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority of votes. The number of judges corresponds to the number of High Contracting Parties. The judges sit in the Court and are independent in carrying out their duties and do not represent the countries which nominated them. The judges must be of high moral character and must possess the qualifications required for appointment to high judicial office. During their term of office, the judges may not engage in any activity which is incompatible with their independence, impartiality or with the demands of a fulltime office. In most cases, the Court sits in seven-judge Chambers and if it finds the application admissible, the seven-judge Chamber seeks to negotiate a friendly settlement between the parties. However, if the Court finds the case inadmissible, i.e. unfounded, at an early stage of the proceedings, a Committee of three judges will unanimously strike it out from the procedure. The case will be referred to the Grand Chamber should the interpretation of the application of the Convention on Human Rights be relevant for the application lodged. The Grand Chamber consists of seventeen judges and at least three deputy judges. It includes the President of the Court, Vice-President of the Court, the Section Presidents and judges elected in respect of the State against which the application was lodged or ad hoc judges if necessary. When the Grand Chamber hears a case referred to it under Article 43 of the Convention, it does not include any judges who previously sat in the Chamber which delivered a judgement and decided on admissibility and merits of the case. The President of the Chamber and a judge elected in respect of the State against which the application was lodged are an exception to this. A panel of five judges of the Grand Chamber decides whether or not the case should be referred to the Grand Chamber for fresh consideration under Article 43 of the Convention.

The execution of judgements delivered by the European Court is supervised by the Committee of Ministers. The aim was to improve the work of the Court and the efficiency of safeguard measures, in order to shorten the procedures while maintaining the high level of protection of human rights which had been achieved during that period. It should be noted that one of the aims was also to make the system more accessible to all interested individuals. The goal of the mentioned changes was achieved

in Vienna on 9 October 1993, at the summit conference attended by heads of state and governments. Statistics show that proceedings initiated as a result of applications lodged by private individuals make up the majority of the work done by the European Court of Human Rights. While the number of such proceedings is on the rise, the number of proceedings initiated as a result of applications lodged by member states against other member states under Article 33 of the Convention does not show a dramatic increase. Only member states have the right to initiate legal proceedings under Article 33 and only member states can have legal standing as defendants, i.e., can be sued. It is interesting to note that the biggest European countries such as the United Kingdom, Germany and Spain have never initiated proceedings under Article 33 of the Convention. This leads to the conclusion that such proceedings are usually initiated by smaller countries lacking greater political power and diplomatic influence. For example, the Republic of Ireland lodged an application against the United Kingdom in 1971 and 1972 because of emergency provisions introduced in Northern Ireland in that period. The Irish government believed that those measures actually violated the prohibition of torture and inhuman and degrading treatment under the European Convention for the Protection of Human Rights. In relation to those complaints, the European Court of Human Rights established that the measures introduced by The United Kingdom in Northern Ireland did not constitute torture prohibited under the Convention on Human Rights; however they did constitute inhuman and degrading treatment.⁸⁰ The power of final decisions made by the European Court of Human Rights lies not only in the fact that they are part of international law and as such are binding for parties to the Court, but also in the fact that, under the Convention, the Court is able to award just satisfaction if it finds that there has been a violation. Just satisfaction in terms of monetary awards represents a moral satisfaction and not reparation. Such just satisfactions have greatly encouraged member states to change their legal systems based on the judgements delivered by the European Court of Human Rights:

Payments of the amounts awarded were too big a burden for state budgets so member states thought it would be much cheaper to make necessary changes in their legislation instead of paying for every single case.

The European Court of Human Rights exerted enormous influence on national legal systems with respect to implementation of the European Convention for the Protection of Human Rights and general development of standards for the protection of human rights.

⁸⁰ Interview, Mr Ivo Škrabalo, October 2006

The European Convention for the Protection of Human Rights has reached the level of constitutional law in Austria and judgements delivered by the European Court of Human Rights in individual cases led to amendment of the Austrian Criminal Proceedings Act as well as of the Austrian system of determining fees for legal services.

In Belgium, the judgements of the European Court of Human Rights led to amendments to the Criminal Code and also granted equal status to legitimate and illegitimate children in the Belgian Civil Code.

In the Netherlands, most provisions set out in the European Convention for the Protection of Human Rights are a major source of law/have direct effect, taking precedence over Dutch laws and the Constitution. Following judgements rendered by the European Court of Human Rights in some cases, the Netherlands made changes to its legislation concerning detention of people with mental disorders. In France, the case-law of the European Court of Human Rights led to changes in the field of telecommunications.

“In general, legal opinions/positions/decisions expressed in the judgements rendered by the European Court of Human Rights are frequently cited in rulings delivered by national courts and in many instances represent decisive criteria for settling/resolving cases. The case-law of the European Court of Human Rights has defined a series of standards and a few doctrines. The case-law of the Court in Strasbourg affected the work of other international courts, primarily the European Court of Justice in Luxembourg as well as the Inter-American Court. Certain parallels can be drawn with the positions and doctrines formulated by the Supreme Court of the United States based on its case-law. It is for this reason that the Constitution of the United States and the European Convention for the Protection of Human Rights are often compared.”⁸¹

Attention should also be drawn to a prevailing doctrine present in the case-law of the European Court of Human Rights, the so-called *margin of appreciation* doctrine.⁸² The margin of appreciation doctrine allows for the space to manoeuvre to member states in fulfilling their obligations under the Convention while taking into account circumstances in a given case: namely, in many cases it is difficult to make a clear distinction between a violation of a right under the Convention and allowed activities. If terminology from technical sciences is to be used, the margin of appreciation represents a permissible deviation from standard values.

⁸¹ Interview, Mr Ivo Škrabalo, October 2006

⁸² Margin of appreciation

Margin of appreciation is the Court's self-regulatory measure, preventing the Court from overly interfering in the legal systems of the member states of the European Convention for the Protection of Human Rights. The case-law of the European Court of Human Rights provides a series of examples in its many years of work. An illustrative example from the case-law of the European Court of Human Rights under the name *Brogan and Others v The United Kingdom*. Brogan was a national of the United Kingdom, arrested by police officers in 1984 and questioned about his suspected involvement in an attack on a police mobile patrol as well as about his suspected membership of the Provisional Irish Republican Army (IRA). During the interrogation, Brogan refused to answer any questions and exercised his right to remain silent. He spent four days and six hours in detention. During that period he was allowed to see his lawyer. Brogan was neither charged nor brought before a court during or after detention. British legislation prescribes that the police may arrest without warrant anyone whom they have reasonable grounds for suspecting to be guilty of the offence. Such a person is to be brought before the court within 24 hours or not later than 48 hours after the arrest so that a warrant for their arrest may be issued, otherwise the person detained must be released (old Anglo Saxon legal instrument known as *writ of habeas corpus*).

However, in the 1970s the Parliament adopted a series of regulations concerning the area of Northern Ireland. The regulations prescribed emergency provisions in view of escalation of violence and increased terrorist activities in that part of the country. The Prevention of Terrorism Act of 1976 had to be renewed every year and allowed the police to make arrests without warrants. The police were allowed to arrest persons for suspected involvement in terrorist activities, and they could not be detained longer than 48 hours. In exceptional cases, a chief superintendent may extend that period by a further five days. The Prevention of Terrorism Act was confirmed also in 1984. Applicant Brogan claimed before the European Court of Human Rights that his arrest was not justified under Article 5 of the Convention of Human Rights, which states that everyone has the right to liberty and security of person and if a person is deprived of their liberty they will be brought before the competent legal authority, meaning in broader terms that the United Kingdom violated the right to liberty and security of person. The applicant claimed that the British legislation in question gave special powers to administrative bodies and failed to protect liberty of person before the judicial bodies. The United Kingdom as a respondent pointed out that the government faced extremely difficult circumstances

in Northern Ireland in terms of threats posed by organized terrorism. The respondent also admitted that, owing to an emergency situation in Northern Ireland, no notice of derogation from the rights under the Convention on Human Rights was given to the Council of Europe in 1984. Furthermore, the United Kingdom claimed there was no reason to believe that the police investigation in this case was not in good faith. It was necessary in view of protection the lives of others. In addition, the United Kingdom pointed out that the European Court of Human Rights was not authorized to review national legislation *in abstracto*, but only to assess whether a right set forth in the Convention has been violated. In its ruling, the European Court of Human Rights finds Brogan's application admissible.

In the judgement of the European Court of Human Rights declares the Broan law suit admissible. Article 5 of the Convention was violated because the detainee was not brought before a judicial authority within an appropriate period. Judicial supervision of the arrest is, as stated in the findings, one of the basic elements of the rule of law and as such may not be called into question. Therefore, the decision in this case came down to establishing whether the time that the plaintiff spent in custody before being brought before a judicial body was shorter than that stipulated by the European Convention on Human Rights. The Court holds that 4 days and 6 hours is certainly longer than appropriate for judicial supervision of the arrest. The Plaintiff was awarded £2,000.00 per each hour spent in custody. The Court confirmed the UK's opinion that it is not authorised to question legal regulations *in abstracto*, but may only decide whether a right or basic freedom was violated in a particular case. Brogan case judgement was not passed unanimously, and several judges dissented. Judges Vilhjalmsson, Binschleder, Glocuklu, Matscher and Valticos expound that this case should have weighed up the detainee's rights against the rights of the population as a whole that is seriously threatened by the terrorist activity. They quote data of 2,000 killed in terrorist attacks in Northern Ireland. Walsh and Salcedo maintain that Article 5 of the Convention does not allow to the members "the margin of appreciation". In his separate opinion, Judge Martens states that the fight against terrorism, a phenomenon that dismisses all principles contained in the European Convention on Human Rights, demands special authority. Martens states that the fight against terrorism should not condone torture or other forms of inhumane and demeaning treatment, but that legality of detention slightly longer than prescribed should not be called into question. Nevertheless, all countries joining the Council of Europe as full members, the focus here being on Central and Eastern Europe countries,

expressed no reservations concerning their willingness to sign and ratify the European Convention on Human Rights. The COE membership is a primary goal and a necessary step on the way back to Europe. The council of Europe maintains high standards regarding the protection of human rights in its member states, primarily via the Convention, its monitoring bodies, the European Commission and the Court for Human Rights, all previously mentioned in detail.

One of the priorities of the Council of Europe is to improve the level of human rights protection by efficient monitoring and protecting basic freedoms and rights, spotting new threats to human rights and dignity, developing public awareness on the importance of human rights and promoting education on human rights and professional development.

2.8. Prior to Croatia's Accession to the Council of Europe

2.8.1 *The Republic of Croatia is granted a special guest status with the Council of Europe*

It is 4 May 1992 in Strasbourg. It is a great day for Croatia, with a lot of work ahead concerning negotiations, session attendance, and colossal efforts aimed at Croatia's admittance to the full membership with the Council of Europe⁸³, the oldest intergovernmental organisation. At the COE's session in Strasbourg, Croatia was unanimously granted a *special guest* status.⁸⁴ That was merely a drop in the ocean, considering all the responsibilities that lay ahead, but for a second former Yugoslav republic (after Slovenia) to be granted such a status, it was a good start. For cooperation and membership with the Council of Europe, comprising 26 member states at the time, there were four prerequisites:

- ★ multi-party system
- ★ market economy
- ★ human rights protection
- ★ protection of national minorities.

Croatian Parliament was granted 5 out of 204 seats with the Parliamentary Assembly of the Council of Europe. The special guest status corresponds to the associate member status with other international organisations,

⁸³ The Republic of Croatia had waited four long years before it was admitted to the COE as a full member.

⁸⁴ As a special guest, Croatia was entitled to the same rights as full members (with the exception of the participation in the work of the Parliamentary Committee on the Honouring Obligations and Commitments) save for the right to vote and to be represented at the election.

and therefore differs from the full membership only in regard to voting and the right to propose resolutions, recommendations or reports. Special guest status allows not only the attendance of plenary sessions of the Parliamentary Assembly, but also the participation in the activities of specialised parliamentary committees, and encourages Croatian experts and institutions to take part in the work of various bodies. Before the committee for non-member states Croatia was represented by the delegation consisting of Mr Žarko Domljan (President of Croatian Parliament), Mr Kačić (president of the Parliamentary Committee on Foreign Affairs), Count Jakob Eltz of Vukovar (independent representative), Mr Ivo Škrabalo (Croatian Social Liberal Party), Mr Neven Jurica (Croatian Democratic Party), Mr Ivica Račan (Social Democratic Party), and Mr Lavoslav Torti (the delegation's secretary). Such was a regular procedure for non-member states in the process of their admission to the Council of Europe. The entire COE admission process is complex and long-lasting. If run successfully, it usually takes up to a year, so the Republic of Croatia is expected to become a full member of the Council of Europe by the summer 1993.⁸⁵ Croatian parliamentary delegation took an active part in the work of Parliamentary Assembly and particular committees and working bodies, networked successfully, and was given the stamp of approval by the COE officials.

Hans-Peter Furrer, Director General of Political Affairs, deserves an honourable mention – he believed that it would be a step-by-step process, with Croatia's full membership as a clear outcome. He also highlighted the ultimate goals of the Council of Europe: pluralism and parliamentary democracy, protection of human rights, the rule of law, and fostering cooperation among non-member states.

Furthermore, he stated that the Council of Europe is engaged in various areas and that its actions are based on recognising diversity – national, religious or social – thereby renouncing any hint of exclusivity or exclusion originating from one group's dominance over another. In regard to the previous article, he stressed the importance of Croatia being included in special programmes (e.g. Demosthenes) within the Assembly, the aim of which is to assist post-communist countries of Central and Eastern Europe in the development of democracy, protection of human rights and harmonisation of national legislations with the European standards. Upholding those values is sealed by signing the European Convention for the Protection of Human Rights and Fundamental Freedoms and accepting

⁸⁵ The Republic of Croatia became a full member of the Council of Europe 3 years later.

the jurisdiction of the European Court of Human Rights⁸⁶, which are also prerequisite for the full membership in that European organisation.⁸⁷ What is more, within the scope of this programme, as a form of cooperation, the experts may assist with further perfection of laws, education and training of staff directly involved in establishing democracy and protecting human rights etc.

One might even say that this organisation is a litmus test for all others, as the title of this book suggests.⁸⁸

Although the Council of Europe does not take any political decisions that are binding for the parliamentary delegations or governments of particular countries, it still stands as the oldest international organisation fundamental to forming public opinion and politics in particular countries. The road to Europe, to the Europeanization of life is virtually unthinkable without taking that first step in the Parliamentary Assembly. Croatia is focused exclusively on the original role of the Council of Europe - Strasbourg is a stop on the road that leads to Brussels.⁸⁹ The Council of Europe is Europe's democratic conscience, acting upon its moral authority.⁹⁰

Furthermore, at the session attended by the delegation of the Croatian Parliament in Strasbourg it was stated that "the Council of Europe represents the spiritual Europe, its conscience, and that it continues to uphold the tradition of humanities", adding that "the Parliamentary Assembly of the Council of Europe does not pass binding laws, but acts in the capacity of a moral and political authority".⁹¹ He labelled the COE as "a purgatory" on the road to other world organisations and institutions. It might be useful to know that, before Croatia, a number of former communist countries had already been granted the special guest status (Albania, Bulgaria, Estonia, Lithuania, Latvia, Romania, Russia and Slovenia, with applications from Azerbaijan, Belarus, Macedonia, Moldova and Ukraine under consideration)

⁸⁶ The court became a permanent institution for the protection of human rights on 1 November 1998, when Protocol No 11 to the European Convention for the Protection of Human Rights and Fundamental Freedoms came into effect.

