

ACCESS TO RIGHTS PROJECT

CIVIL SOCIETY WORKING GROUP FOR CROATIA

OVERVIEW OF ACCESS TO RIGHTS IN CROATIA

**TOPIC: THE MAIN IMPEDIMENTS FOR REFUGEES/RETURNEES
TO ACCESS THEIR BASIC RIGHTS**

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ANNEX: EXECUTIVE SUMMARY

ABRIVATION

- ASSC** - AREAS OF SPECIAL STATE CONCERN
- BAHRN**- BALKAN HUMAN RIGHTS NETWORK
- BIH** - BOSNIA AND HERZEGOVINA
- CLNM** – CONSTITUTIONAL LAW ON THE RIGHTS OF NATIONAL MINORITIES
- IDPs** - INTERNALY DISPLACED PERSONS
- EC** - EUROPEAN COMMISSION
- SFRY** - FORMER SOCIALIST REPUBLIC OF YUGOSLAVIA
- GoC** - GOVERNMENT OF CROATIA
- LASSC** – LAW ON AREAS OF SPECIAL STATE CONCERN
- LTTSP** - LAW ON TEMPORARY TAKE OVER AND ADMINISTRATION OF SPECIFIED PROPERTY
- LHR** - LAW ON HOUSING RELATION
- MMTTD – ODP** MINISTRY OF MARITIME AFFAIRES, TRANSPORT AND DEVELOPMENT - OFFICE
FOR DESPLACED PERSONS AND REFUGEES
- NGO** - NONGOVERNMENTAL ORGANIZATION
- OSCE** - ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE
- OTR** - TENANCY/OCCUPANCY RIGHTS HOLDERS
- RSK** - FORMER OCCUPIED TERRITORY UNDER UN CONTROL OR TRANSITIONAL ADMINISTRATION
- RC** - REPUBLIC CROATIA
- SEE-RAN** – SOUTH EAST REFUGEE ASSISTANCE NETWORK
- S/MG** - SERBIA AND MONTE NEGRO
- UNTAES** – UNITED NATION TRANSITIONAL ADMINISTRATION IN EASTERN SLAVONIA

I. BACKGROUND

To gain better understanding of the background of obstacles that refugees still face in exercising their rights, it is important to give an overview, not only of the actual legal framework but also of the laws that serve as a legal ground for various restrictions, in the period from 1990 to 2000.

This legislation contained a number of unconstitutional and discriminatory provisions that affected the position of Croatian pre-war residents belonging to the minorities, mainly of Serb ethnicity, who had fled from Croatia during the war.

Around 20.000 private houses and other real estates taken over and allocated to the “temporary occupants”, thousands of terminated tenancy/occupancy rights, and thousands of houses that were destroyed and devastated either outside of the conflict zones or after the armed conflict was over, virtually prevented the return of Serb refugees.

It may seem that presenting the regulations, which were revised, or which are no longer in force belongs to the “history”. However, their consequences, to a great extent, determine refugee position at the present time. After 2000 Parliamentary elections, new Government failed to make radical law revision, and to established legal framework that would ensure the restitution of deprived rights and equality before the law for all Croatian citizens. Contrary to the endeavours and proposals of international organizations (OSCE in particular) and NGOs it did not happen. The “modest” law revision which was made, as well as other insufficient and inadequate measures, in fact, reflected the government’s attitude towards minority return – the Government has never genuinely tried to facilitate the return of Serbs. Being prevented to return and realize their property rights and all other rights within reasonable time after the armed conflict was over, and more than 8 years after they fled from their homes, their willingness to return had faltered. The majority were forced to find other solution.

To day, all relevant national and international politicians, without analyzing why more than 200.000 Croatian Serbs opted to stay in the country of exile or third countries, and could more be done for their return, state that the return process came to its end. It is hard to say that majority of them was in a position to make free choice. Someone’s decision to stay or to return largely depends to the possibilities offered by the country of their origin or the country of their exile. But, they were forgotten by both. In fact, their exile lasted for too long, and this will, certainly, reduce the number of returnees.

However, it is too early to categorically state that very few refugees are willing to return under new, more favourable circumstances considering Government’s commitment to meet all EU requirements regarding refugee and minority. The return will be significantly determined by the concrete measures the Government will pass, the timeframe in which those measures should be brought to the effect, and, to a great extent, by resolute response from international community and degree of tolerance towards the GoC when fail to respect their obligations. It will be also influenced by good or bad experiences of those who have already returned. But, what one has to take into consideration is that the legacy of the policy led during the last decade of the past century shall be a big burden for the government. Ten years of doing nothing and accumulating unresolved issues imposed considerable financial problem to the Croatian Government that could be considered justified limit to meet all requirements for sustainable return but could also be used as an excuse for doing less than possible.

II. OVERVIEW OF RETURN PROCESS

While the return of Serb refugees was blocked or restricted until 2000, Parliamentary and Presidential elections in 2000 brought an end to the decade of the authoritarian political regime and have caused considerable expectation regarding the policy towards the process of minority return,

and the rights of national minorities, as well as human rights in general. Despite apparent changes in political climate and progress in areas vital to its democratic credentials, the new Government have been slow to amend the discriminatory laws, and overall conditions for return have barely improved. The Government also hesitated, for a rather long period, to adopt the legal framework for the protection of minority rights. Potential returnees, as well as those who have returned, were still facing many legal, administrative and bureaucratic obstacles and the number of returnees was increasing slowly.

New Government elected at the end of 2003 has continued the policy of former Government regarding the accession to EU, which was defined, as the strategic national goal. In April 2004 the European Commission issued a positive opinion («Avis») on the application of Croatia for the membership in EU and recommended the opening of accession negotiations. This recommendation was endorsed in June 2004 and Croatia became a candidate country. Progress in the accession to negotiations will depend on Croatia's fulfilment of its commitments under the SaA.

Among number of "political" criteria for EU accession to be met in the process of negotiations, Croatia must achieve "stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities." Giving the positive opinion for the Croatia's accession EC emphasises that Croatia needs to take measures to ensure that the rights of minorities, in particular of the Serb minority, are fully respected. Croatia also should speed up the implementation of the Constitutional Law on National Minorities and accelerate efforts to facilitate the return of Serb refugees from S/NM and BiH.