⁸⁷ No member state may become a full member of the Council of Europe unless it accepts and ratifies the European Convention.

⁸⁸ The Council of Europe is deemed first step towards the membership in European integrations.

⁸⁹ Interview: Žarko Domljan, PhD, November 2006.

⁹⁰ Interview: Žarko Domljan, PhD, November 2006.

⁹¹ Interview: Žarko Domljan, PhD, November 2006.

2.8.2. *Ad Hoc Committee's first visit to Croatia*

Having been granted the special guest status, Croatia received its first guest in the new capacity - the *Ad Hoc* Committee to the Parliamentary Assembly of the Council of Europe, entrusted with the task of modelling parliamentary and presidential elections, announced by Franjo Tuđman - Croatia's first elections since the independence proclamation in 1991. *Ad Hoc* Committee monitored the elections on site. It comprised 3 members of socialist parties, 2 members of European democratic parties, 2 members of liberal, democratic and reform parties, and 1 member representing the parties of the united left.⁹² The Committee studied the electoral law, met with the representatives of Bosnia and Herzegovina and local councils, scrutinised the damage to the heritage, and consulted the diplomats from the COE member states that have offices in Zagreb. The Committee also met with the representatives of HDZ (Croatian Democratic Party), HSLs (Croatian Social Liberal Party), HNS (Croatian People's Party – Liberal Democrats) and HSP (Croatian Party of Rights) – namely, with the parties that won more than 3 percent of votes in opinion polls. The Committee met with the president, vice-president and four judges of the Constitutional Court, the president of the National Electoral Commission, the late Archbishop of Zagreb and Cardinal Franjo Kuharić, the mufti, and radio and TV executive editors.

On the day of the election, the Committee (split into five groups) monitored more than 80 polling stations in Zagreb, Dubrovnik, Rijeka, Osijek and Split. All five groups concluded that the elections were held in a trustworthy atmosphere – there were no objections – and that, despite slight irregularities, they were free and fair.

Their conclusion also points out that they are not in the position to comment on the elections held abroad or on the territory occupied by foreign soldiers or under UNPROFOR protection. Also, the comment of the first visit to Croatia should not go without mention of Catherine Lalumière⁹³, Secretary General of the Council of Europe, who accepted Žarko Domljan's invitation for an official visit in the honour of Croatia's newly received special guest status. Her lecture to the members of the Parliamentary Committee on Foreign Affairs, the Committee on the Protection of Human Rights and Rights of Ethnic and National Communities or Minorities, and other prominent politicians ended on the following note:

⁹² Lord Finsberg from the United Kingdom was elected Chair of the Committee, whereas Gerhard Reddeman from Germany was the rapporteur.

⁹³ French politician, a member of the Radical Socialist Party, served as Secretary General of the Council of Europe from 1989 – 1994.

“I’m returning home with a message for the Council of Europe to open its door to Croatia. You must assist us by clearly indicating the will to be integrated into Europe. At this moment, the Council of Europe is the first European organisation that is open to Croatia. European community is next, but all in good time.”⁹⁴ She adds: “in order to become a member, a country must protect human rights, conduct free elections, have independent judiciary system and press, and above all, there must be peace. I am happy that Croatia honours the principles of the Council of Europe, that is, that it opposes ethnic cleansing and forcible change of border lines, and is attempting to establish the rule of law.”⁹⁵

She determined that the reforms had already taken its course and that the Council of Europe would not wait until all processes are fully completed before Croatia is allowed to join the Council of Europe. Lalumière maintains that the ultimate goal is “for Croatia to become integrated in the community of European nations as soon as possible”⁹⁶, so she urged Croatia “to sign the European Convention for the Protection of Human Rights and Fundamental Freedoms, but prior to that it should embrace Lord Owen’s project on establishing a court that would deal with the protection of human rights.”⁹⁷ Specifically, it refers to the following: the court would handle disputes in an unbiased fashion, and would have jurisdiction in all member states of the Council of Europe. It would comprise equal number of judges from Croatia and other European counties. Any member state, organisation or individual who finds their human rights to be threatened, may appeal to the Court of Human Rights with the Council of Europe.

Lalumière states that Croatian laws, Constitution, Act on Minorities and Act on Citizenship – all prerequisite for the accession to the Council of Europe – are compliant with the Council’s principles. Furthermore, she warns against the nationalism that naturally arises from the formation of new states. An applicant won’t be admitted to the Council of Europe if it is in direct conflict with another country, which is fortunately behind Croatia. Other conditions concern the internal regulation, free press, free election, pluralist democracy, independent judiciary system, and Constitution and laws that protect human rights and the rights of the minorities. Those conditions were the reason why she met with the representatives of Serbian and Italian minority, as well - there were no objections to the

⁹⁴ Lecture to the members of the Croatian parliamentary committee, September 1992.

⁹⁵ Lecture to the members of the Croatian parliamentary committee, September 1992.

⁹⁶ Lecture to the members of the Croatian parliamentary committee, September 1992.

⁹⁷ Lecture to the members of the Croatian parliamentary committee, September 1992.

law on minorities, just the request for that law to be consistently applied. The Secretary General was hesitant only where the freedom of press was concerned, since her impression was that the media had only just been set free, and certain people were still unaware of what the concept really means – she listed a few examples of privatised newspapers, whose owners were convinced of their right to instruct the editors on the views they should advocate, and whose journalists often published unsubstantiated information without recognising that the freedom of press has its limits.

2.8.3. Opening procedure for Croatia's admittance to the full membership

Considering the previous paragraph, 1992 may be labelled as very positive in terms of the onset of negotiations for Croatia's admission to the Council of Europe, in accordance with the decision of the Committee of Ministers of the Council of Europe dated 9 December 1992, which gave the green light to Croatia's application for the membership in that organisation.

Further procedure is handled by the Parliamentary Assembly Bureau via three of its committees (Committee on Political Affairs and Democracy, Committee on Non-Member States, Committee on Legal Affairs and Human Rights) that must give a favourable opinion and report on the state of affairs in Croatia, whereas the final decision is made by the Parliamentary Assembly itself.

2.8.4. First official visit to Strasbourg by Croatia's minister of foreign affairs (1993)

As it was previously stated, the date of Croatia's admittance to the full COE membership will depend on the reports submitted by the abovementioned committees on whether the COE's principles are being realized and safeguarded. It is safe to say that the report by the COE's Secretary General⁹⁸ who personally spent some time in Croatia significantly influenced the Committee of Ministers in its decision to give Croatia the green light to enter the procedure for admittance to full membership.

Along frequently mentioned Mrs. Lalumière, Secretary General of the Council of Europe, other highest-ranking officials of this organisation should also be acknowledge, namely Mr. Noel Marshall, the president of the Committee of Ministers, and Mr. Miguel Angel Martinez, the president of the Parliamentary Assembly. At the time (1992/93), Zdenko Škrabalo was the Croatian minister of foreign affairs. In his official visit to Strasbourg in 1993 he had important talks with the highest-ranking officials of the Council of

⁹⁸ Secretary General Catherine Lalumière

Europe⁹⁹, focused primarily on Croatia's preparations and prospects of the admittance to the Council of Europe. At the request of the COE's officials, the minister elaborated further on the burning issues at the time, i.e. Croatian military operations at Maslenica Bridge and Peruča Dam, since the officials thought that these operations may be an issue when it comes to Croatia's admittance to the full COE membership.

However, the minister explained that the scope of the operations is limited and is in no way aimed at Krajina or the Serbs because the area is not under Krajina, and is inhabited by 120,000 Croats and 5,000 Serbs. Croatia decided to pursue that course of action only because of the traffic corridor and humanitarian concerns, since the peacekeeping forces hadn't met their end of the deal. Namely, the Serbs were obstructing the agreement on the opening of Maslenica Bridge – the only mainland link between Croatia's north and south. The minister also delivered notifications concerning a dozen conventions and agreements that govern the cooperation between the Council of Europe and its members. The European Cultural Convention is the first on the list, because it traditionally opens any country's cooperation with the Council of Europe. It is followed by: Convention on the Equivalence of Diplomas Leading to Admission to Universities; Convention on the Equivalence of Periods of University Study; Convention on the Academic Recognition of University Qualifications; Agreement on Continued Payment of Scholarships to Students Studying Abroad; Convention on the Protection of the Archaeological Heritage; Convention on the Protection of the Architectural Heritage of Europe; Convention on Spectator Violence and Misbehaviour at Sports Events; Anti-Doping Convention. Croatia promised to sign other conventions without delay, and the Convention on the Protection of Human Rights upon its COE admittance to full membership. The hosts found the negotiations satisfactory, and once again expressed their support for Croatia's application to full COE membership. However, they addressed the issue of military operations and prompted Croatia to seek peaceful solution with the help of UN forces and within UN's plan. In fact, they laid down a specific condition – Croatia was to contribute to a peaceful resolution of conflict in former Yugoslavia. That led to a press release in which the head of Croatian diplomacy informed all journalists at COE headquarters that Croatia has no intention of terminating the mandate of peacekeeping forces, but it rather wishes to extend it under new conditions. Minister Škrabalo's final words were: "We will never ask for segmentation of Croatia... Croatia wishes to establish sovereignty on its entire territory, and it plans to do so

⁹⁹ First official visit of Croatia's minister of foreign affairs to Strasbourg

in a peaceful manner, within the UN framework. We hope the use of force won't be necessary."¹⁰⁰ On that note, Mr Škrabalo concluded the negotiations with the highest-ranking COE officials, and said that Croatia does not lack military power to reclaim its territories on its own. "Since Croatia accepted the Convention on the Protection of Cultural Heritage, it is free to apply to European experts for funding"¹⁰¹ During the session, several committees, the Standing Committee and Bureau met – from Croatia's point of view, the most significant decision was the one taken by the Committee on Culture and Education, establishing that one of its sessions should take place in Croatia, which is quite significant in terms of good PR.

One should not fail to mention that Jacques Baumel's study *Damage to the Cultural Monuments in Croatia and Bosnia and Herzegovina* was accepted in that very session. Mr Baumel, a French representative, is a great supporter of Croatia and a founder of the National Committee for Aid and Protection of Dubrovnik, and his study was a cornerstone of further monitoring of damage on cultural heritage.¹⁰²

In that session a committee on human rights in Croatia was formed. The three committees appointed their rapporteurs who were to render an opinion on Croatia's admittance to the Council of Europe.

"That put Croatia one step closer to the Council of Europe."¹⁰³

2.8.5. COE expert mission visiting Croatia (1993)

Five members of the expert mission of the Council of Europe paid a visit to Croatia on 10 May 1993. They met with the president of the Committee on the Protection of Human Rights and Rights of Ethnic and National Communities or Minorities.¹⁰⁴ As expected, they expressed marked interest in the position of minorities, their representation in the parliament, and the media oriented towards the minorities. Furthermore, they were interested in the way the refugees and exiles were being kept informed, in the human rights court provided for under the Constitutional Act on the Rights of National Minorities, and in TV and radio coverage targeting minorities.

¹⁰⁰Vjesnik , 23 March 1993, Interview with the Minister of Foreign Affairs Mr. Škrabalo and the COE high-ranking officials

¹⁰¹Vjesnik , 23 March 1993, Interview with the Minister of Foreign Affairs Mr. Škrabalo and the COE high-ranking official

¹⁰²The Committee on Culture has established permanent cooperation with other governmental and non-governmental organisations, UNESCO in particular

¹⁰³Vjesnik, 23 March 1993, Žarko Domljan

¹⁰⁴Ljubomir Antić, PhD

As regards the minorities, Mr Antić stated that “there are 16 national minorities in Croatia, represented by five members of parliament in total, and that the parliamentary representation of Serbian minority is proportionate to their numbers in Croatia”.¹⁰⁵ With regard to the minorities’ newspaper, he said that “not a single one ceased to be published, since the state is legally bound to fund them from the state budget”.¹⁰⁶

Commenting on the work of the human rights court, Mr Antić said that “the court will be established in due time, and until then the protection of human rights lies with the ordinary courts and the Committee. The court in question is a temporary solution because once Croatia is admitted to the Council of Europe, the country will fall under the jurisdiction of the European Court of Human Rights.”¹⁰⁷ In the light of the issues surrounding privatisation of media outlets, it was also pointed out that the Croatian government is a staunch advocate of free e-media, and that the bill on e-media still hadn’t been passed, all due to the nation’s low purchasing power, obsolete technology, limited market opportunities and, more than anything, foreign investors who exhibited distinct lack of interest in investing in the media due to the war in Croatia.¹⁰⁸ The members of the mission disagreed with the intention to treat media transformation and privatisation as any other business, because they believed that the privatisation of the media should be carried out in accordance with a different set of criteria, and therefore recommended that the national television programme be outlined independently from the government.

Finally, the host emphasised that both foreign newspapers and satellite programmes are available in Croatia, that all political parties were equally treated in the media covering their election campaigns, and that there were no complaints or objections from the political parties on that matter. Considering the fact that the freedom of the media and their outlets is an essential issue in Croatia, not to mention Europe, it is worth noticing that in November 1993, the 35th session of the Committee on the Media was held in Strasbourg, with all member states in attendance. The Committee deals with all aspects of mass media in Europe.

A political declaration and a charter concerning the European journalists and media owners’ code of conduct are being prepared. It caused a difference of opinion, with the media owners and journalist associations

¹⁰⁵ Vjesnik, 17 May 1993

¹⁰⁶ Vjesnik, 17 May 1993

¹⁰⁷ Vjesnik, 17 May 1993

¹⁰⁸ Vjesnik, 17 May 1993

severely criticising the upcoming European law. They even announced a public campaign against the abovementioned COE declaration. In the midst of the argument, some claimed that in certain countries tabloid journalism undermined the credibility of newspapers in the eyes of the public. Some circles in Croatia and abroad tried to publicly portray Croatia as a country with no free media. However, our representative, Minister Babić¹⁰⁹, strongly refuted such claims, expounding Croatia's wish to join European democracies as soon as possible, and so shed the burden of a 50-year long totalitarian system and its legacy. Babić expressed his gratitude to Jane Dinsdale, COE Director of Human Rights Department, who recently paid a visit Zagreb and brought along a team of experts who assisted with drafting of a new bill on electronic media in Croatia. Despite all war-related difficulties, Croatia already takes pride in modern legislation and increasingly improving freedom of expression and the media.

2.8.6. First working visit from Miguel A. Martinez, President of the Parliamentary Assembly of the Council of Europe (1994)

One of the most important visits to Zagreb was the working visit from Miguel A. Martinez, President of the Parliamentary Assembly of the Council of Europe.¹¹⁰ His host was Nikica Valentić, Croatian prime minister, who introduced his guest to the state of affairs and the results of the Croatian economic stabilisation programme. He pointed out that "Croatia wants peaceful reintegration of the occupied territories, and is willing to negotiate the solution to the problem, that there is no right-wing group capable of threatening the democracy, and that Croatia is and always has been a European country and wishes to be an active member of the European family, but requires Europe's assistance".¹¹¹

The President of the Parliamentary Assembly M. A. Martinez was very open and said that "Croatia's first obstacle to the COE membership is the fact that part of the territory and citizens of the Republic of Croatia are not under the control of the Croatian government."¹¹²

He also emphasised that "the role Croatia played in Bosnia and Herzegovina is not congruous with the COE values. Fostering freedoms, human rights and free media presented another problem, as well. I believe that significant progress has been made regarding Croatia's role in the war

¹⁰⁹He was also the Head of Information Department with the Ministry of Foreign Affairs

¹¹⁰5 July 1994

¹¹¹Vjesnik, 6 July 1994

¹¹²Vjesnik, 6 July 1994

in Bosnia and Herzegovina and I expect to witness the same improvement concerning human rights and democracy in state administration. That would be the ultimate impulse fulfilling Croatia's wish to join the Council of Europe".¹¹³

So, these are the three reasons why the Council of Europe might appear hesitant to admit Croatia among its ranks. On the other hand, Martinez added that "the signing of the Washington Agreement and Croatia's current attitude towards Bosnia and Herzegovina are absolutely satisfactory, and that he will try to persuade his peers in the Parliamentary Assembly that the level of democracy and human rights allow for Croatia's admittance, regardless of the fragmented sovereignty on its territory, which should not be a admittance criterion since the issue is not solely contingent on Croatia".¹¹⁴ He also pointed out that "a greater degree of pluralism and openness regarding the freedom of media in Croatia would be desirable".¹¹⁵ During his two-day visit, Martinez gave a lecture on the Council of Europe¹¹⁶ and Croatia's prospects on being admitted to that organisation. He stated that the COE membership prepares a member state for yet more profound relationships and further integration – the Council of Europe is by no means a school for undemocratic countries, but an organisation that admits only those who have met the requirements.

Hopes for Croatia's admittance to full COE membership in 1994 vanished with Žarko Domljan's announcement that the delegation of three members decided to visit Croatia from 16-18 January 1995. That meant that Croatia would be admitted in a regular, not accelerated procedure (like Latvia), meaning that the Parliamentary Assembly would take the decision on the matter in April of the following year, which would then be endorsed by the Committee of Ministers at the beginning of May."¹¹⁷ The minister of justice Ivica Crnić made a few noteworthy comments at the consultation organised by his ministry, where the discussion was focused on four different topics – to us the most relevant was *Legal System: Key to the Council of Europe*. In Crnić's words: "not only devising, but implementing the legal system may be a crucial factor in Croatia's COE admittance".¹¹⁸

¹¹³Vjesnik, 6 July 1994

¹¹⁴Vjesnik, 6 July 1994

¹¹⁵Vjesnik, 6 July 1994

¹¹⁶Vjesnik, 6 July 1994

¹¹⁷Vjesnik, 6 July 1994

¹¹⁸Vjesnik, 9 July 1994

He continues: “the first meeting was about the execution of criminal penalties, i.e. the prison system. The second meeting focused on the juvenile delinquency, whereas the third revolved around the Ministry of Justice and the rule of law. The latest consultation dealt with, in my opinion, the most important issue – judicial independence, which safeguards and promotes democracy”.¹¹⁹

When asked about the experts’ appraisal of the Croatian legal system, he said that “the appraisal comes at the end of a meeting, but we are on the right track, and in some solutions even more advanced than the European ones. There wasn’t a single objection saying that our solutions deviate from the European norm”.¹²⁰

2.8.7. Croatia’s admittance to the Council of Europe postponed

The promise made to Mr Domljan that Croatia’s admittance would be discussed in the second COE session in Strasbourg was not kept because the second session of the Parliamentary Assembly was closed at the end of April. The arrival of three general rapporteurs for Croatia was postponed for May.¹²¹ In addition to the delay of their arrival, the ongoing situation in Croatia might also cause a setback. Therefore, Mr Martinez appealed to the Serbs in Croatia to cease the retribution attacks. “Escalation of military conflict would diminish Croatia’s chances for the planned admittance to the Council of Europe in the next few months”.¹²² Following the events in western Slavonia, and unfounded accusations directed at Croatia, Žarko Domljan, the Head of the Croatian delegation to the Council of Europe, addressed a letter to President Martinez, COE officials and the president of the Western European Union Sir Dudley Smith¹²³. In that letter Mr Domljan defended all actions surrounding the successful reinstatement of Croatia’s legal system in western Slavonia by means of a police operation. He also explained that Croatia was compelled to act due to frequent terrorist attacks on Zagreb-Lipovac motorway, which resulted in 6 dead civilians and dozens of wounded. The police operation took meagre 31 hours, and still it managed to reinstate order and safety for all people living in western Slavonia, and after more than four years, clear the motorway, roads and railway for transport.¹²⁴

¹¹⁹Official Record, Hidra, 9 July 1994

¹²⁰Official Record, Hidra, 9 July 1994

¹²¹The delegation of three members was supposed to stay in Croatia 16-18 January 1995.

¹²²Večernji list, Interview with the President of the Parliamentary Assembly, 4 April 1995

¹²³WEU

¹²⁴HIDRA, 11 April 1995

As for the Serbian paramilitary forces that surrendered, Domljan made it clear that they were being treated fairly and in accordance with international conventions. All those who didn't commit a crime were granted a pardon, as stipulated by the Amnesty Act that had been in effect for a long time. Civilians were allowed to return to their homes, and the Croatian government vowed to protect civil and minority rights, which in turn defused the situation. All global media journalists and international observers were granted free access to the area so that they could verify if the civilians and Serbian prisoners of war were treated fairly. At the end of his letter Domljan pointed out that the process of peaceful reintegration of western Slavonia, and protection of human rights and the rights of minorities on the territory where Croatian legal system was reinstated, are under the watchful eye of the Croatian Parliament via the Committee on the Protection of Human Rights and Rights of Ethnic and National Communities or Minorities, and the Committee on the Peaceful Reintegration of Occupied Territory.¹²⁵ The head of the delegation to OSCE Parliamentary Assembly directed a similar letter to Frank Swaelen and the members of the OSCE Bureau. Mate Granić, Croatian minister of foreign affairs commented on the COE admission process: "If there are no unpleasant surprises, and we don't expect any, we believe that the process will be completed in September".¹²⁶ Reflecting on the fact that the European institutions, i.e. Council of Europe and the EU, are insistent upon a peaceful resolution of the problem, Mr Granić said: "We are more than willing to embrace that solution, provided that the international community does everything in its power to facilitate the implementation of the Resolutions of the UN Security Council, 981 and 990 in particular, the economic agreement and Croatian border control, and to support the initiation of political talks on the local autonomy (of the Serbs), and thereby complete the reintegration of the occupied territory into Croatia".¹²⁷

Finally, the pivotal moment arrived with the third session of the Parliamentary Assembly in 1995. The Committee on Political Affairs decided that the final vote on draft Recommendation for Croatia's admission to the Council of Europe will be held on 4 September 1995. Three most important rapporteurs were consequently bound by that deadline to prepare their reports. The rapporteur of the Committee on Political Affairs¹²⁸ In the light

¹²⁵HIDRA, 11 April 1995

¹²⁶Božidar Petrač

¹²⁷Vjesnik, 13 April 1995

¹²⁸The Committee on Political Affairs was monitoring the situation in former Yugoslavia from 1991, and the Dayton Agreement implementation was one of its priorities

of the upcoming admission proceedings in June, René van der Linden paid a visit to Croatia and drafted the recommendation, whereas the rapporteurs of the Committees on Legal Affairs and Non-Member States would make the report on the previously established facts, submit it to the general rapporteur and verify the facts once they visit Croatia again. In that way, any delay in admission proceedings would be avoided. In that case, Gunnar Jansson would, on behalf of the Committee on Legal Affairs, deliver to the Croatian Government a list of measures that had to be accepted and, once Croatia is a full COE member, implemented. They include ratification of a number of important conventions, particularly the Convention for the Protection of Minorities and additional protocol on the protection on the protection of the language of minorities.

Van der Linden will demand that the Croatian Government explain what happened to the persons filed missing following the operations in western Slavonia, and expect a detailed account despite the fact this matter does not fall under any of the categories of Croatia's obligations. COE's special commission would be in charge of monitoring the fulfilment of the said obligations.

It must be stated that, until recently, Croatia's admission proceedings were running in line with Moldova's and Albania's, and that their applications have been accepted, and Croatia's proceedings have slowed down due to the circumstances in Slavonia, although Croatia has met all the requirements previously met by the said countries. It also must be pointed out that this session of the Parliamentary Assembly is the most important and substantial as of yet, especially with the Croatian delegation now being thoroughly acquainted and active participant in the admission proceedings.

One month before the Draft Recommendation for Croatia's admission to the Council of Europe was reviewed and accepted, the President of the Parliamentary Assembly Mr Martinez said: "Croatia, whose admission is now being discussed by the Parliamentary Assembly, will be appraised in a way any other sovereign state would, particularly regarding the protection of human rights and the rule of law on the reclaimed part of its territory and the rest of the country. Of course, we are very much concerned about the rights of minorities".¹²⁹

Resolving the humanitarian crisis concerning thousands of refugees who seek refuge in Bosnia and beyond must be a priority for our governments and they should provide their full support to the international organisations. All refugees and dislocated persons should be allowed to return home.

¹²⁹Večernji list 14 June 1995

He also said he hoped that “Croatian military operations will result in conditions favourable for political dialogue that would lead to a peaceful solution”.¹³⁰ At the end, he expressed his support of Croatia, but also pointed out that its treatment of the Serbs will tip the scales regarding the decision on Croatia’s admission to the said oldest organisation.

2.8.8. Accepted draft Resolution on Croatia submitted by the Committee on Political Affairs

Reflecting on the previous 3 years, this is surely the most important day for Croatia. On 27 September 1995 the draft Resolution concerning the situation on the territory of former Yugoslavia was accepted by the Parliamentary Assembly after it was submitted by the Committee on Political Affairs. Based on Peter Bloetzer and van der Linden’s¹³¹ reports, draft Resolution includes three topics: Croatia, Bosnia and Herzegovina, and the so-called Yugoslavia. It is requested that Croatian Government abide by the agreement made with the UN on 6 August, prove it by providing information and allowing international presence, guarantee the basic rights to those living on Croatian territory, all parties are urged to show maximum tolerance regarding eastern Slavonia. Furthermore, measures concerning Oluja refugees should be promptly adopted, whereby they would be able to return home, and, in accordance with Amendment 3 adopted in this very session, fully exercise their rights of ownership. Review of Croatia’s application for COE admission will carefully examine the response of the Croatian Government to the abovementioned demands. Matters concerning Bosnia and Herzegovina, and the government of the so-called SR Yugoslavia were discussed, as well. The attacks on Srebrenica and Žepa safe areas were denounced, information on Srebrenica Muslims requested, expulsion of Banja Luka Croats and Muslims denounced, protection of the rights of “ethnic minorities on its territory” demanded.

Twelve amendments to the draft Resolution were proposed. Two were rejected – one describing the situation in Croatia as UNPROFOR and UN’s failure, and the one requesting from the Croatian Government not the return the refugees from the Federation of Bosnia and Herzegovina and recently reclaimed territories before due time.

The accepted amendments included the one on the return of cultural objects, whose staunch advocate was Mr. Domljan, and the one on expansion of Tempus and Phare programmes in Bosnia and Herzegovina. Virtually all

¹³⁰Večernji list 14 June 1995

¹³¹General Rapporteur of the Committee on Political Affairs of the Parliamentary Assembly

participants who were prevented from speaking due to lack of time, 18 out of 45 of them, supported the draft, whereas the representatives of Russia (Sergej Glotov), Greece (Korakas), and Romania (Paunescu) fiercely opposed the draft.¹³² The Russian representative even dared to request suspension of Croatia's application for CoE membership, quoting Chechnya as impediment in Russian case at the time. In closing of this chapter it should be mentioned that at the end of the year President Tuđman received a COE delegation, whose representative stated that the report on Croatia is being drawn up, and will be discussed the following year, when and where it will be decided whether to process should be continued.

"If the response is favourable, April might see the final talks", said van der Linden.¹³³ He added: "The Council of Europe finds it extremely important that all war crime suspects face the Hague International Tribunal", upon which President Tuđman promised to bring all persons charged with violation of human rights before the court.¹³⁴ Eastern Slavonia, Baranja and western Srijem were discussed, as well. Representatives of the Parliamentary Assembly visited the territory Croatia reclaimed in the police and military operation "Oluja", in order to get a clearer insight into allegations on violation of human rights.

2.8.9. Accepted recommendations of Parliamentary Assembly regarding the refugees and exiles, and reconstruction on the territory of former Yugoslavia

In 1996 the Parliamentary Assembly held its first plenary session¹³⁵, remembered by the acceptance of the recommendations of the Parliamentary Assembly regarding the refugees and exiles, and reconstruction in certain countries of former Yugoslavia. The recommendation supports Dayton Agreements and expresses hope they would accept the fact the war is over. It is pointed out that the human rights must be fully protected, as well as the rights of the refugees and exiles to return to their homes, which constitutes a foundation for reconstruction. Croatian Government must immediately and fully meet the demands of the Security Council dated 8 January, measures must be taken to facilitate the return of refugees to the reclaimed territory, and their safety and human rights, as well as the living conditions of Muslim refugees in Kupljensko, must be promptly improved.¹³⁶ It appears that, in

¹³²HIDRA, 7 September 1995

¹³³Večernji list, Van der Linden interview, 11 December 1995

¹³⁴Večernji list, Van der Linden interview, 11 December 1995

¹³⁵24 January 1996

¹³⁶HIDRA, 25 January 1996

some way, the recommendation calls for other COE members to participate in funding of these activities, for the organisations on the territory of former Yugoslavia to continue providing aid, to support the International Committee of the Red Cross in the tasks assigned to them by the Dayton Agreement. On 13 January 1996 there was a conference under the name: "The Council of Europe and democratic freedoms in Croatia".¹³⁷ Historian Dušan Bilandžić said he was surprised by the turn of events – after Yugoslavia fell apart, every Croat dreamed of joining Europe, whereas now, many witness media reports associating Croatia's accession to Europe with a spiritual death. He added that Croatia is inundated by deintellectualisation, depopulation and deindustrialisation, and that poverty is a mortal enemy of any democracy.¹³⁸

However, Mr. Škrabalo refers to his words, and says that on the journey to its destination, owing to various circumstances (primarily its politics), Croatia had been forced to take a step back, and even return to square one during the conflicts between the Croatian Defence Council (HVO) and the Army of Bosnia and Herzegovina. The admission process might as well be slower, but eventually Croatia will be admitted to the Council of Europe.¹³⁹

¹³⁷ The conference was organised by the Croatian European Movement

¹³⁸ Ivo Škrabalo interview, October 2006

¹³⁹ Ivo Škrabalo interview, October 2006

3

Council of Europe and Croatia

3.1 Admission to the Council of Europe

3.1.1 Proposal of the Committee on Political Affairs for Croatia's admission to the Council of Europe

Despite all shortcomings, the Committee on Political Affairs of the Parliamentary Assembly proposed on 19 March 1994 that Croatia be admitted to the full membership with the Council of Europe.