In that context, the Government expressed a firm commitment to resolve obstacles refugees still face and to ensure their rights on sustainable return/or integration, as well as other rights, without any discrimination. The Government is also determined to ensure the implementation of the laws relating to the rights of national minorities.

However, as it was clearly shown in the past, for the effective protection of refugee and minority rights it is not enough that someone's rights are declared by the Government (which is often not based on sincere political will) and the majority of given promises were broken. Access to rights must be understood as a comprehensive reform of legislation, administrative and judicial system. Ensuring the access to rights to refugees also requires extensive and continued regional co-operation because any comprehensive solution to refugee situation without such co-operation is not possible. The Government has yet to prove itself in this regard, and, in the next period, the keyword will be translation of words into actions. Status of candidate for EU membership should be a turning point with regards to the Government's commitment to address the issues of refugees and minorities.

Though the last 4 years, there has been some progress within the general conditions of the return of Croatian Serbs due to some important actions taken by the Governments that came into office in 2000 and 2003 but the pace of reforms in refugee return related issues was extremely slow. Yet, potential returnees, as well as those who have returned are facing a variety of legal, administrative and bureaucratic obstacles, and the number of returnees is increasing too slowly. Majority of refugees were discouraged to opt for return lacking any certain timeframe for the repossession of their property, possibility for housing of former TOR holders, or for reconstruction of their homes and other conditions for their sustainable return. Mainly as a result of long displacement and numerous barriers to their return, a large number of refugees probably will opt (or they already did) for local integration in the country in which they currently reside. But, someone's voluntarily decision to stay or to return largely depends to the offered possibilities.

However, under new, more favourable circumstances and having in mind Government's commitment to meet all EU requirements regarding the rights of refugees and rights of minorities, it is too early to be so determined and say that not many refugees are willing to return. Concrete

measures the Government would pass, and the timeframe in which the measures should be brought to the effect could significantly induce the return. It will also be influenced by the good or bad experiences of those who have already returned.

While at the end of 2003, Croatia has started to reconstruct homes of Serb refugees and speeded up repossession of residential property, particularly in the course of 2004, adequate solution for a great number of Serb potential returnees, was not found yet, particularly for former tenancy/occupancy right holders and for the repossession of other property such as farming land and business premises.

ACCESS TO BASIC RIGHTS OF REFUGEES/RETURNEES –THE MAIN IMPEDIMENTS

The most significant obstacles to sustainable return (1) Restitution of property and other property rights (2) Reconstruction assistance; (3) Housing care for former tenancy rights holders (4) Compensation of damages caused by terrorist acts and armed forces (5) Citizenship (6) Employment (7) Pension and social rights (8) Implementation of the Amnesty Law (9) Difficulties in exercising minority rights. Besides, the lack of trust, slow reconciliation, ethnic prejudice, ethnic incidents in some areas and physical barriers still impede the return.

III. PROPERTY RIGHTS

III.1. REPOSSESSION OF PROPERTY

III. 1.1. Legal framework

From 1995 to the present days, the ownership rights of Serb refugees are regulated by separate laws and decrees rather than within the regular legal framework set up in the Constitution of Republic Croatia and the Law on Ownership and Other Property Rights. During the past years, different laws and by-laws, and even quasi-legislative acts that were not based on the highest values of the constitutional order and international standards – the inviolability of ownership, free disposing of the property which cannot be prevented because the owner left the territory of RoC, either temporarily or permanently, and equality of citizens before the law - were in force. On the contrary, law has persistently favoured those who were allocated abandoned property over the rightful owners. Although the Constitutional Court² struck down such provisions as unconstitutional in 1997, The Programme of Return adopted a year later, and some other laws, contained the identical provisions that made temporary occupant safe from eviction as long as he/she was not provided with an alternative accommodation. Also, some other laws contained similar provisions that protected the temporary occupants from the eviction. After 2002 law revision a number of discriminatory provisions were removed but the law continued to prevail the right of temporary occupant above the right of owner. Prior to the eviction, the government must provide an alternative accommodation to temporary occupant, thus the right of the owner depends of availability of the houses or funding for alternative accommodation. Government's ability to provide alternative accommodation has been limited and it resulted with substantial delays in property repossession. Waiting for years, many refugees have grown disillusioned and decided to sell their houses for rather small prices. Also, some local authorities keep addressing Serbs to sell their houses. Even certain criminal acts have been noticed in reference to purchase of those houses by the State agency.

- **The Law on Temporary Take Over and Administration of the Specified Property (LTTP)**³ was adopted in 1995 and it provided legal grounds for the take-over of all movable

² Constitutional Court- Decision U-I-948, September 1997

³ Narodne novine (Official gazette) No. 73/1995

and immovable property of Serbs who fled from Croatia between 1990 and 1995. More than 22,000 houses and unknown number of business premises, agricultural land, etc., were seized. Pursuant to Articles 1 and 2 of the Law, the primary aim of the Law was to protect abandoned property and to safeguard the claims of creditors arisen in connection with that property. However the abandoned property was exposed to damage, theft and looting or it was destroyed and authorities failed to take any measures to protect it. In addition to real estate, the movables of absent owners were also handed over for temporary use. The owners cannot receive the records of property, which were supposed to be made in the compliance with the provision of the Law, and it is almost impossible for the owner to prove what property he/she left behind and what is missing or being devastated now.

- **1996 The Amendment to the Law on Temporary Take Over and Administration of the Specified Property**⁴ clearly demonstrated discrimination of Serb refugees and their property rights because it stipulated that the issue of repossession and use of the property owned by Serbs who left territory of Croatia would be regulated through the Agreement of Normalisation of Relations Between the Republic Croatia and the Federal Republic of Yugoslavia. The Constitutional Court repealed this provision because it discriminated a specific group of Croatian citizens and put them into an unequal position in comparison with other citizens. However, this unconstitutional provision was incorporated into the Law on Cessation of Validity of the LTTP. It was never clear to which property this provision relates stating that “Special agreements shall be applied to the property of persons which was placed under temporary administration of Republic Croatia pursuant to the LTTP and which is not included in the Program of Return”

LTTP was repealed in 1998 upon the adoption of the Program of Return.

- **1996 the Law on Areas of Special State Concern (LASSC)** regulated *inter alia*, the disposition and allocation of the property abandoned by their owners. Apart from a number of discriminatory provisions, provisions under which “family houses, an agricultural household and associated land or apartments shall also (besides refugees /IDPs, war veterans) be allocated to settlers” and “a real estate shall allocated for use pursuant to a decision by the Ministry, and, after 10 years of uninterrupted permanent residence of a settler in apartment or family house it shall become their property” were exceptionally dubious. That was in contradiction with the Law on Ownership and Other Proprietary Rights which does not acknowledge the possibility of someone acquiring the ownership of a privately owned housing unit, if he/she knows that the unit belongs to someone else. Although 2000 Law on Amendment to LTSP revoked those provisions, they were in force for many years and the painful consequences still exist. People who were invited to populate the areas abandoned by Serbs trusted the Government and the legal system and believed that the properties would become theirs. Therefore, they refused to return occupied properties to their lawful owners, particularly after investing in refurbishment, although it was done illegally.
- **In 1997, the Constitutional Court** revoked majority of the articles of the Law of Temporary Take Over and Administration of Specified property⁵ deeming them discriminatory. The proponents of the procedure for an evaluation of constitutionality considered almost entire text of the Law to be in contradiction with the constitutional provisions and discriminating certain group of citizens of Croatia belonging mostly to the Serbian minority. Since that time, the State has no legal grounds for taking over the property and allocating it to the temporary occupants. Also, the State has no right to prevent the repossession of property by the owner, as there was no legal base for that, either. However, the provisions of repealed articles were in force for many years although they were revoked as unconstitutional.

⁴ Narodne novine (Official Gazette) No. 7/96.

⁵ Narodne novine(Official Gazette) No. 100/1997

- **Programme of Return.**⁶ was adopted in July of 1998 and thus after a year long “legal gap” commenced by Constitutional Court decision, a new regulation relating to the property take over was set in force. This regulation was unconstitutional and discriminatory. Instead of regular remedies, according to which the issue of ownership and rights ensuing from it should fall within the judicial competence, the Programme prescribed the long and complicated procedure for the property repossession. Although a series of doubts emerged with regards to the Programme, the international community as a “significant step welcomed it forward”. The Programme was legally controversial document in many aspects. In addition to a series of extremely dubious provisions, in constitutional and legal sense, Programme was not adopted following the regular legislative procedure and it failed to indicate constitutional, or any other legal grounds. To sum up, it did not have the strength of the law and rights and therefore the rights stipulated in the Program could not be protected either in administrative or court procedure. There was much vagueness after the provisions were enforced particularly when the case would come to a court. Therefore, judges of the county courts often asked for explanations of the Supreme Court on how those provisions corresponded with the Law on Ownership and Other Proprietary Rights. Finally, in August 1999, the President of the Supreme Court issued the instructions saying: “It is clear that the Law on Cessation of Validity and the Return Programme apply to temporary occupancy, administration and supervision of the property of natural persons, which was comprised by the LTSP, as a *lex specialis* in relation to the provisions of the Law on Ownership and Other Proprietary Rights”⁷

The Programme was a product of Government’s efforts aimed to satisfy international community presenting the “political will” to protect ownership’ rights and, in the same time, endorse such an administrative procedure that would prevent or drastically slow down property repossession, and thus reduce the return of refugees. The Programme contravened to the Constitution, particularly because the right of temporary occupant prevails over the right of the owner. The owners were completely dependent on the “good will” of occupant to abandon property even when they were offered an alternative accommodation. The owner had no access to the court and claims for the repossession of the property; and had no right for compensation. Due to shortcomings and self-contradictions of the Programme, the applicants for property repossession, as well as regional executive bodies were faced with difficulties when enforcing it. As the result of such a defective document, the owner’s position has not significantly improved, if compared with previous situation. The rate of reposessed houses based on the procedure prescribed in the Programme has been low, and in some areas it was reduced only to the cases when temporary occupant voluntarily left the property or after the owner accepted to pay him some money to leave the house. Even in the cases of multiple and illegal occupancy the owner’s rights were not protected.

- **The Law on Temporary Administration and Take-over of Specified Property was repealed in 1998** shortly after the Programme of Return was adopted,⁸ And, ever since, the procedures related to the temporary occupancy, administration and supervision of the property taken over by that Law shall be ruled according to the provisions set up in the Programme.
- **Law on the Amendments to the Law on the Areas of Special State Concern.**⁹ the Croatian Parliament passed in the August 2002, That law, *inter alia*, regulates the repossession of property seized on grounds of the Law on Temporary Take-over and Administration of Specified Property and, thus, replaces respected provisions of the Programme on Return. Although the Government that took power in the January 2000 was fully aware of the fact that both the 1998 legal and administrative procedures set in the Programme of Return, as well as Housing Commissions, as executive bodies, represented completely inefficient legal tool for

⁶ Narodne novine (Official Gazette) No, 92/1998

⁷ Instruction No. SU-678/99 of 12 August 1999.