The parliamentary committee accepted van der Linden's report with 25 votes in favour¹⁴⁰, and proposed to the COE Parliamentary Assembly that Croatia be admitted in the session held 22-26 April, by two-thirds vote. The Parliamentary Assembly would request that the COE Committee of Ministers formally invite Croatia to join the Council of Europe as a full member. The previously mentioned shortcomings that wouldn't prevent Croatia's admission refer to the "grave concerns" of local and regional representatives of COE member states regarding the state of democracy of local government in Croatia. Another aggravating factor is Franjo Tuđman's refusal to approve two Zagreb mayors elected by the City and County Assemblies. The Bureau of the Congress of Local and Regional Authorities of the Council of Europe¹⁴¹ finds his refusal "blatant violation of the principle of democratic pluralism and local self-government advocated by the Council of Europe".¹⁴² Furthermore, during his visit to Croatia the general rapporteur to the Parliamentary Assembly pointed out that "the situation is far from ideal, but Croatia is doing well in terms of meeting the admission prerequisites". He qualified the situation in eastern Slavonia as the most delicate part of the general peace agreement in the region, and said that the Council of Europe carefully monitors Croatia's relations with Bosnia and Herzegovina. He thinks that, following the circumstances surrounding the elections for mayor, the Croatian Parliament must amend the existing law so that such a thing may never happen again.

But, all shortcomings aside, Croatia's admission should be supported if only for the democratic powers and processes, and the unresolved Zagreb case should not be an obstacle to the admission, as it was stated in a letter that Zdravko Tomac, the president of the Zagreb City Assembly, addressed to the COE Parliamentary Assembly.

¹⁴⁰Three voted against, four abstained.

¹⁴¹CLRA

¹⁴²HIDRA 19 March 1996

As Mate Granić put it in his statement for Croatian National Television: “Admission to the Council of Europe grants Croatia access to the first circle of European integrations, and Phare Programme, as well as a trade agreement with the EU and international monetary institutions”.¹⁴³

To shortly outline Phare – it is a pre-accession programme established after the fall of communism to foster economic development of Central and Eastern Europe countries. The programme aimed at establishment of institutions that would assist the countries on their way to European integrations and was a source of funding for investments in countries that applied for membership.

Poland and Hungary were the first to use its resources, and were later followed by other Central and Eastern European applicants: Bulgaria, the Czech Republic, Estonia, Latvia, Lithuania, Romania, Slovakia and Slovenia. By 2000, Albania, Bosnia and Herzegovina, and Macedonia had access to Phare Programme, after which it was replaced by Cards Programme.¹⁴⁴ This year Croatia has become the beneficiary of Phare Programme. Mr. Granić also said: “In the light of the *global approach to the region*, it is of the utmost importance for Croatia to be here, because we wish to become a full member of European integration without delay. Ultimately, the end of the war, favourable review of Croatia’s contribution to the Dayton Agreement, and the Rome and Geneva Accords prevailed and brought about the affirmative decision of the Committee on Political Affairs.

Another point not to be omitted are the replies to COE’s questions, signed by Tuđman and Pavletić, whereby they accepted the rules and codes of conduct for full COE members, agreed to protect the human rights of minorities, to support the Dayton Agreements, Roman and Geneva Accords, the Federation of Bosnia and Herzegovina, and to cooperate with the Hague Tribunal”.¹⁴⁵ In Granić’s opinion, Croatia should be officially admitted to the Council of Europe at the end of June. Domljan pointed out that the admission prospects are more than promising, and that Croatia should be on the agenda, but, considering it is currently the centre of attention, the schedule might be disrupted.

The first to use PHARE were Poland and Hungary, later joined by Bulgaria, the Czech Republic, Estonia, Latvia, Lithuania, Romania, Slovakia and Slovenia, also being the candidates from Central and Eastern Europe.

¹⁴³HIDRA 19 March 1996

¹⁴⁴Community Assistance for Reconstruction, Development and Stabilization – started in December 2000. Its primary aim is providing assistance to the countries of South-Eastern Europe with a view to their active participation in the stabilisation and association process with the European Union

¹⁴⁵Vjesnik, 20 March 1996

Until 2000, Albania, Bosnia and Herzegovina, and Macedonia had access to the PHARE programme, which was soon after replaced by the CARDS¹⁴⁶ programme. This year Croatia has become a beneficiary of the PHARE programme. Furthermore, Mr. Granić in his statement says the following: “This is extremely important for Croatia at a time when the ideas about the so-called global approach to the region are emerging, and Croatia wants to become a full member of European integrations as soon as possible. For the decision of the Political Committee the decisive facts were the end to the war and the positive evaluation of the Croatian contribution to the Dayton, Roman and Geneva agreements.

The answers to the questions of the Council of Europe, which were signed by Mr. Tuđman and Mr. Pavletić, play a major role because Croatia agreed to adopt the rules, standards of conduct of a full member of the Council of Europe, and to fulfil the obligations concerning the rights of minorities, support for the Dayton, Roman and the Geneva agreements, support of the Federation of Bosnia and Herzegovina, and co-operation with the Hague tribunal¹⁴⁷. According to Mr. Granić’s opinion, Croatia should be formally admitted to the Council of Europe at the end of June. Mr. Domljan pointed out that the chances of admission were more than fair, and Croatia’s admission to the Council of Europe should be on the agenda of the meeting. But he also pointed out that there is a possibility of a “derailment”, given that Croatia is a focal point.

3.1.2 Croatian admission to the Council of Europe discussed in Strasbourg

On April 24 1996 the Palace of Europe in Strasbourg saw the beginning of the debate on Croatian admission to the Council of Europe. The members of the parliamentary delegations of 39 member states of the Council of Europe were deciding on the admission by consensus, by majority or individual declarations. Therefore, the Parliamentary Assembly recommended to the Council of Ministers to formally invite Croatia to accede to the Council of Europe¹⁴⁸.

¹⁴⁶Community Assistance for Reconstruction, Development and Stabilization - Community Assistance for Reconstruction, Development and Stabilization) is a program of technical and financial assistance of the European Union adopted in December 2000, whose main objective is to support the countries of Southeast E’s ability to participate in the stabilization and association process.

¹⁴⁷As the fortieth full member.

¹⁴⁸See *Criteria for Croatia’s full COE membership (21 points)*

3.1.3 Decision on Croatian admission to the Council of Europe, 24 April 1996

The wording of the decision on the admission of the Republic of Croatia to the Council of Europe is quoted in full below, as it is a very important document, i.e. the opinion of the Parliamentary Assembly on the admission of Croatia to the Council of Europe, adopted at the session of the Parliamentary Assembly.

Croatia applied for the admission to the Council of Europe on 11 September 1992. By Resolution 69/1992 of 10 December 1992, the Committee of Ministers of the Parliamentary Assembly requested an opinion on the application, in accordance with Statutory Resolution 51 (30A). A special guest status in the Parliamentary Assembly was granted to Croatian parliament on 4 May, 1992. The procedure for issuing opinions on the Croatian application for the membership was postponed due to Croatian involvement in the war in Bosnia and Herzegovina. The events in Western Slavonia and former UN Sectors North and South delayed the process even more. Parliamentary elections were held in October 1995. A delegation of the Parliamentary Assembly observers assessed them, with some reservations, as free and fair. Croatia took part in various activities of the Council of Europe from 1992, either in the form of intergovernmental cooperation and the support programmes or by participating as a special guest in the work of the Parliamentary Assembly and its committees. The political dialogue between Croatia and the Committee of Ministers was established in April 1992. Croatia also acceded to some conventions of the Council of Europe, including the European Cultural Convention. Croatian President and President of the Croatian Parliament signed a document on 15 March 1996 in which Croatia formally assumes the obligations for the accession (21 points), in order to meet the prerequisites for the admission to the Council of Europe. The criteria that Croatia should fulfil for the full membership in the Council Europe as a whole will be listed in one of the following chapters¹⁴⁹.

The Parliamentary Assembly welcomes the temporary agreement on the establishment of the OSCE mission in Croatia. The Parliamentary Assembly also expects Croatia to agree to adhere strictly to the provisions of international humanitarian law, including those governing an armed conflict within its borders.

¹⁴⁹See *Criteria for Croatia's full COE membership (21 points)*

The Parliamentary Assembly also expects Croatia to cooperate with humanitarian and international organizations, to take all necessary steps to resolve the remaining humanitarian problems following the recent conflicts, particularly with regard to prisoners of war and missing persons.

The Parliamentary Assembly expects from Croatia:

- ★ to make sure that the National Judicial Council applies the laws in accordance with COE standards
- ★ to effectively guarantee the rights and freedoms of national and ethnic minorities in accordance with the obligations assumed by Croatian authorities
- ★ to effectively guarantee freedom of the press in accordance with the obligations assumed by Croatian authorities
- ★ to immediately proclaim general amnesty for all former soldiers who are not war crimes suspects, in order to encourage the return of the Croatian Serbs
- ★ To actively assist the work of the OSCE mission
- ★ To consult COE experts on amending the law on local and regional administrations, in good time before the second reading of the law in the Parliament.

Furthermore, The Parliamentary Assembly expects Croatia to resolve the problems concerning confiscated property during the fascist and communist rule thus conforming to the standards and principles of the Council of Europe.

Based on these commitments and expectations, the Parliamentary Assembly believes that Croatia, in accordance with Article 4 of the Statute of the Council of Europe is undoubtedly able and willing to fulfil the requirements for the membership in the Council of Europe as defined in Article 3 of the Statute¹⁵⁰. To ensure compliance with the commitments of the Parliamentary Assembly, it is promptly decided that from the very day of the accession the situation in Croatia should be closely monitored in accordance with the procedures laid down in Order No. 508/1995. The Parliamentary Assembly recommends that the Committee of Ministers, based on the above commitments

- a) invite Croatia to become a member of the Council of Europe
- b) allocate five seats to Croatia in the Parliamentary Assembly.

¹⁵⁰Source Statute: "Every member of the Council recognizes the principle of the rule of law and the principle that every person under its jurisdiction must enjoy human rights and fundamental freedoms, and agrees to cooperate sincerely and effectively in achieving the objectives specified in Chapter I."

We must note that the most problematic point of the discussion at the Parliamentary Assembly on the admission of Croatia to the Council of Europe was the seventh amendment, given that the Republic of Croatia, among other things, had not fulfilled all its obligations towards the International Criminal Tribunal for the former Yugoslavia. Therefore, since the Republic of Croatia had failed to fulfil all its obligations under the Dayton Agreement, the debate on Croatian admission to the Council of Europe was postponed until June. A Liberal Democrat Briton Russell Johnston even tried to switch the debate on Croatian admission to the Council of Europe from a plenary session to a committee level, failed to rally the support of parliamentarians. Most members of the Committee on relations with non-member countries supported Croatia's admission¹⁵¹.

Thus, the rapporteur of the Committee on Political Affairs pointed out that many positive events and changes took place in Croatia, namely the adoption of the Act on Cooperation with the International Criminal Tribunal for the Former Yugoslavia, the voluntary departure of general Blaškic to the Hague, the increased cooperation between Zagreb and Belgrade, the acceptance of a long-term OSCE mission, and the signing 21 demands of the Council of Europe. Of course, he said that there are circumstances that are troubling, but that the decision should not be based on those¹⁵². Others pointed out that Croatia should be trusted, and that it should be given more support in solving its problems. Among Croatia's firmest advocates was the former Parliamentary Assembly President Miguel Angel Martinez. In the next section we will quote the speech of the President of the Croatian Parliament Mr. Žarko Domljan, delivered on the occasion of the upcoming accession of Croatia to the Council of Europe, the oldest international organization, four years after the application was made. It was a highlight of Croatia's history.

¹⁵¹ Croatia's admission to the Council of Europe was supported by the three most important committees.

¹⁵² Example of the mayor of Zagreb, freedom of the media

3.1.4 Speech of the President of the Croatian Parliament before the Parliamentary Assembly upon Croatia's accession to the Council of Europe

On 24 April 1996 Mr. Domljan began his Strasbourg speech in these words; “Madam President (Leni Fischer), Secretary General (Daniel Tarschys) ladies and gentlemen, my fellow representatives. At this very important moment for Croatia, I would, first of all, like to thank all those who, with their objective, skilful, and politically wise reflections on a rather specific Croatian position contributed to a final decision and a recommendation in favour of welcoming my country to the Council of Europe. By continuing this speech in Croatian, the language recorded on monuments since the 11th century and developed since the 15th century in literature, I would like to point out that integration in Europe has not only been our goal since gaining independence and the introduction of a democratic multiparty system six years ago, but above all, our reality and destiny. For centuries, the unbreakable ties between Croatia and Europe have been reaffirmed, for its scientific, cultural and political legacy. Our military, with great human losses, succeeded in stopping the mighty Ottoman waves directed at the heart of Europe. Ottoman flag has never been raised in the Croatian capital of Zagreb. Culturally, we have been drawing not only from great, but also small European nations, from the Middle Ages all the way to the Postmodernism. Croatian history as a Mediterranean, Danubian, and Central European country is part of the European history. Neither economic nor political connections with Europe and with its highest ideals have never been interrupted. With the hope in the final admission to the Council of Europe we are excited and joyful not about joining the pan-European organization, but rather about returning to Europe. The political dialogue with the Council of Europe was continuous in recent years, which is evidenced by the presence of Croatian representatives in thirty permanent and ad hoc COE bodies and specialized conferences, both in Strasbourg and in Croatia. Collaboration was with the experts who helped with work on the creation of legislation and its alignment with the European standards was particularly fruitful. This work has continued intensively up to the present day.

Croatia has already signed a number of conventions and will certainly continue to do so after the accession to the Council of Europe. Irrevocably committed to democracy, Croatia's laws and practice protect the rights of citizens, especially ethnic minorities, in accordance with the European standards, and even more. For example, despite the war in Croatia the capital punishment was not legalized. However, severe war trauma caused by the Serbian aggression and terrible crimes cannot be forgotten overnight.

The national government is strongly advocating the rule of law, and is committed to a peaceful solution to problems common for countries in transition, as well as to some of the specific problems with the neighbours. The majority in Croatia feel responsible for building a democratic society of free and happy people, of citizens equal in all things. On the path of reinforcing the rule of law, no one can shake this mass of voters. But the Council of Europe, by its embracing Croatia and taking it under its wing, can greatly assist and accelerate the healing of war wounds, both on the buildings and on the people, in the feelings and in the heart of hearts.

The European situation at this integration stage is not a static phenomenon, but a dynamic process. Croatia's inclusion into such Europe will be faster and more dynamic, and effected by providing a role model and real, not just verbal, support on behalf of the whole. Community is encouraged and held together not only by common but also shared individual interests. Of course, it should be accompanied by clearly defined obligations between the parts and the whole.

In this particular case it is a distinctive complex political, economic, scientific and cultural hermeneutic circle¹⁵³. Croatia, when it finally joins that circle, will be bound thereby to gradually transform in order to achieve its strategic goal: full integration into Europe that must find the right answers to the challenges of the 21st century with shared wisdom and ability. That is why, I would like to point out at the end, for Croatia it is a true honour, but also a great obligation, to share the fate of Europe, a Europe that knows what it does not want, but also what it clearly strives for, a Europe of prosperity and safe future.¹⁵⁴

The statement of the Council of Europe about Croatia's accession was issued by the COE Information Office. The statement is quoted in its entirety, as the most crucial content for Croatia in 1996:

"The Parliamentary Assembly of the Council of Europe voted with a majority vote in favour of admission of Croatia and thus opened the way to this country to become the fortieth full member of this Pan-European organization based in Strasbourg. The opinion of the Assembly will be submitted to the Committee of Ministers that will make the final decision. By adopting the opinion issued by Rene van der Linden, the rapporteur of the Committee on Political Affairs, the Assembly took into account the fact

¹⁵³ Defines the structure of the process of interpretation in the hermeneutical philosophy, according to which something can be understood or interpreted only if it has already been understood to a certain extent.