⁸ Narodne novine (Official Gazette) No. 101/1998

⁹ Narodne Novine (Official Gazette) No24/2002

the property repossession, the Amendments to the LASC were not adopted until 2002. Instead of establishing concise and sufficiently transparent law in accordance with the constitutional rights and the rights given by the Law on Ownership and Other Property Rights, the Government decided to regulate the property repossession issues with the Amendment to Law on Areas of Special State Concern (since 1996. it was fifth amendment to the same Law). Although the Law on the Amendments contains some legally questionable provisions and number of obscurities, the new regulation made some progress towards securing property rights: (a) The key provisions of the Programme of Return regarding the repossession of the properties were repealed; (b) Local housing commissions previously responsible for repossession of properties were cancelled, and their jurisdiction, since September 2002, was taken over by the Government (Ministry for Public Works, Construction and Reconstruction); (c) The Law sets a time limit for repossession of properties by rightful owners to 31 December 2002 and «compensation of damage» if the property is not returned within that time. However, compensation for the property does not include the right described under the article 50 of the Croatian Constitution¹⁰ but only recognises the possibility of the rent payment for a lease of a house (without other property) from the end of 2002 until repossession of the property, if owner applies for it under the conditions set by the Ministry. Compensation for the years of unlawful occupancy is not recognised. (d) The property owner is, for the first time, authorised to file a lawsuit in order to protect his/her ownership rights; (e) The concept of temporary alternative accommodation is introduced for temporary occupants for whom authorities are unable to provide permanent accommodation; (f) Temporary occupants who are owners/co-owners of the residential property and those who sold or disposed of such property after October 1991, or who hold the status of protected lessee are not eligible for the alternative accommodation; (g) the individuals who reject offered housing care (alternative accommodation) should lose any eligibility for the state assistance in housing.

III.1.2 Implementation

General

After the jurisdiction from Housing Commissions was transferred to the Ministry for Public Works, Construction and Reconstruction (now Ministry of Sea, Tourism, Traffic and Development), situation has improved in general but, still, for the shortcomings of the new regulation on one hand, and complicated and demanding administrative procedure on the other hand, the owners face a number of difficulties in its practical enforcement.

Amendment fail to address a number of issues that affect the repossession of property such as repossession of business premises, farming land, farming equipment as well as an unknown number of residential properties which were taken over by means other than the law in 1995 (based on decisions by army or police, and different county commissions). Owners who wish to file a lawsuit against the occupant are about to face very lengthy court proceeding. The right of temporary occupant continued to supersede the right of lawful owner because lengthy procedure for eviction of temporary occupant may start only when alternative accommodation is provided.¹¹ The deadline for the repossession of the property (end of 2002) prescribed by the law related only to administrative procedure of cancellation of the decision granted to temporary occupants but not to physical repossession of property by the lawful owner. Actually, refugees were cheated because the law provision says that property shall be reposessed before the end of 2002, and they believed it would be returned to them within the deadlines set by the Law. Although the deadline was

¹⁰ Article 50 of the Constitution stipulates that ownership may be restricted or taken over by the Law in interest of the Republic, but only with compensation equal to its market value.

¹¹ Several illegal occupants obtained alternative housing although they were not entitled to this housing by law. Prime Minister who gave public assurance to temporary users that nobody would be evicted on the street announced this policy shift. It shows again that the words of politicians are above the law.

extended twice - to the end of 2003 and then to the end of 2004, these deadlines were not met. The Government approved very small compensation for the owners who did not come in possession of their property within legally prescribed period (0,93 Euro per square metre of living space)

Bodies competent for the implementation of the regulations often failed to act in favour of the owner. Some Law provisions that might accelerate the repossession of property are not implemented in practice, particularly the provisions regulating the issue of alternative accommodation and illegibility of temporary occupants for such accommodation. Possibility of providing temporary alternative accommodation for the occupant is not exercised in practice.

As for claims for the compensation, the Ministry has initiated a rather complicated and non transparent administrative procedure and, thus, created unnecessary confusion among the owners. According to Ministry standpoint, the compensation can only be granted to the owners who specifically opted for it. For instance, by the end of 2002, 3.900 owners who filed claims for repossession of property were requested to come to the regional offices for additional interviews. They were asked whether they preferred to repossess own property, rent it or sell it to the State. In practice, the compensation is only being paid to rather small percentage of potentially eligible beneficiaries. According to the official data, the compensation was paid to 1.481 out of 3.900 owners who filed claims by the end of 2004. The report on how many of them repossessed their properties is not available in the moment. The same as before, the State, again, demonstrated bigger interest in resolving the problem of temporary occupants by buying the properties rather than returning them to the lawful owners. In the survey carried out in the end of 2002, some of the owners feared that the agreement on compensation might prolong the repossession of their property. Some of them who are still displaced in Serbia and Monte Negro, or Bosnia and Herzegovina did not receive the invitation to the interview in the regional offices for all potentially eligible beneficiaries because they had changed address or could not afford to travel to Croatia.

Latest development

The new Government, which came into office at the end of December 2003, pledged to remove the obstacles that slowed down the return, and to speed up the repossession of property. With reference to that the Government undertake following steps:

- **The Agreement on Co-operation between the Government of Croatia and the Members of Parliament of Independent Serbian Democratic Party** concluded on 18. December 2003 stipulated *inter alia* that 523 illegally occupied houses would be repossessed by the end of June 2004, and by the end of 2004 the rest of property should be repossessed.
- **Government Conclusion adopted on 20 February aimed reinforcing of the provision of the LASSC** that stipulates the loss of State providing houses for temporary occupants who refuses offered housing care.
- Early in March 2004 the Government established the **Commission for Displaced People, Refugees and Repossession of Property** as a new body in charge of accelerating the repossession of the property in line with the deadline laid out in above mentioned agreement.

It took almost a decade through which legally acceptable solution for the repossession of property was not found.

The Government which came into the office in 2003 has intensified its efforts to return private properties according the 2002 Amendment to LTTSP nevertheless, only residential properties (houses) shall be returned in that respect, while the repossession of other types of properties was not addressed yet. There are many cases of illegal occupancy of privately owned business premises and farming land, most of which the State allocated to Croat settlers for temporary use although

they came from all over Croatia and had never lived in the areas of armed conflict, and, therefore, can not be considered as internally displaced people.

According to the GoC, in the period from 1995 to the end of February 2005, 18.212 housing units have been repossessed, and around 1.100 housing units still remain occupied. 2,312 housing units out of the total number of repossessed housing units have been repossessed in the course of 2004. Although the Government speeded up the repossession of the property, both the obligation from the Agreement between the Government and Serb MPs regarding the repossession of illegally occupied houses which was to be met by the end of June 2004, (by the end of 2004, 22 cases of illegal occupancy remain unresolved) and the repossession by the lawful occupants which was to be met by the end of 2004, (this does not include cases in which the occupants became illegal in the interim) were not met completely.¹² The Government reported that majority of owners and/or occupants have initiated court proceedings in respect to remained illegally occupied houses and solutions of their problems depend on the final court decisions or the settlement between the owner and occupants. This is a rather strange explanation because, according to the law, the State Attorney's Office has the right to initiate court proceeding even if the owner filed a private suit and thus to speed the process of repossession of the property.