¹⁵⁴ Hidra, 24 April 1996

that Croatian President Franjo Tuđman and the President of Parliament Mr. Vlatko Pavletić signed on 15 March a document with 21 requests proposed by the Committee of Political Affairs. The establishment of the OSCE mission in Croatia as well as the adoption of the Constitutional Act on cooperation with the Hague Tribunal also influenced the vote. Croatia committed itself to accept the European Convention on Human Rights during the year following the accession to the Council of Europe, and to recognize the right of individual recourse to the European Commission and compulsory jurisdiction of the European Court of Human Rights. During the first year of membership in the Council of Europe, Croatia is obliged to sign Protocol 6 of the Convention governing the abolition of the death penalty in peacetime, which will be ratified within three years. During the year after the accession Croatia will sign and ratify the European Framework Convention for the Protection of National Minorities, the European Charter of Local Self-Government and the Charter on Regional and Minority Languages. Croatia also agreed to cooperate in the implementation of the Peace Agreement on Bosnia and Herzegovina, to cooperate with the International Tribunal for war crimes committed in the former Yugoslavia, and promptly brought to trial all persons indicted for war crimes, crimes against humanity and genocide. The Assembly expects from Croatian authorities to effectively guarantee the rights and freedoms of ethnic and national minorities as well as freedom of the press, and to consult with experts within the Council of Europe during the review of the Act on Local Government and Administration. It also needs to ensure that the law of the Legal Service of the Commission is carried out in accordance with the rules of the Council of Europe. Finally, Croatia agreed to cooperate with the Council on the implementation of measures for monitoring compliance with the obligations. In May, two ministers for foreign affairs met in Zagreb, the Irish Minister Gay Mitchell and Mr. Granić. This was the first official visit by an Irish minister to Croatia. The conversation ran around relations between Croatia and Ireland¹⁵⁵, and Ireland promised to support Croatia with the implementation of the European criteria on the path of its admission to the European integration. “¹⁵⁶

¹⁵⁵Ireland took the presidency over the European union within two months

¹⁵⁶Hidra , 24 April 1996

3.1.5 General disappointment - Croatia's accession to the Council of Europe postponed

To general disappointment of all senior officials, as well as all Croatian citizens, in May, when the executive body of the Council of Europe was supposed to meet, the Committee of Ministers of the Council of Europe decided at the ambassadorial level by consensus to postpone the admission of Croatia to the Council of Europe.

The required consent for the adoption of a positive decision on Croatian membership was not achieved. "Member states of the Council of Europe want to see progress before making a final decision," said the spokesperson for the Council of Europe.

Ministerial Committee formally reviewed Croatian admission to full membership, and issued the following statement:

"Representatives of Ministers of thirty-nine countries of the Council of Europe instructed the group of countries of Central and Eastern Europe today to continue considering the issue of granting the accession to the Council of Europe as early as possible in the next meeting on May 30 1996, on the basis of the Secretariat document which sets out obligations and expectations whose execution may be requested from Croatia by deadline that should be set. Lawmakers also agreed to continue considering this matter at the next meeting from 3 to 6 June 1996¹⁵⁷"

Croatian Ministry of Foreign Affairs immediately responded to the statement with a statement expressing regret for the delay in the admission to the full membership, and said that it could not accept that its admission is conditioned by the admission of other neighbouring states to the Council of Europe. Furthermore, it reminds of the transparency of Croatian politics and the development, the cooperation with key international players, and it confirms in its statement the commitment to the process of democratic development, honouring the standards of the Council of Europe. Furthermore, it requires further clarification of the extended deadline of the accession. Likewise, Croatian Minister of Foreign Affairs Mr. Granić said that Croatia will fulfil all the commitments assumed in the negotiations for the admission to the Council of Europe.

¹⁵⁷Vjesnik, 3 May 1996

3.1.6 Thessaloniki - resolution on Croatia, accession procedures to the Council of Europe

And so the negotiations continued, in Thessaloniki, before more than 200 members of the parliament from 39 member states. Among other topics, the status of Croatian application was discussed.

Namely, Croatia was included in the emergency debate of the session scheduled for 29 May 1996.

The procedure is as follows: after the eighty members of the Standing Committee reflect upon the Croatian request (the Standing Committee normally acts on behalf of the Parliamentary Assembly between the meetings, and votes on the draft of the resolution on Croatia's application to be admitted), the working group for relations with the countries of Central and Eastern Europe (GREL) would then have to meet in Strasbourg, and consider the matter of Croatia becoming a full member of the Council of Europe, and proceed with its conclusions to the Committee of Ministers. Namely, the working group will be given the resolution, and will also prepare a new document, which lists four sets of obligations, on which Croatia will have to once again declare itself, once the exact deadlines for the fulfilment have been set. Those are: honouring Dayton Agreements, return of refugees and exiles, freedom of the press and law on local government. Those are not new obligations but deadlines for the existing obligations.

Vice President of the Croatian Parliament Mr. Žarko Domljan said at the session of the political committee of the Parliamentary Assembly of the Council of Europe that once again Croatia faced the reservations and criticism. In relation to the work of the Standing Committee, members of the parliament noted that Croatian authorities acted inconsistently with the commitments from the moment of getting the "green light" to enter the Council of Europe, referring to the dissolution of the Zagreb City Assembly, failure to implement the adopted act on cooperation with the ICTY, and repressive measures against the media. The draft of the resolution cites the decision of the Constitutional Court which annuls the government's decision to dissolve the Zagreb City Assembly as a positive sign of the functioning rule of law. Therefore, in order to allow Croatia to enter the Council of Europe as soon as possible, Standing Committee urges the Croatian authorities in the draft resolution to strictly adhere to the commitments and expectations.

But let us go back for a moment to Thessaloniki where the Standing Committee of the Parliamentary Assembly of the Council of Europe unanimously accepted the text of the resolution on Croatia based on the report of the Special Rapporteur Van der Linden:

1. The Parliamentary Assembly adopted the Opinion No. 195 on 24 April 1996 regarding Croatian accession to the Council of Europe. Based on the list of commitments undertaken by Croatia, and signed by Croatian president, and the president of the Croatian Parliament, as well as certain expectations that the Assembly formulated, Croatia should be given an invitation to join the organization.
2. The Parliamentary Assembly is surprised to note that the Croatian authorities afterwards apparently acted against the said obligations. The repressive measures taken against the media and the dissolution of the City Council of Zagreb provoked serious doubts as to their good intentions. Moreover, there was a concern about changing the law on cooperation with the International Criminal Tribunal for the former Yugoslavia.
3. However, the Parliamentary Assembly considers the decision of the Constitutional Court that annulled the decision of the government to dissolve the Zagreb City Assembly as a positive sign of functioning rule of law in Croatia.
4. The Parliamentary Assembly takes note of the position of the Deputy Ministers of 15 May 1996. Before deciding on Croatia's acceptance, the Committee will consider whether the obligations which may be requested from Croatia are fulfilled, as well as the expectations in accordance with the terms which would be determined.
5. The Parliamentary Assembly is pleased to note the importance that the Council of the European Union attaches to the commitments made in connection with the admission to the Council of Europe. However, there is a clear need for close consultations to ensure the coordination between the joint foreign and security policy of the European Union and the Council of Europe's point of view.
6. The Parliamentary Assembly requests that Croatian authorities strictly comply with the obligations and expectations set forth in the opinion No.195, and that the Croatian Parliament acts accordingly in order to allow Croatia to access the Council of Europe more quickly¹⁵⁸.

The resolution on not receiving Croatia into the Council of Europe was adopted by the MPs of the European Parliament on 6 June 1996. Immediately, the following day, the president of the Committee of Ministers gave to the Permanent Representative of Croatia to the Council of Europe, Ambassador Theodore Gagra, a letter to give to the Foreign Minister and Deputy Prime Minister Mr. Mate Granić. The letter requests further clarification concerning

¹⁵⁸HIDRA, 24 April 1996

certain obligations that the Republic of Croatia agreed to in April 1996 under the procedures of the admission in the Council of Europe. The Croatian government responded to the letter within seven days of the reception in the hope of continuing the dialogue and the completion of the process for the full membership.

In relation to the resolution on Croatia within the procedure of its membership in the Council of Europe, Croatian president at that time, Mr. Stjepan Mesić, was not shy about his opinion, also the President of the Independent Croatian Democrats (HND), who clearly stated that the Croatian government was to blame for the delay in the reception into the Council of Europe because it did not fulfil the conditions it took upon itself, which he clearly all commented in the following words:

“Looking for someone to blame for the delay in the admission to the Council of Europe among some sort of enemies that surround Croatia is notorious stupidity.¹⁵⁹” He also said that Croatia should be urgently integrated into Europe in order to get its hands on the financial programmes and try to freshen up “a very dramatic economic situation.¹⁶⁰ Refusing to recognise the election results in Zagreb is not at the level of the European standards and shows that HDZ is still a movement that wants to play the role of the former Communist Party and treat all other parties as orchestrated entourage, something akin to the former Socialist League.¹⁶¹”

3.1.7 Croatian government responds to the Memorandum of the Council of Europe

We should also mention the first session of a European committee ever held in Croatia, a regular meeting of the Committee on Relations with European non-member countries of the Parliamentary Assembly of the Council of Europe held on 10 September 1996¹⁶². The purpose of the visit is not an exploratory mission, but rather an impulse to get a feel of the political situation in Croatia.

Of course, regarding the Croatian position on accessing to the Council of Europe there are no changes, but the working group of the ministerial Committee of the Council of Europe should propose a final entry into force of the decision on the admission of the Republic of Croatia into the Council of Europe on 15 September 1996, noted Mr. Žarko Domljan, the host.

¹⁵⁹Vjesnik, 30 May 1996

¹⁶⁰Referring to the PHARE and CARDS programmes

¹⁶¹Vjesnik, 30 May 1996

¹⁶²Held at Intercontinental Hotel in Zagreb

However, the members of the Committee conducted interviews with the representatives of Croatian political parties, the representatives of national minorities, NGOs and Croatian media during their visit to Croatia. A day later, a press conference of the Committee on Relations with European non-member countries of the Parliamentary Assembly of the Council of Europe¹⁶³ was held in Zagreb where a prominent member of the French Senate President of the Committee Jean Seitlinger, vice president Elena Potpodorova, rapporteur Lord Dundee and a member Hanna Severinsen talked to the representatives of the media. Among other things they reminded that the Council of Ministers would meet mid-September to finally decide to confirm the admission of Croatia into the Council of Europe, and also that one of the main sources on the basis of which it will be decided on the admission will also be a report that the Committee will submit on relations with European non-member countries after visiting Croatia. As noted in the previous paragraph, the representatives of the Committee did not waste any time, and met with the representatives of Croatian political parties, national minorities, NGOs and Croatian media, and had important discussions on which they will make some conclusions concerning the reception of Croatia in the Council of Europe. Mr. Seitlinger said: "We are particularly pleased with the fact that all our interlocutors, without exception, advocated a speedy accession of Croatia to the Council of Europe¹⁶⁴"

Talking about freedom of the press, the Committee tried to determine whether there was political discrimination in Croatia of different media or was it just the wrong procedures which were applied after the media attacks on the private lives of some certain public figures. "We do not intend to blame anyone, we believe that journalists must follow certain rules while those who have accepted to represent their country at some level, should learn to be a little less sensitive¹⁶⁵"

The President of the Parliamentary Assembly of the Council of Europe, Leni Fischer, gave hope in her statement by saying that she believed that the debate should not go back to square one. Instead, like in the cases of some other countries before, it should be reviewed what Croatia had done, considering all the guarantees it extended. She also believes that the Committee of Ministers in mid-October at its meeting will be in the position to determine the accession date for Croatia's admission among full members of the Council of Europe. And the political committee confirmed a positive

¹⁶³ On 11 September 1996 at the House of Europe

¹⁶⁴ HIDRA, 11 September 1996

¹⁶⁵ HIDRA, 11 September 1996

attitude about admission of Croatia into the Council of Europe. The leader of the parliamentary delegation Mr. Žarko Domljan participated, at the request of the Rapporteur Van der Linden. Namely, Van der Linden asked Mr. Žarko Domljan to give an answer to the main objections contained in the presidential statement of the Security Council. Mr. Domljan outlined for the audience many positive changes and breakthroughs that had been achieved from April when the Parliamentary Assembly adopted its recommendation for the admission of Croatia into the Council of Europe.

One of the main objections, the return of Serbs, was not as simple as one may think, because it can only be accomplished by checking each and every application, as well as by respecting the rights of every individual to obtain Croatian citizenship and return of property, and this right cannot be limited by any deadline.

Following the foregoing, and a positive outcome of a discussion at the Political Committee, the same committee concluded that further postponement of the Croatian accession into the Council of Europe would not make any sense.

The Ministerial Committee of the Council of Europe should determine the final date of the formal accession of Croatia into the Council of Europe, and the fulfilment of the guarantees that are required from Croatia towards the Council of Europe will be affected by the system of supervision of these outcomes, through the so-called monitoring¹⁶⁶. Monitoring is also applied in some other newly admitted member countries¹⁶⁷. It is important to mention that Croatia got an undivided support for the membership in the Council of Europe in a number of bilateral meetings. "Now they have all directly voted for the Council of Europe," said Minister Granić and added that joining the Council of Europe should be signed in November this year. Minister Granić signed in New York an encompassing treaty banning nuclear testing. Furthermore, as announced by *France Presse*, in a conversation with one of the officials of the Committee of Ministers: "It's just a formality because, since July 2, there has been a consensus among us." He also reminded that "on 2 July the Committee issued a decision inviting Croatia to become a member of the Council of Europe. That decision is conditioned by the requirement that Croatia should fulfil a number of conditions until 30 September. "

¹⁶⁶The procedure for monitoring the fulfillment of obligations, provided in various texts of the Assembly.

¹⁶⁷Constituting of the Committee institutionalized the practices that had already existed before, ie. since the Assembly decided to accept the "new democracies" despite their difficulties. In this way he wanted to facilitate their transition from a totalitarian regime into a system of pluralistic democracy.

If Croatia fails to meet them, the invitation could be brought into question. By June 30, no one questioned the invitation addressed to Croatia. Therefore, on 1 October the invitation was indirectly confirmed.

Also, the same Committee official stated that Croatia established diplomatic relations with the Federal Republic of Yugoslavia, contributed to the success of the Bosnia and Herzegovina elections in September, voted for the Amnesty Act and the Public Information Act, which was one of the objections directed at Croatia. But he also expressed his regret that Croatia had not responded to “an important question of cooperation with the International Tribunal for War Crimes” in The Hague, adding nevertheless that “Croatia is not the only one.” It must be mentioned that the refusal of the ministers, since they did not unanimously agree on the Croatian accession to the Council of Europe mid-May, led to a precedent in the annals of the Council of Europe since its opening to East European countries, because it came after the Parliamentary Assembly had already approved the Croatia’s admission on 24 April 1996. German Foreign Minister Klaus Kinkel said in an interview with Croatian Minister Mr. Granić that his country will most certainly support Croatia and Croatian trade agreement with the European Union, as well as Croatia’s involvement in the PHARE program, which would of course mean an additional recognition for Croatia.

Now web should get back to the report of the Ministerial Committee which as followed by the decision on 16 October 1996 that Croatia would finally be admitted as a full member in the oldest pan-European organization. On that occasion the leader of Croatian parliamentary delegation to the Council of Europe Mr. Žarko Domljan stated the following: “This is the end of a painstaking period for Croatia.”¹⁶⁸

“We have gone through hardship and finally saw that the Ministerial Committee unanimously passing the decision on Croatia’s admission.”¹⁶⁹ “But one would be wrong to think that that they would leave us be. Now it’s time for fighting from within to establish our political reputation. We will be able to present stronger arguments and about the truth, to defend our views, and express our complaints to on equal grounds, because there is no place where there are no objections about human rights, the rule of law, and freedom.”¹⁷⁰

¹⁶⁸ HIDRA, 16 October 1996

¹⁶⁹ HIDRA, 16 October 1996

¹⁷⁰ HIDRA, 16 October 1996

In his statement for the Croatian news agency, Mr. Domljan jokingly said that the process of admitting Croatia in the Council of Europe took four years, i.e. from May 1992, which was a world record of sorts, and that he believed that “we can be proud because we went through a thorough examination prior to the accession. I used to say that, unlike other countries, Croatia would be admitted to the Council of Europe through a special procedure.”¹⁷¹ “

3.1.8 Press release of the COE’s Public Relations Service on the final accession of Croatia into the Council of Europe

The Press Department of the Council of Europe finally announced on 16 October 1996 that Croatia would become the fortieth member of the Council of Europe, as per decision of the Committee of Ministers.

This decision is based on the recommendation adopted by the Parliamentary Assembly in April 1996, on the written contacts between the Croatian Government and the Ministerial Committee, and finally, on the invitation for admission to become a full member with a July delay. As stated in the report, Croatia accepted the obligations in the following areas:

- ★ Implementation of the Dayton Agreement
- ★ Cooperation with the International Criminal Tribunal for the Former Yugoslavia
- ★ Human rights, minorities, refugees and displaced persons
- ★ Freedom of the press
- ★ Local and regional government and local elections

Apart from that, Croatia agreed to ratify the European Convention on Human Rights in a period of one year following its admission to the Council of Europe, and to recognize the right of individual recourse of the citizens to the European Court and the mandatory jurisdiction of that court. Furthermore, in a period of one year after the admission, Croatia will sign, and in the period of three years, ratify the Protocol No. 6 of the Convention on Human Rights on the abolition of the death penalty in peacetime.

In the period of one year after the admission, Croatia will sign and ratify the draft the COE Convention on the Protection of National Minorities, the European Charter on Local Autonomy and the Charter on Regional and Minority Languages. All these obligations, commitments are of course based on written contact between the Parliamentary Assembly and the Ministry of Foreign Affairs of the Republic of Croatia in March and June

¹⁷¹HIDRA, 16 October 1996

1996. It should be emphasized once again that the Republic of Croatia for the first time applied for admission to the Council of Europe in May 1992.

It was established by the Ministerial Committee that the Republic of Croatia, i.e. Croatian delegation to the Parliamentary Assembly of the COE, will have five members. Shortly after the previous announcement from Strasbourg the Ministry of Foreign Affairs of the Republic of Croatia released its statement as well, stating the following: as soon as the positive recommendations of the Parliamentary Assembly of the Council of Europe of 24 April 1996 and the Resolution of the Committee of Ministers of 2 July this year were confirmed, the Ministerial Committee of the Council of Europe at the level of representatives of Ministers decided to invite Croatia as a fortieth full member to access the Council of Europe on 6 November 1996 at midday¹⁷². In its press release it states that the Republic of Croatia with a “special guest” status developed cooperation with permanent and ad hoc bodies of the Council of Europe. However, with the accession into the Council of Europe Croatia is expected to continue to intensify cooperation at all levels within the commissions and the Committee, in accordance with the mechanisms established for all members of the Council of Europe. Furthermore, commitments undertaken by the Republic of Croatia are stated as well, which must be fulfilled within one year of its accession to the Council of Europe¹⁷³. Having acceded to the Council of Europe, Croatia took the first major step that leads to other Euro-Atlantic integrations, and at the same time underlined the need to renew the process of concluding the already harmonized Cooperation Agreement with the European Union, the Treaty on associated membership to the European Union and the Accession to the Partnership for Peace program.

The document also states that the accession into the full COE membership confirms the commitment of Croatia to strengthen a democratic society, the rule of law and the provision of full protection of human rights, which will contribute to speeding up the process of peaceful reintegration of the Croatian Danube region. This also strengthens and confirms the international position of the Republic of Croatia and values its active contribution to the implementation of the Dayton Peace Accords with the stabilization of the situation in the region.

¹⁷²HIDRA, 17 October 1996

¹⁷³Daniela Petričević Golojuh, *Croatia's Membership in the Council of Europe*, Master's thesis, Faculty of Political Sciences, University of Zagreb, 2010, p.91

3.2 Criteria for Croatia's full COE membership - 21 points (prerequisites for Croatia's accession)

In order to meet the criteria for accession to the Council of Europe, the Republic of Croatia, hereby officially undertakes the following obligations;

- ★ signing of the European Convention on Human Rights (ECHR) at the moment of accession,
- ★ ratifying of the ECHR and the Protocols No. 1, 2, 4, 7 and 11 within one year from the time of accession,
- ★ Until Protocol 11 enters into force, recognizing the right of individual recourse to the European Commission and the statutory jurisdiction of the European Court of Justice (Art. 25 and 46 of the Convention)
- ★ Signing of the Protocol No 6 ECHR on the abolition of the death penalty in peacetime within a year, and ratifying it within three years after the accession,
- ★ Within one year from the accession signing and ratifying the European Convention for the prevention of torture and inhuman or degrading treatment or punishment,
- ★ signing and ratifying the European Framework Convention for the Protection of National Minorities and the European Charter on Local Self-Government and the Charter on Regional and Minority Languages having policies on minorities in accordance with the principles set out in Recommendation No. 1201 of the Assembly (1993) within one year of its accession and incorporating these principles into the legal and the administrative system and practices of the State,
- ★ implementing the recommendations arising from the opinion of the European Commission for Democracy through the law ("Venice Commission")¹⁷⁴ on the Constitutional Law on Human Rights and Freedoms and the Rights of National and Ethnic Communities or Minorities, as well as mechanisms to protect human rights,
- ★ taking all necessary measures, including adequate police protection, to ensure the safety and human rights of Serbian population in Croatia, especially in the former UNPA zones, in order to facilitate the return of

¹⁷⁴Established in May 1990 as a partial agreement of the COE. It included the 39 members, 5 associated members and 8 observers. It examines the constitutional, legal and administrative measures that serve for the implementation of the fundamental principles of the COE. The Commission issued the "Bulletin of constitutional jurisprudence" which contains a summary of the most important decisions of the constitutional courts and the European Court of Human Rights and the Court of Justice of the European Communities.

people who left these areas and allow them, with a special procedure determined by law, to effectively exercise their rights to restore the property or receiving compensation,

- ★ with the aim of ratifying study the Social Charter of the Council of Europe, and in the meantime implement a policy in accordance with the principles contained therein,
- ★ signing and ratifying, and in the meantime applying, the basic principles of other Council of Europe conventions, in particular those relating to extradition, mutual assistance in criminal matters, transfer of sentenced persons Laundering, Searching, Seizure and Confiscation of gains of crime
- ★ peacefully resolving international and internal disputes,
- ★ complying strictly with its obligations under the Basic Agreement for Eastern Slavonia, Baranja and Western Srijem and to cooperate fully with the United Nations Transitional Administration for the region (UNTAES)
- ★ fully and effectively cooperating in the implementation of the Dayton / Paris Peace Agreement of Bosnia and Herzegovina,
- ★ collaborating and effectively assisting the prosecutor of the International Criminal Tribunal for the former Yugoslavia, promptly detain and bring into Court all persons suspected of war crimes, crimes against humanity and genocide,
- ★ solving the remaining international border disputes in compliance with the principles of the international law
- ★ Implementing the recommendation of the Council of Europe experts on the laws related to the media such as the Public Information Act, Telecommunications Act and the Law on Protection from the Competition,
- ★ Proceeding with the election of the Mayor of Zagreb in accordance with the Constitution and laws of the Republic of Croatia, taking into account the recommendations of the Council of Europe,
- ★ implementing reforms aimed at aligning of legislation and practice and the principles with the standards of the Council of Europe,
- ★ In good time, before the next election, fulfilling the recommendations made by the monitors of the election from the COE and other international organizations, in particular with regard to the special electoral lists for the diaspora, minority representation, the list of voter registration, voter anonymity, and the need to increase the independence of national media outlets (HRT), and as soon as it is possible to conduct a census,
- ★ Within one year of accession, signing and ratifying General Agreement on Privileges and Immunities of the protocols to the agreement,

- ★ Cooperating fully in the implementation of the Assembly Decision No. 508 (1995) on the honouring of obligations of the member states of the Council of Europe, as well as the observation process, established on the basis of the statement of the Committee of Ministers from November 10 1994 (95th session).

With this obligation, Croatia agreed that it respects 9 “Expectations” (Expectations).

However, a well-known fact should be noted, namely that Croatia has fulfilled almost all previously mentioned obligations undertaken upon the accession to the Council of Europe, and ratified all international agreements it agreed to ratify, and also completed the amendments to and enactment of legislation which had to be aligned with the provisions of the contracts. Therefore International Agreements, which entered into force on the basis of the Croatian Constitution have the force above the law and are applied directly. For example, the European Convention on Human Rights is certainly the most important signed and ratified document.

3.3 Republic of Croatia – Full COE member (6 November 1996)

On Wednesday, 6 November 1996, before the Palace of Europe in Strasbourg, Croatia officially become the fortieth full member of the Council of Europe.

That act was accompanied by the Croatian flag ascending during the national anthem and Beethoven's "Ode to Joy"¹⁷⁵, so it was on the highest possible protocol level.

That act was attended by Mr. Mate Granić, the Vice President of the Croatian government and the Minister of Foreign Affairs, who had previously presented the document of the accession of the Republic of Croatia to the Statute of the Council of Europe to Daniel Tarschys, the Secretary General of the Council of Europe. The document was signed by Mr. Franjo Tuđman, Croatian president, and after the act. After that minister Granić and the secretary general signed the declaration of Croatian accession to the Statute of the Council of Europe.

3.3.1 The speech by Mr. Daniel Tarschys, the Secretary-General of the Council of Europe

It would be interesting to mention some of the quotes by Mr. Daniel Tarschys, Secretary General of the Council of Europe on the occasion of proclamation of the Republic of Croatia the fortieth member state of the Council of Europe, as that event has been of great importance not only for the Republic of Croatia but for the Council of Europe as well.

"Every country joining the organization that is based on certain values takes on very serious commitments not only to other member states, but also to its own citizens." He emphasized that by raising the Croatian flag in front of the Palace of Europe did not mark a new beginning, it rather confirmed the long lasting relationships with Croatia and that "Croatian friends are not newcomers to the Council of Europe.

"For several years the Croatian parliamentary delegation has been participating in the activities of the Council of Europe in the Parliamentary Assembly and in the Congress of Local and Regional Authorities."¹⁷⁹

He also added that the Croatian observers participated in many ministerial conferences and other meetings of the Council of Europe, and that there was permanent political dialogue between the Committee of Ministers and

¹⁷⁵In 1972 the Committee of Ministers adopted as the European anthem the prelude to the "Ode to Joy" from the Ninth Symphony by Ludwig van Beethoven in Herbert von Karajan's arrangement. It is performed t official occasions and ceremonies.

the representatives of Croatian government, especially Mr. Mate Granić, the Vice-President and Minister of Foreign Affairs. Mr. Tarschys further pointed out that the Council of Europe participated and helped Croatia in many forms of cooperation. The Secretary General stressed out that he insisted on “life after admission, because it is a foundation for more intensive post-accession relations.”¹⁷⁶ “Membership is linked to specific obligations, but also to the possibility for the active involvement of Croatia in our common European project”¹⁷⁷ At the end, he pointed out that the procedure for admission was not easy, adding that trust must be established. “Croatian accession to the Council of Europe is an important step in the process, and we welcome your commitment and determination to care for and promote the principles of European cooperation in your country, in neighbouring countries, and the whole continent.”¹⁷⁸

3.3.2 The speech by Mr. Mate Granić, Minister of Foreign Affairs of the Republic of Croatia

The speech by Mr. Mate Granić at the accession ceremony of the Republic of Croatia to the Council of Europe.

“For our country it is great honour and for me personally a great pleasure to witness the Republic of Croatia officially become a member state of the oldest European intergovernmental advisory organization- the Council of Europe.

Croatia remains deeply committed to the noble goals and the ideals of the Council of Europe in whose accomplishments we will devote all our efforts, beginning of the lasting peace in our neighbourhood. We have reinforced that position today, by handing in the Instrument of Accession of the Republic of Croatia to the Statute of the Council of Europe, and by accepting the key documents on which our common European home is based, especially the European Convention on Human Rights and its protocols. Those documents will be helpful in Croatia’s future progress, which has already begun by aligning our legislation with European standards. That will speed up the process of strengthening and development of Croatian democracy, and in practice, which will in turn strengthen Croatian legislation. With regard to the extremely difficult conditions in which the Republic of Croatia was to progress over the past few years, important steps were taken resulting mainly from our cooperation with the Council of Europe and with the help

¹⁷⁶Hidra 6 November 1996.

¹⁷⁷Hidra 6 November 1996.

¹⁷⁸Hidra 6 November 1996.

of the Council of Europe. In particular, I must mention kind help of Mr. Daniel Tarschys, Secretary General, Mrs Leni Fischer, the President of the Parliamentary Assembly, and their predecessors Mrs. Catherine Lalumière and Mr. Miguel Martinez, the members of Ministerial Committee, my fellow ministers and their representatives to the Council to whom I would like to express sincere thanks.

On this occasion, I would like to thank all other senior official representatives to the Council and to their constituent bodies, first of all the Parliamentary Assembly, which in the summer of 1991 was the first international institution to acknowledge what was happening in the former Yugoslavia. By receiving the representatives of the Croatian Parliament and approving Croatia the status of a special guest, the Assembly supported the growth of democracy in the new countries. My special thanks go to rapporteurs on political affairs, legal affairs, and human rights, and to the boards of Non-Member States of the Parliamentary Assembly.

Their reports, though often laced with a little criticism, were invaluable in our efforts to join the big family of European democracies. Special thanks go to the Secretariat that enabled a number of Croatian experts and representatives from various ministries to participate in the work of the Committee and other working groups, and so access the treasury of knowledge and experience. The value of this cooperation will be evident in the coming months. In that period, two special joint committees, alongside the representatives of the Parliament and other ministries, will begin an intensive work on aligning Croatian legislation with European conventions and agreements to which we have accessed, as well as with conventions and agreements we are going to sign in the following months.

I would like to thank you, Mr Secretary General, for aiding the cooperation between the Council of Europe and the Republic of Croatia, particularly in the matter of peaceful reintegration of Croatian Danube region, as well as for your personal support. We would very much appreciate if you could be understanding of Croatian needs in the future.

Rest assured that Croatia will, in its full member capacity, continue to seek the Council assistance whenever there is a need to efficiently align parts of our system with European standards in terms of democracy and protection of human rights. The Republic of Croatia is redirecting its efforts from the protection of its very existence to nurturing democracy, good neighbourly relations with all willing parties, and cooperation with other European countries, now on equal terms.