However, the official statistical data on the rate of repossessed property are rather disputable and insufficient to draw conclusions about real results of the property repossession. Empty houses (more than 3,256) are also included in the number of repossessed houses, and as such, presented as the result of enforcement of new legislative acts and efficiency of the competent bodies. Many of those houses, registered "as repossessed but still empty" are devastated and unfit for living, or located in villages without any infrastructure. The Government data is lacking many details and, therefore, the conclusion about success in property repossession rises many doubts.

Almost ten years after the property of Croatian citizens belonging to Serbian minority was taken over, pace of the property repossession got accelerated only during the last two years and significantly increased in the course of 2004. Yet, the deadline for completion of the property issue by the end of 2004 was not met.

Property repossession under 2002 Amendment to the LSSC, from the legal point of view and in practice, has shown, and still shows different weaknesses and even aberration in regard to the certain law provisions such as:

1. The right of occupant persists over the right of owner,
2. The repossession of property other than residential houses has not been addressed yet,
3. Lack of state measures that would speed up the property repossession;
4. Slowness in hand-over of cases from the Ministry to state attorneys offices, very slow court proceedings that extend over lengthy period of time and failure to execute verdicts¹³; The judges are unfamiliar with the initiated cases of property repossession. Majority of court cases remain pending without verdict on eviction, and, out of a small

¹² OSCE Background Report on the Return of Illegally Occupied Residential properties 30. July 2004

¹³ Examples that illustrate the judicial proceedings: (a) In one case an owner waited more than 29 months before the first hearing was conducted; (b) The applicant filed a civil action against the occupants in 1999. In January 2002, i.e. three years later, the court ordered the property to be vacated within 15 days, but the court order has not been executed yet. (Source: OSCE Status Report No 13).

number of court ordered evictions, only a few have been implemented.¹⁴ Such delays in the execution of court verdicts still hamper refugee return.¹⁵

5. Financial ability of the temporary occupant to rent alternative accommodation and to leave the occupied house is not taken into account;
6. In spite of GoC's Conclusion adopted in February 2003 re-enforcing the LASSC provision that stipulates the loss of state provided housing for temporary occupant who refuse offered housing care, in many cases, temporary occupants are not willing to accept the alternative accommodation for different reasons and thus expose the owners to a long lasting court process.
7. According to OSCE and NGOs reports, high percentage of repossessed houses is uninhabitable because they have not been protected from devastation and looting by the occupants while they were under the State administration. Field observation confirmed that devastated property prior to the occupants' departure takes place in 30 to 55 percent. The owners are completely unprotected when temporary occupants vandalise the property before moving out and the claims for damage are not filed *ex officio* although prescribed by the law, resulting in prolonged displacement of the owners even after possession is regained. Although the owner of looted properties have the right to apply for building material, such assistance has been made available for only limited number of potential beneficiaries, and, in some cases, the owners of looted houses were even compelled to sell their houses to the State Agency at law prices due to damage.
8. Many owners whose houses are occupied, are the subject of persuasion by the State Agency for Real Estate Transaction (APN) to sell their property, which is than used for alternative housing care for occupants. The Government has intensified the purchase of residential houses from Croatian Serbs in municipalities with high number of illegal occupancy but in the same time with a high return rate. Measures used include rising the offered price above market level and public invitation to owners to put their houses on sale. Thus the policy of selling the houses rather than their repossession, initiated in 1998 Program of Return, has continued to the present days. As it was reported by OSCE, repossession in up to half of cases takes place through the purchase of the occupied properties through APN.¹⁶
9. The needs for alternative accommodation in Government's statistic data are only given in numbers, and it is not visible whether all temporary occupants are eligible for alternative accommodation, and are there any owners/co-owners of a property in Croatia or other states of former Yugoslavia among them¹⁷. However, field research confirmed that the GoC provided housing to ineligible temporary occupants who have access to their properties in other SFRY successors countries.

¹⁴ Ms. D. Karamarkovic (75) applied for repossession of her property in January 1999. Since she has no any other possibility for her accommodation in Croatia she could not return. In April 2002 her friends were willing to accommodate her until repossession of her house. Vojnic Municipality Court issued the verdict ordering to temporary occupant to leave the property within the 15 days on 19. July 2001. The occupant has since than refused all housing solution that was offered to him and, to these days, with unsuccessful eviction attempt on 26 July 2004 the court failed to vacate the property.

¹⁵ In November 2004 the ECHR issued a decision (Kostic case) in which it ordered the Government to pay 11,000 euros to the applicant who contended that a three-year delay in execution of final court verdict violated the right to property.

¹⁶ Among several reasons that motivated owners to sell their hoses to APN it should be mentioned the prolonged lack of access to their property; devastated hoses after occupants vacate them ; lack of other condition (electricity, communications etc)

¹⁷ The Housing Verification Mission which in the Framework of the OHR in BiH is carrying out cross-border field checks in on the status of properties, has so hare referred to the Croatian Ministry (ODPR) the names more than 360 occupants in Croatia who either repossessed their property or received reconstruction assistance in Bosnia and Herzegovina. There is no information available as to whether the Croatian ministry has so fare addressed any of these cases.

10. Temporary occupants often refuse to vacate the property demanding from the owners to reimburse them for the investments made during temporary occupancy, and most courts also join repossession dispute and investments claim and it results with delay of repossession claims. The constitutional court has determined that investment claims filed by temporary occupant can be decided in a procedure separate from repossession claims. However, court practice continues to be contrary to the Constitutional Court's decision.¹⁸

Although temporary users invested illegally, and often with a permission or under protection of relevant local authorities (for what they were not authorised), the state bodies do not consider them responsible, and temporary occupants are filing the counterclaims against the owners¹⁹. Increasing number of counterclaims filed by occupants against owners to obtain payment for their investments and common court practice in such cases could potentially have significant impact on property repossession. The result of the continuation of such a practice would be that the owner, after repossessing the property, could lose it again. In number of cases, courts have ordered such payments, while, at the same time, they did not allow the owners to file "counterclaims" for obtaining the rent for the period their properties were occupied.

11. In some villages where properties were repossessed, there are no conditions for normal life there is no electricity, running water, public transportation or communications, etc.
12. Temporary occupants often leave without paying the electricity bills and when the owners apply for the re-connection after house is being repossessed, they face difficulties.

Since deadline for repossession of the property was extended three times, hopefully this process will be completed in 2005 if GoC will keep given promise.

III.2. RECONSTRUCTION ASSISTANCE

III. 2.1. Legal Framework

- **The Law on Reconstruction** came into force in 1996²⁰ and different legal acts regulating the reconstruction prior to the spring of 1996 were annulled²¹. The Law sets the number of provisions and eligibility criteria that effectively discriminate Serb applicants. Such Law opened wide possibility for harassment and arbitrary behaviour of officials authorised for its implementation, and the possibility for the reconstruction of houses belonging to Serbs in practice almost did not exist. However, the real problem was not in the quality of the Law since such a law demonstrated political will focused on the prevention of Serb return. Although official statistic of ethnic composition of the beneficiaries is not available, according to data gathered by non-governmental organisations, from 118.580 housing units being reconstructed by the beginning of 2003, only very few belonged to Serbs. Their claims for the reconstruction

¹⁹ For instance, in 18 cases, owners are facing counterclaims ranging from 5.000 to 120.000 Euros. However, there are more extreme cases – for instance, the case where the Municipal Court in Korenica passed the order that forced the occupant to vacate the property within the 15-day period. The verdict has remained unexecuted for almost six years. Meanwhile, the owner has been ordered by the same Municipal Court to pay the compensation to occupant of 30.000 Euro. Since the owner was not able to pay it, the Court also ordered the auction of the property. Another shocking example is the counterclaim of over 185.000 Euros against an owner for the amount invested by the temporary occupant into the property to run a restaurant (Source OSCE Status Report, No. 13). The latest of several cases is decision of Daruvar County court ordering to sale the house of the owner who repossess it in September 2003 after six years long court procedure as he was not able to pay about 6,000 euro to temporary occupant who lived in his home since 1992. Temporary occupants obtained rights for temporary housing in 1992 as a "Croat- refugee from Macedonia".

²⁰ Official Gazette No. 24/March 1996

²¹ These Acts were applied only to Croats who returned to liberated areas of Croatia because at the time a very small number of Serbs returned as family reunion cases and members of family who applied for their return had to provide housing care.

were rejected or stalled – and, for years, they received neither positive nor negative answers. The owners of the houses destroyed in “terrorist acts” were not entitled to the reconstruction.

- **The Amendment to the Law on reconstruction**²² was adopted in June 2000 and the majority of discriminatory provisions were repealed. However, because of some vagueness of the Law, the Government issued the Guidelines and a number of different by-laws and instructions for its implementation that caused many problems not only to the beneficiaries of reconstruction rights but to the county officials in its practical enforcement as well.

The Amendment determines: (a) that reconstruction areas cover the entire territory of the Republic of Croatia and reconstruction refers to damaged or destroyed material goods exposed to destructive effect of the armed conflict or to the consequences of those effects (previously the reconstruction areas referred only to the areas that were temporary occupied and were exposed to destructive effects of Serbs, Montenegrins and terrorist unites). (b) The persons with habitual residence in Croatia in 1991 shall be entitled to exercise the rights on reconstruction (previously only Croatian citizens were eligible if they proved their citizenship with “Domovnica”, a document that majority of Serbs could not obtain at that time); (c) the individuals convicted of war crimes are not eligible to reconstruction, and those indicted for the same criminal acts will have their reconstruction rights deferred till the finality of court verdict. In both cases, the family members of the proprietor are not excluded from the right to reconstruction (previously the right to reconstruction excluded the individuals under penal procedure for the criminal acts committed in armed conflicts and in war against Croatia, the denial extended to the family members as well.); (d) The article which determined the priority for the reconstruction and which gave minimal chances to the Serb returnees to exercise their reconstruction rights was deleted. However, deleted provision was replaced with the list established in by-law of the relevant Ministry and it placed the Serbs at the bottom of the priority list.

According to the **Governmental Decision of February 15, 2001**, the deadline for the application for the State provided reconstruction assistance was set by 31 December 2001.

In March 2004, pursuant to the Agreement on Co-operation with SDSS and OSCE proposal the Government reopened the deadline for submission of new request for state provided reconstruction assistance from 1 April to 30 September 2004.

III.2.2. Implementation

General

Since the Amendment came into force, the situation began to change. Still, the enforcement of the Law required a large number of different by-laws and internal guidelines, which made the Law non-transparent, and created difficulties to the beneficiaries in obtaining the decision on their eligibility to reconstruction such as:

- As the right on reconstruction of the houses destroyed by the “terrorist act” was not specifically mentioned, it was not clear whether the owners of such houses were eligible or not for the assistance in reconstruction. A year later, relevant Ministry issued the instruction saying “that bodies in charge for the implementation of the Law must also take the applications for reconstruction of houses destroyed in “single act of terrorism” including those previously turned down. Filed applications will be processed but final decision will follow after the co-ordinating of legislative regulations” (it referred to the Art. 180 of the Act on Civil Obligation – see billow);
- To the applicants who submitted an application for reconstruction after the Amendment to the Law came into force (mostly Serbs), will not be granted the rights to state assistance in household furniture and appliances. However, according to the Regulation on deadline for

²² Narodne novine (Official Gazette) No, 57/2000

submission of applications for reconstruction in Eastern Slavonia²³ (predominantly Croats), the assistance for re-furnishing will be granted.