Furthermore, by participating actively in various issues that the Council of Europe deals with, the Republic of Croatia wishes to contribute to the stabilization of democracy in Europe and expansion of the European integration process. Aware of the fact that these factors are the only guarantee for long-term stability and prosperity, the Republic of Croatia will, I can assure you, with renewed energy tackle the task of achieving these goals, today more than ever, since its presence in Europe is now measured not only in purely geographical terms, but political, too.

Thank you, Mr. Secretary General.”¹⁷⁹

3.3.3 The letter by Mr. Franjo Tuđman, Croatian President, addressed to Croatian people

It is worth quoting the letter by Mr. Franjo Tuđman, Croatian President addressing Croatian people on 6 November 1996 on the occasion of the accession of the Republic of Croatia to an institution such as the Council of Europe.

“Today Croatia has finally been admitted to the Council of Europe.

Considering present international order, it is an event of great importance for independent and sovereign Croatia. On the way to the first formal step towards European integration we had to overcome many objective difficulties, sometimes in the face of purposeful disinclination. Apart from misunderstanding, we were faced with the attempts of direct interference in Croatian internal affairs concerning the development of democracy, in order to influence its international status. Despite of all extremely unfavourable and very complex circumstances on our way to establish, defend and affirm modern Croatia, we have triumphed, because not only have we learned the lessons the history taught, but we have been a good judge of international relationships and their common and conflicting goals and interests. Croatian people have found within themselves surprising strength and maturity, and in their own blood, sweat and tears, guided only by the God’s helping hand, won their place in an international order and now in the Council of Europe. That was possible because of the Croatian national awareness of permanent values, of the political and cultural heritage dating back to medieval onwards, to the intellectuals and their contributions to European and world civilisation.

That awareness has always, now and in the past, overcome all clueless structural components which, aided by the tragic foreign influences, threatened not only the state, but the national survival, as well.

¹⁷⁹Hidra 6 November 1996, the speech by Mr. Mate Granić

What Croatia has and is now has been accomplished by surviving life or death conflicts with the Venetian, Ottoman, German, Hungarian, Nazi and Serbian imperialism.

But we also had to overcome our own fatal weaknesses, blind failures and self-destructive deceptions.

Historical successes in bringing to life an independent, sovereign and democratic Croatia and establishing its international position is the result of clever and resolute statesmanship in achieving and defending national and state goals and interests in given international circumstances. In exceptional – war – circumstances, we managed to establish in the most democratic way a stable constitutional, legal and democratic order which successfully resists all internal and external attempts of destabilization that threaten to reinstate the old system or uncertainty. We started from scratch and managed to build Croatian armed forces, at first comprising unarmed people who defended their freedom, and afterwards armed, which soundly defeated Yugo-Communist and Serbian aggressor, thereby forever altering strategic alliances and turning Croatia into a significant factor in this part of Europe.

Having transformed from a socialist system into a system of free market, and introduced a new, stable national currency and overall economic stability, Croatia has established a firm foundation for rapid economic and cultural development.

Now, while the reconstruction is well underway and the whole country is one big construction site, the most relevant international financial institutions have estimated that Croatia is likely to become one of the most prosperous countries. Croatian accession to the Council of Europe is welcomed by Croatian leaders and public as a positive factor and a requirement for better mutual understanding, common obligations and economic connections. However, at the same time Croatia announces that it resolutely opposes all initiatives aiming at any integration that would involve the Balkans or South-East Europe. The reasons for it, we can assure you, lie in both Croatian and international strategic interests. Croatia's geopolitical position and its fourteen-hundred-year history place it in the middle-European and Mediterranean cultural and civilizational sphere. Political connection to the Balkans is just a short episode in Croatia's long history, the one which lasted for mere seven decades, and which, opposite of what one might think, has only resulted in increased civilization gap. Croatia therefore cannot accept such basis for integration, as it would actually require disregarding everything that Croatia has achieved at the cost of massive casualties while

establishing its freedom, democracy, and sovereignty. This would prevent Croatia to return to the sphere to which it belongs geographically, historically and culturally. What is more, it would mean the imposition of political and diplomatic defeat, similar to that of military campaign at Bleiberg.

Croatia is determined to avoid new forced marches in the area it escaped. Croatia, however, does not shirk the responsibility of establishing lasting peace and new international order in this part of Europe.

At the same time, Croatia reminds and testifies that the tragic crisis in the region was not brought about by differences between allegedly distorted nationalisms, but by an extremely complex reality, conditioned by all events from ancient times to the present era. Therefore, we would like the European and international factors to realize that one cannot ignore indisputable historical facts and reality of today irresponsibly and without consequences.

This is the territory where the Roman Empire was divided into West (Roman), and East

(Byzantine); the territory where East-West Schism split the Christians into Roman Catholics and Eastern Orthodox; Yugoslavia created by The Versailles Treaty couldn't survive neither in monarcho- fascist nor in communist dictatorship, and the attempts at its democratic transformation failed. Ignoring all those hard facts and imposing unsustainable regional boundaries could, not in too distant a future, cause new tragic events. It should be clear that it was the democratic national movements that were crucial internal driving force behind the collapse of the communist system and Stalinist imperialism. Also, it must be acknowledged that not only multi-ethnic socialist Yugoslavia and multi-national Soviet Union collapsed, but also democratic Czechoslovakia. Just like other European countries, Croatia is hopeful about the prospects following the accession to the Council of Europe, and calls for common sense, even the historical wisdom, in the implementation of European integration. Having already achieved a partnership with the USA, friendly solid relationships with many European countries, as well as with Russia and China, Croatia aims to accelerate the integration into the European Union and into Euro-Atlantic security system. If the matter of previously mentioned regional associations is not dropped, than Croatia's rightful place is among Central-European countries from the Baltic to the Adriatic and more specifically among the Adriatic-Danube countries, with whom Croatia is most closely associated.

Sovereign and democratic Croatia has already proved that it wants and can be constructive factor and reliable support in building the peace and new and stable international order in this part of the world. We build on the experience of monumental mistakes and victories that we have achieved through actualising, defending and developing the independent, free, democratic, internationally recognized and sovereign Croatian state!

Progress, and economic and cultural prosperity of our Croatian homeland, the best interest of all its citizens based on social justice, can and must be ensured by way of developing the democratic rule of law and stability and vitality of our economic system! Following all mentioned above, we see Croatian accession to the Council of Europe as the beginning of formal integration that serves the interest of our homeland and the entire European community.”¹⁸⁰

Reactions to the Croatian accession to the Council of Europe as a full member were very positive. Political parties and various organizations issued press releases with their comments in relation to the happy event. For example, Croatian Democratic Party of Rights points out that by Croatian accession to the Council of Europe, Croatian leaders have received another significant political victory on the road to the fulfilment of our national sovereignty and the affirmation of Croatian people.

Furthermore, in regard with the political incident which occurred at the time of the act of accession (I am referring to some members of the organization “Reporters Without Borders” who were circulating anti-Croatian flyers), those people have demonstrated their hypocrisy before the eyes of the world and exposed themselves as fakes when it comes to fighting for human rights and freedom of the press in Croatia, and the organization failed to achieve its goal.

Association *Hrvatski vitezovi – ratni veterani 1991.* (Croatian Knights - war veterans of 1991), scoff at “an uncivilized way the protest was carried out” – the protest which was supposedly organised by the journalists at the event of signing the act of accession – and state that this scandal speaks more of those who performed it, and of those who allowed it.

¹⁸⁰Source: HIDRA, 6 November 1996., transcript of the letter by Mr. Franjo Tuđman, Croatian President addressed to Croatian people

3.4 Post-accession cooperation between the Republic of Croatia and the Council of Europe

3.4.1 Croatian delegation's first Strasbourg session

After Croatia's accession to the Council of Europe, a complete delegation from the Croatian Parliament attended the winter session of the Parliamentary Assembly in Strasbourg, for the first time as full members. The delegation was led by Žarko Domljan, vice-president of the Croatian Parliament. Other members were: Zdravko Bušić, Mate Meštrović, Božo Kovačević, Snježana Biga Friganović, and the deputies Jakob Eltz, Count of Vukovar, Ivan Nogalo, Denis Jelenković, Boris Kandare and Stjepan Radić, and the permanent secretary of the delegation, Lavoslav Torti.

At this session, the Parliamentary Assembly made a decision to establish a new Committee to oversee the implementation of the commitments the member states have taken upon themselves - both general commitments (related to the Statute of the organization, the Convention on Human Rights, and other conventions signed by member states) and special commitments. The new committee had a task to monitor not only new members, but all COE member states. The intention was for all countries to be equal in terms of fundamental COE values and principles. There are 40 members in the new committee. It is important to mention that the new committee will not have the right to open the procedure of the control of country's obligations until six months have passed from the day of its accession to the Council of Europe. Three-stage mechanism of sanctions will be worked out. For countries who do not implement their obligations the first stage will mean suspension of the rights of parliamentary delegations to participate in the work of the Assembly. The second stage will mean exclusion from work, and the third stage would give Parliamentary Assembly the authority to recommend that the Committee of Ministers exclude the country from COE membership. However, the third stage is still being questionable.¹⁸¹

Members of Parliament were, at the end, addressed by the Estonian prime minister, since in the previous six-month period Estonia was the COE chairing country, and its successor will be Finland. Since the process of admitting new members to the Council of Europe was almost completed, the decision was made to abolish the Committee for non-member countries. Its role will be taken over by the Political Committee in relation to remaining non-member countries such as Belarus, which still have status of special guests waiting

¹⁸¹That would mean final expulsion from the COE membership

for the admission. However, Belarus is one step further removed from being admitted because the COE has made a decision on the suspension of Belarus for the referendum in which the president Lukashenko was given greater powers. The referendum was declared illegal in Strasbourg.

It is evident from this case that the COE monitors the operations and the behaviour of its member states.

Thus, “the monitoring”¹⁸² in Croatia can be expected six months after 6 November 1996, the date of admission to full membership, and after the first participation as a full member in the work of the Parliamentary Assembly, meaning May. Yet another explanation is that the beginning of the monitoring is connected to a one year period following the admission to full membership, when Croatia may ratify the conventions it had given consent to by the act of accession.

Even the president of the Parliamentary Assembly Leni Fischer, before the five-day session of the Parliamentary Assembly pointed out that the COE is approaching the end of expansion, and that at the summit in September the newly admitted members will be requested to present their views and suggestions for future work. In the words of President Fisher, “the COE will not tolerate anything substandard”, and she specifically advocated tightening the control and monitoring of obligations, and emphasized that the ideas concerning European cooperation and security issues should be put forward at the summit.

This session was also attended by Jacques Santer, the President of the European Commission, who in his speech clearly expressed his opinion on the bond between the two most powerful integrations - the COE and the European Union. Namely, in his speech he stated that “the new era has begun for the European continent, in which it must be open for new democracies, for the sake of peace, security, stability and prosperity. We share a common destiny and must therefore share the effort toward security and political dialogue.”¹⁸³

Calling upon “the rapid democratization in the Eastern Europe”¹⁸⁴ he called for strong mutual cooperation and complementarity between the European Union and COE, to avoid all misunderstandings that could be detrimental to common European goals. The president of the European Commission had a lot of compliments for the COE and the European Union, calling them partner architects behind the design of the European continent, at the moment when the Fifteen are planning to expand. At the end, he said

¹⁸² Committee for monitoring or Committee for respecting obligations and duties member states of the COE

¹⁸³ HIDRA, 11 January 1997

¹⁸⁴ HIDRA, 11 January 1997

that “it was a significant political project, not only ensuring free movement of goods for member states. Europe once again has the opportunity to be what it once was in history, and this is the heart of the world.”¹⁸⁵ However, it should be mentioned that although the COE is not formally tied to EU member states, none of them missed out on the membership in the COE.

3.4.2 COE’s second summit, Croatia’s first

10 and 11 October 1997 should be remembered as dates when Croatia for the first time independently and equally participated in the first meeting of the heads of state, foreign ministers of COE member states at the second COE Summit. Contrary to what some media had announced, Croatia was not the topic of discussion, but an active participant.

This year the summit should adopt a global programme to promote the unique cultural values on the European continent. Unlike the current views on European policy, in which the security of the continent was viewed exclusively through geostrategic balance of power and constant demonstration of military power, the leaders of COE member states should adopt a global programme to promote the unique cultural values on the European continent.

What will be discussed is the democratic security in Europe, a new name for this type of policy in Europe. It is believed that security should be built in the minds of people, and that military force cannot be a guarantee against the outbreaks of new wars in a country. It was also agreed that the members will discuss the document whereby the COE members will agree to incorporate into their educational systems the educational programmes focusing on democratic civil rights. Security in Europe would lie on the foundations made of European children who would, from their first day of school, be educated to see any form of racial, religious or any other discrimination as completely alien. The importance of the second summit, whose moderator and host was the French president Chirac,¹⁸⁶ is confirmed by the fact that 40 heads of state and governments of COE member states were invited, to whom new Pan-European organization tasks were presented in the light of the challenges awaiting Europe on the eve of twenty first century. At the summit, the secretary general gathered all the leaders of European democracies to prevent new divisions on our continent, and to underpin the campaign for democratic stability.

¹⁸⁵HIDRA, 11 January 1997

¹⁸⁶After the first held in Vienna in 1993

The strategy of building a new order in Europe on the eve of the third millennium will require certain structural reforms within the COE itself, and more effective instruments for achieving democratic stability in former socialist countries. To serve this purpose, the Court of Human Rights¹⁸⁷ was established within the COE, and it was up and running by the late 1998. That was far-reaching task and a logical next step in the oldest European organization, whose primary concern was the protection of human rights, promotion of democracy and the rule of law. As the COE has no effective mechanisms for sanctioning states or individuals who act in contravention of those principles, all COE members are obliged to accept the jurisdiction of the Court of Human Rights. The permanent Court of Human Rights aims at providing greater legal protection for more than 800 million citizens of Europe. Of course, the court also focuses on the efficient protection against terrorism and organized crime, and, in particular, the protection of children, which is the focal point of the Final Declaration and the Action Plan of the COE which should be adopted at this summit, since the text of those two documents has already been agreed on by the member states. Only formal inauguration is left.

President Franjo Tuđman was present at this significant event, together with the Croatian delegation, where he held a seven-minute speech after the opening ceremony.¹⁸⁸ This was his first opportunity to present Croatia before such a distinguished group, as a parliamentary democracy from the European realm. In his speech, he emphasized the achievements of Croatia since its independence, but also its contribution to the process of peaceful reintegration of Croatian Danube region, and Croatian contribution to the peace process in Bosnia and Hercegovina established by the Washington and Dayton Agreements.

That meeting was an opportunity for a number of bilateral talks, those arranged beforehand and the impromptu ones. In addition, it was also an opportunity to submit all European documents previously ratified by the Croatian Parliament, the most important of which are the Framework Convention on National Minorities, the European Charter on Regional and Minority Languages, and the European Charter on Local Self-Government. Although the European Convention of Human Rights is one of the fundamental documents of the COE, and the obligation that Croatia must fulfil until 6 November 1997, it has not been ratified in the Croatian

¹⁸⁷Judicial institution of the COE, which was founded in 1959, to protect the rights and freedom guaranteed by the European Convention on Human Rights 1950.