- Difficulties in collecting various documents that must be attached to the reconstruction application, particularly the proof of ownership (title deed) often caused by the problems in Land Register Books

Latest Development

The 2000 Amendments only started to be enforced with significant intensity et the of 2003, and assistance in the reconstruction to returning Serbs since than advances well. At the time, the reconstruction of Croat houses is completed and relevant offices started signing reconstruction contracts with a number of Serbs. According to the GoC, a total of 3,073 houses were finished in 2004, 8,200 housing units will be reconstructed in 2005 according to remaining reconstruction claims, and 760 houses will be finished as their reconstruction started in 2004. However, for many Serbs, changes in policy came too late, after years of not being able to get state assistance for the reconstruction of their homes they have decided to stay in the country of exile.

Since almost all houses belonging to Croats have been reconstructed, the Serbs constitute the firm majority of current beneficiaries. Extended deadline (September 2004) for the reconstruction applications has given opportunity to several thousands of potential beneficiaries who missed the previous deadline, or at that time did not consider that option because of less favourable return climate, to claim for the reconstruction. Competent local bodies accelerated the processing of applications for reconstruction, but due to increased number of the applications submitted within the extended deadline, more than 16.700 applications are still pending²⁴. Although situation in the enforcement of the Reconstruction Law has significantly improved, some difficulties still persist, such as:

1. Particular problem within the enforcement of the Law is categorisation of damages, performed several years ago, when majority of owners of houses were unable to return. In the meantime, many houses were vandalised or devastated in criminal acts but they were also fallen into decay due to lack of maintenance or protections. Damages degrees established in 1996 are presently completely unrealistic and with amounts of money earmarked for reconstruction it is impossible to make those houses habitable. Many houses that were categorised as the first damage category (the lowest one) got so damaged in the meantime that they came under fifth or sixth damage category by now. Demands for re-categorisation were rejected.
2. By the end of 2004 some 2.200 applications filed before 2001 deadline still remain to be processed by relevant state body. The majority of those claims were filed abroad and many of them are lacking required documentation. As applicants are displaced in Serbia, Monte Negro and Bosnia and Herzegovina, and many of them are often forced to change addresses, there are certain difficulties in contacting them.
3. During 2004, a number of negative decisions on eligibility for assistance issued at the first instance has significantly increased and resulted with 10,000 pending appeals. What one has to mention is that, according to the Law on the Administrative Procedure, if a person who initiated certain administrative procedure fails to submit lacking documentation within the time-limit prescribed by the law, the case is being be rejected. This problem always appears when the time-frame from established by other laws is applied in reference to the rights granted by the refugee related laws since those laws do not contain any time-frame concerning the exercise of specific rights (for instance the applications for exercise of certain rights were rejected because for the expired period to institute legal proceedings)
4. Returnees face different kinds of violence. As reported, when returnees succeeded to repossess their property or get reconstruction assistance, some of them or their properties

²³ Official Gazette 30/1999)

²⁴ This figure vary in different sources

were subjects to attack in certain areas. Not only that police protection was lacking, the perpetrators of these crimes never faced charges or punishment, as they were never discovered²⁵.

III.3. HOUSING FOR FORMER TENANCY/OCUPANCY RIGHT HOLDERS ²⁶

Introduction

At the moment of Croatian independence, The Law on Housing Relations adopted in 1985 was regulating legal status of tenancy rights holders on socially owned apartments. That Law, as a legal institute, was introduced after The Second WW and existed for almost 50 years. Nothing has changed since that time in regard to the rights and the level of protection of tenancy rights holders.

The law was based on the constitutional provision of former SFRY and former SR Croatia stating that: “The citizen is guaranteed that the tenancy right he/she acquired over the socially owned apartment, will ensure, under the legally binding terms, that he/she can permanently live in the socially owned apartment so that he/she can satisfy personal and family housing needs”

Since the provision of the Constitution of SFRY was bounding all former Republics, there were no differences in legal position of OTR on the whole territory of former SFRY. Dissolution of Yugoslavia did not affect the position of OTRs in any other state successor except in Croatia where this affected only minority population, almost exclusively Serbs. The tenancy rights of tens of thousands of Serb families were terminated after they fled from their apartments. Many of those who stayed in the country were forcefully evicted, particularly in bigger towns.

Croatian Government refused to open any discussion on this issue persisting on its stands such as that: no rights have been violated; Serbs left Croatia without any valid reason to join to the enemy forces; Croatia will bankrupt if the OTRs are compensated, etc.

All requirements by national NGOs and international organisation in relation to the resolution of problem of former OTR intensified after 2000, and caused strong reaction of the GoC.

Only during the last two years, certain regulations were past that, so far, produced no effects.

OTRs were terminated through the court proceedings on the ground of discriminatory laws or discriminatory enforcement of the Housing Law, mostly in urban areas controlled by Croatian government during the period of conflict, or were terminated *ex lege* on the territories under control of Serbs (UN protected zones- now referred to as Areas of Special State Concern (ASSC).

According to Ministry of Justice, a total of 23.700 court proceedings were initiated and mostly completed for the cancellation of OTR as of the end of 2002. The number of cancelled OTR in ASSC is unknown. Since their tenancy rights were terminated, former tenancy rights holders could not participate in the process of privatisation of housing stock as otherwise they would be entitled to in accordance to The Law on the Sale of Apartments ²⁷

III.1.1. Legal Framework

- **Constitution of the Republic of Croatia**, unlike the Constitution in force up to 1990, does not recognise the tenancy right as a constitutional right. However, Articles 14, 34, 35 and 61 (Paragraph 2) protect certain values concerning subjects of the home and family (“The home is inviolable” “All citizens shall be guaranteed respect for and legal protection of personal and family life, dignity, reputation and honour”. “The family shall enjoy special protection of the

²⁵ NN. 81-year-old man, returned to Croatia after 13 years of exile in Serbia. Soon upon his return, his house was attacked and he decided to leave it again and return to Serbia. In other case, the house of Serb returnee was reconstructed and set on fire and burned down before he was able to move in.