¹⁸⁸In accordance with the protocol for all heads of state

Parliament yet. President Tuđman, when asked by the journalists about the Croatian position in view of the departure of ten Croats to the Hague and whether its position has been weakened by it, he replied in these words:

“On the contrary, that departure is not only the sign of consistency, but, and this is not just another phrase, the strength of Croatian international politics. The public impression seems to be that we gave in, and that our people left, which is simply not true. No, our people left after we had received assurances that there will be fast and fair trial. It serves the interest not only of Croatia, but also the interest of those people who had been persecuted, for the lack of a better term, who had lived in impossible conditions, like hunted beasts. One of them was no longer a normal man, so he couldn’t even respond.

While on the subject, let me remind you that during the election in Bosnia and Hercegovina we were faced with electoral engineering that threatened the survival of local Croatian community. Determination of Croatian leadership in the Federation, and my intervention managed to neutralise the engineering that was at the expense of the Croats. And another thing – for the first time the highest US officials, both here and in Washington, softened their position on a unitary Bosnia and stated that the Bosnian situation should be resolved on the basis of Washington and Dayton Agreements.

As you know, the Washington Agreement speaks directly of confederal relationships between the Federation and Croatia.

Accordingly, all those arguments on isolation and blockade of Croatia in financial institutions must be abandoned. All those are positive signs that Croatia and its politics had to be taken seriously and couldn’t be pressured, without being given guarantees.”¹⁸⁹

However, if we take a look at the year following those significant events, we will realize that Croatia still hasn’t fulfilled all its commitments.

3.4.3 The first monitoring of the implementation of commitments taken by The Republic of Croatia when admitted

Council of Europe rapporteurs responsible for monitoring of the implementation of commitments that were accepted at the time of admission into the COE will visit Croatia in July. The purpose of visit is to assess how is the process of establishing trust is being carried out.¹⁹⁰ On that occasion the rapporteurs will determine whether, since their last visit, there have been changes that might amend the previous draft report on Croatia.

¹⁸⁹Vjesnik, 11 November 1997.

¹⁹⁰Monitoring Committee

Croatia has several objections to that draft, drawn up last year in October, since the major part was devoted to the problem of refugees and displaced persons of Serbian nationality, and the issues of their ownership and obtaining documents. Croatia demands that the fulfilment of 21 commitments should be presented in the report, because the UNTAES mandate has been terminated in the meantime, Croatia's authority in the Danube Region has been reinstated, and some refugees have returned, none of which was mentioned anywhere. It is also expected that Croatian judges be elected to the Court of Human Rights. The Parliamentary Assembly elects the judges among three candidates from each country, for a period of six years. Court of Human Rights will replace the current European Commission and the European Court of Human Rights. As Leni Fischer, the president of Parliamentary Assembly said during her official visit to Zagreb: "Croatia has made a significant progress in terms of its commitments to the COE, but many are yet to be fulfilled."¹⁹¹ She stated that Croatia has ratified key COE conventions, that it cooperates in the implementation of the Dayton peace agreements, and she welcomed the adoption of the plan for the return of refugees and displaced persons. However, Croatia still has to work on "the freedom and independence of the media, freedom of speech, resolving ethnic issues and flaws in the election process." Among other things, she spoke about the history, development and fundamental tasks of the COE, and about the period of its expansion to the countries of eastern and central Europe. "Before 1989, none of the countries of central and eastern Europe met the requirements for COE membership, such as respect for human rights, the principles of parliamentary democracy and the rule of law,"¹⁹² adding that it didn't prevent the COE to dream about "a broader Europe". That very year the COE introduced a special guest status, so that eastern and central European countries could, through corporation with the organization, become closer to the standards of the COE. A large number of countries have joined the COE as full members, including Croatia in November 1996, with only a few countries still waiting for their turn to enter (like Belarus).

However, in April 1999 the Parliamentary Assembly of the COE unanimously adopted the report of the monitoring committee for Croatia, as well as the resolution and the recommendation to the Committee of Ministers that welcomed progress made by Croatia in honouring its obligations.

¹⁹¹Večernji list, 12 February 1998

¹⁹²Večernji list, 12 February 1998

The progress that Croatia has made in honouring its obligations since the acceptance to the full membership of the COE was welcomed, especially when it comes to ratification of the COE conventions.¹⁹³ The cooperation of Croatia with Vena¹⁹⁴ experts in the preparation and drafting of laws, cooperation with the Hague Tribunal and cooperation between the Croatian Constitutional Court and the Venice Commission were welcomed, as well. The Parliamentary Assembly expressed its satisfaction with the progress achieved in the implementation of the Dayton and Erdut Agreements. On the other hand, it was required that Croatia make further progress in honouring its obligations concerning electoral law reform, judicial system reform, constitutional protection of minorities, freedom of the press, commitments regarding local autonomy. The Assembly and the Croatian delegation have agreed on the deadlines for their fulfilment. In the final provision of its resolution the Parliamentary Assembly decided to continue monitoring Croatia and to review the new report on the fulfilment of the obligations no later than April 2000.

3.4.4 Recommendation to abolish permanent monitoring of human rights in Croatia adopted

As it was expected, on 8 September 2000 in Paris, the Monitoring Committee of the COE adopted the recommendation to abolish the permanent monitoring of human rights in Croatia. The proposal was unanimously supported. "Today, the preliminary drafts of the resolution and the recommendations which end the procedure of permanent monitoring of human rights have been adopted."¹⁹⁵ said the head of delegation of the Croatian Parliament to the Parliamentary, Mirjana Ferić Vac.¹⁹⁶ "A painstaking process is now completed."¹⁹⁷

Regardless of the circumstances arising in the meantime, connected to the new Croatian government that took over the fulfilment of the obligations at the beginning of the year, Croatia has fulfilled 21 obligations, including the toughest ones. i.e. abolition of discriminating laws governing the return of refugees, improved cooperation with the International Criminal Court, transformation of HTV into a national broadcaster, and amendments to the Constitutional Act on ethnic groups and minorities. Permanent monitoring

¹⁹³The most important European convention on human rights

¹⁹⁴Venice Commission

¹⁹⁵Vjesnik, 8 September 2000

¹⁹⁶Permanent member of the Parliamentary Committee

¹⁹⁷Vjesnik, 8 September 2000

was replaced by post monitoring dialogue as part of the standard procedure, which countries like the Czech Republic, Estonia and Latvia are subjected to, as well. It was a stepping stone for Croatia – we have taken a difficult road, but one that has paid off eventually. Even though it was only the first step leading to Brussels, Croatia's aspirations and a clear goal will ensure the ultimate success.

“The last step and the final destination is without a doubt the European Union.”¹⁹⁸ “The fulfilment of the democratic standards is prerequisite for the admission to the Euro-Atlantic integrations. The Euro-Atlantic integrations are also looking for transparent economy and investment security, which is important for the South-East Europe, because funding and economic recovery depend on them.”¹⁹⁹ “To illustrate the point, the COE Convention on the Prevention of Corruption is one of the important elements of the Stability Pact. Therefore, the road to Brussels by default passes through Strasbourg, i.e. on the road to the European Union one must pass through COE. All European institutions are part of a network, as it can be seen in the framework of the Stability Pact, and their views more or less coincide.”²⁰⁰ “Fortunately, this leg of the journey is behind Croatia.”²⁰¹

¹⁹⁸ Interview with Žarko Domljan, November 2006

¹⁹⁹ Interview with Žarko Domljan, November 2006

²⁰⁰ Interview with Ivo Škrabalo, October 2006

²⁰¹ Interview with Žarko Domljan, November 2006

4

Conclusion

The research into the complex and long-standing process of Croatia's admission to the COE is important both from the scientific and public perspectives, because it addresses, along with the political history of the country, its tradition, cultural heritage and all other features that constitute a country. Although this process unfolded in one of the most difficult periods of Croatia's political history there hasn't been any research on that particular topic. Therefore our attempt is directed at analysing in more detail the links within the triad Croatia-COE-European Union on the basis of relevant scientific literature, authentic sources and testimonies of protagonists in the process of negotiating Croatia's admission to the COE. In addition, the process of negotiating and admitting the Republic of Croatia to the Council of Europe is followed through an analysis of media reports, official documentation and statements of politicians and diplomats. Croatia's accession to the European Union is also reflected through the Council of Europe, which is considered an entrance-hall to all other European institutions.

By analysing the not so distant past we can conclude that the COE has without doubt significantly contributed to and prepared Croatia for membership in the European Union. By fulfilling the obligations that the COE placed before Croatia, it gained extensive experience in dealing with, and fulfilling the undertaken political tasks. Precisely because of that, all the obligations Croatia had undertaken for accession to the European Union were successfully fulfilled and incorporated into its national legislation. The COE, that first important step that had to be taken along the path to other European integrations, should be seen as a school of democracy, in which each country had to pass an exam to verify its readiness for the next big step. It is important to mention that Croatia's first contact with the COE took place soon after it acquired its independence, in the early 1990s, during the Croatian Homeland War. The credibility granting a country membership in the European Union is based on passing the exam in "the holy trinity of the COE" (I. Škrabalo, interview), i.e., respect of multiparty democracy, human rights and the rule of law. Naturally, this trinity implied a number of other requirements, answers, procedures, etc., in order for all the criteria to be fulfilled. It should be noted that the results of COE's work cannot be precisely measured. It goes without saying that the COE played a decisive role in resolving issues linked to minority human rights, European cultural heritage, European identity, and other common issues (respect of democratic freedoms, preventing xenophobia and racism, human trafficking, prostitution, drug abuse and many others). Precisely for these reason COE

has asserted its reputation as a very significant political organization and catalyst in Croatia's phase of transition from a deprived part of Yugoslavia to an equal partner in the European Union. Accordingly, Croatia now participates, on an equal footing, in all relevant discussions in the status of a full-fledged member. In the political sense of the word, this "New Europe" is not aggressive it is not set "against" anyone, but rather open and accessible to all who wish to accept its fundamental values and international solidarity and, above all, peace. For an increasing number of Europeans, integration represents the most acceptable policy. A unified Europe is salvation for all Europeans, but only if they are aware of the need for solidarity and if they don't give in to mutual confrontation. Europe must be active and its resources pooled together. It must be a community of different nations, as it is stated in one of the Chapters: "Joining European integrations means joining the community whose principle is unity in diversity." As such it will enable the flourishing of humanity's pluralism of civilizations. Naturally, in this process we all have to exert efforts and change our awareness and our way of thinking, because in the European Union as a political integration, we can all just gain. At this moment, there are no obvious drawbacks to joining the European Union, so it is of the greatest importance to emphasize that Croatia could not have remained isolated as a state outside of European processes. That would have meant overall stagnation and distancing from the standards and flows of life in the European Union. Of course, no form of integration or transfer of part one's sovereign rights to the European Union is a simple process, but like in life it is a question of compromise. For that very reason it is important that Croatia joined the European Union when it was ready, that it knew the benefits of membership and that it did not plunge unprepared in the grindstone of market competition, leaving decision-making to supra-state institutions without participating in the process. Croatia joined the Union at a time of economic crisis but with developed legislative institutions and an upgraded administration. The long period of "getting to know" Croatia represented in a sense a guarantee that our country will readily protect the vital and strategic interests and that it will be represented in the European Union by competent individuals who can be trusted in affairs of common interest. Naturally, we will feel some minor flaws in certain aspects of daily life, but all in all Croatia's accession to the European Union has proved to be a certain gain.

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Index

- Antić, Ljubomir 60
Arafat, Yasser 27
Babić, Antun 62
Beethoven, Ludwig van 31
Benoit, Florence 38
Biga Friganović, Snježana 100
Bilandžić, Dušan 69
Binschleder 52
Bloetzer, Peter 67
Baumel, Jacques 60
Broan 52
Bušić, Zdravko 100
Carlos, Juan 27
Chirac 102
Churchill, Winston 18, 19, 35
Clements, Luke 36, 37, 38, 41
Crnić, Ivica 63
Dinsdale, Jane 6
Domljan, Žarko 8, 42, 54, 55, 56, 60, 63, 64, 65, 67, 73, 74, 77, 78, 82, 84, 86, 87, 88, 100, 107
Dundee 85
Eltz, Jakob 54, 100
d'Estaing, Giscard 31
Ferić Vac, Mirjana 106
Finsberg 56
Fischer, Leni 78, 85, 95, 101, 105, 118
Flego, Gvozden Srećko 26
Fontine, Pascal 18
Furrer, Hans Peter 54
Gagro, Božidar 70
Glocuklu 52
Glotov, Sergej 68
Granić, Mate 7, 65, 73, 80, 83, 86, 87, 93, 96, 118, 119
Halambek, Andrea 19, 40, 43
Herdegen, Matthias 19, 40, 43
John Paul II 27
Jansson, Gunnar 66
Jelenković, Denis 100
Johnston, Russel 77
Jurica, Neven 54
Kačić 54
Kandare, Boris 100
Kinkel, Klaus 87
Klebes, Heinrich 38
Klebes, Rohmer 38
Kohl, Helmut 27
Korakas 68
Kovačević, Božo 100
Lalumière, Catherine 56, 57, 58, 95
Linden, Rene van der 66, 67, 68, 72, 79, 82, 86
Marshall, Noel 58
Martinez, Miguel Angel 5, 58, 62, 63, 64, 66, 77, 95
Matscher 58
Matulović, Miomir 18, 20, 22, 23, 24, 25
Mesić, Stjepan 84
Meštrović, Mate 100
Mitchell, Gay 80
Mubarak, Hosni 27
Nogalo, Ivan 100
Omejec, Jasna 18, 19, 20, 22, 23, 26, 28, 34, 37
Paunescu 68
Pavišić, Berislav 18, 20, 22, 23, 24
Pavletić, Vlatko 73, 80
Petrač, Božidar 65
Petričević Golojuh, Danijela 89
Potpodorova, Elena 85
Račan, Ivica 54
Radić, Stjepan 100
Reddeman, Gerhard 56
Salcedo 52
Sandys, Duncan 19
Santer, Jaques 101
Seitlinger, Jean 85
Severinsen, Hane 85
Smith, Dudley 64
Swaelen, Frank 65
Škrabalo, Ivo 19, 37, 44, 46, 49, 50, 54, 58, 59, 60, 69, 107
Škrabalo, Zdenko 54, 55
Tarschys, Daniel 78, 93, 94
Tomic, Zdravko 72
Torti, Lavoslav 54, 100
Tuđman, Franjo 7, 56, 68, 72, 74, 80, 93, 96, 99, 103, 104
Valentić, Nikica 62
Valticos 52
Vilhjalmsson 52
Walsh 52

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The accession ceremony of the Republic of Croatia to the Council of Europe

The accession ceremony before the Palace of Europe



The speech by Mr. Mate Granić, Minister of Foreign Affairs of the Republic of Croatia



The speech by Leni Fischer

The speech by Siim Kallas, Minister of Foreign Affairs of the Republic of Estonia and Chairman of the Committee of Ministers of the Council of Europe





The Croatian delegation



Mr. Mate Granić, Minister of Foreign Affairs of the Republic of Croatia and Mr. Daniel Tarschys, the Secretary - General of the Council of Europe



Mr. Mate Granić, Minister of Foreign Affairs of the Republic of Croatia signs the Statute of the Council of Europe, together with Mr. Daniel Tarschys, the Secretary-General of the Council of Europe



Mr. Mate Granić, Minister of Foreign Affairs of the Republic of Croatia, together with Leni Fischer, the President of the Parliamentary Assembly