²⁶ For more see 2001 SEE-RAN and BAHN LIG material “Housing Legislation in Croatia and its Consequences on the Status of Refugees/IDPs – Former Occupancy/Tenancy Right Holders”

²⁷ The Law on Sale of Apartments on which Tenancy Right Exist” was subject to numerous changes and amendments (Official Gazette 43/1992, 69/92, 25/93, 26/93, 48/93, 44/94, 47/94, 58/95, 11/96, 11/97, 68/98)

Republic”). Furthermore equality of all citizens is guaranteed by the Constitution (“All citizens shall be equal before the law”).

- **Law on Housing Relations (LHR)**²⁸

According to the LHR, the tenancy right represented a permanent right and it was transferable to the household members. It could have been only revoked by court decision under the explicitly prescribed legal conditions. When setting those conditions, the legislator kept in mind that the tenancy right was specific right; it was a right to a home and existential assumption for a life of a family. The Law on Housing Relations remained in force till 1996 when it was repealed and replaced with the **Law on Lease of the Apartments**.²⁹ Since that time, the “tenancy right” does not exist any longer as a legal institute recognised by the law. The Law on Lease of Apartments protected OTR holders (who do not belong to the majority of OTR holders who purchased the apartments in the process of privatisation) and they continued using apartments as “protected lessees”. However, this right shall not be referred to the minority population, dominantly Serbs who fled from Croatia and whose OTRs were cancelled.

The most common legal bases for the termination of the OTR were following provisions of the Law on Housing Relations

- **Art. 99 of the 1985 LHR**

This article provided ground for the majority of court rulings on the termination of tenancy rights because of the stipulation establishing that “more than 6 months of unjustified absence of the tenant from the apartment” is the ground for the termination. Those proceedings were in most cases conducted *in absentia* of tenancy rights holders and courts failed to examine the validity of the reasons for not using the apartment although bound to do so by the very same provision, and despite the fact that those were justified circumstances resulting from the war.

- **Art. 94 of the LHR** authorised relevant housing body to issue an eviction decision and to carry out the eviction of the tenant who occupied the apartment without valid legal grounds within 15 days. The decision was executable immediately. This provision was used for mass evictions from army-owned apartments denying to the tenants legality to use the apartments.

The Law on Housing Relations was amended in the period from 1991 and 1996, and, at the same time, several new laws were passed. The purpose of all of those changes was to create additional legal ground for the termination of tenancy right.³⁰ Contrary to constitutional provisions, adopted provisions regulating housing legislation introduced inequality of citizens before the law at the expense of specific categories of people (mostly refugees based on national affiliation criteria and the members of former Yugoslav National Army) into the legislative system in Croatia. Unlike in Croatia, refugees in Bosnia and Herzegovina were not prevented from repossessing their apartments after they have returned. That was also the case with internally displaced Croats whose tenancy rights were not cancelled.

- **Law on Amendment to the LHR**³¹

The Article 102 of that Law expanded the legal basis for cancellation of tenancy rights in the court proceedings to the individuals “who took or are taking part in the activities hostile to the Republic of Croatia”. This clause was in contradiction with the constitutional provision stating that everybody is innocent until proved guilty by the judgement absolute, and with the

²⁸ Official Gazette No. 51/85

²⁹ Official Gazette No. 91/1996

³⁰ According to the data of the Ministry of Justice, between 1991 and 2002 courts received 23.700 cases of tenancy right termination on legal grounds of the Law on Housing Relations out of which 21.516 decisions were brought, and 800 cases pending. According to the ministerial data the largest number of apartments were located in urban centers – the area under the jurisdiction of Zagreb County Court – 5.039 cases; Dubrovnik County Court – 299 cases; Gospić County Court – 435 cases; Osijek County court – over 3.000 cases etc.

³¹ Official Gazette No 22/92)

provision of the Housing Law regulating rights of spouses of the tenancy right holder. However, the Constitutional court established, in series of decisions starting from 1999, that the OTR could only be constitutionally terminated through application of the article 102a in case the tenant was criminally convicted.

- **The Law on the Temporary Occupancy of Apartments**³²

This law prescribed that all permanently abandoned apartments, and the apartments that were vacated by their tenants and were free of all persons and households should become the property of the State Only 8 days after the said law came to power, the apartment for which it was established that its tenants abandoned it, although the motives for abandoning the apartments were in majority of cases related to the danger of falling victims in the arm conflicts, were considered permanently abandoned apartments over which the tenancy rights ceased. In some cases, the “crises headquarters” forced the tenants to leave certain places security reasons, but upon their return, their apartments were already occupied.

- **The Law on Lease of Apartments in Liberated Areas**³³

In accordance to this Law, the tenancy rights of all tenants who left their apartments during the military operations and who did not return within 90 days of the date the law came into force were terminated *ex lege*. Majority of these people fled to Bosnia and Herzegovina and Yugoslavia. Since their return was blocked and they were not recognised at that time as Croatian citizens, they could not return, not only within 90 days, but also for the next several years.

Even those who did not leave Croatia but were displaced within Croatian territory in most cases could not reoccupy their apartments.

Besides above mentioned law provisions, the illegal and forcible intrusion into apartments was a common method of preventing the lawful tenant to dwell in the apartment. Forcibly evicted tenant enjoyed a court protection if he/she initiated a civil suit. However, even in the cases when the court verdict was pronounced in favour of the tenancy rights holder, the execution of a verdict was often prevented by brute force, or, later, with the enforcement of provisions contained in other laws that protected specific categories of illegal tenants in housing lawsuits. Above mentioned legal provisions were applied almost exclusively to Serb minority.

In the course of 2001 and 2003, under the pressure by the international community aiming to mitigate the consequences of lost tenancy rights, the Government of Croatia passed a set of regulations and other acts. According to the Government’s opinion, those acts adequately solved the problem of potential returnees although they did not take into consideration the legal aspect of the meaning of tenancy right and the fact that, almost exclusively, refugees of Serb ethnicity were subjects to the discriminatory laws and their discriminatory enforcement.

- **Law on the Amendments on the Law on Areas of Special State Concern**³⁴

The Law on the Amendment on the Law on the Areas of Special State Concern was passed in July 2000. Those amendments eliminated legal norms full of indisputably discriminatory content and, in principle, provided the opportunity for the exiled Serb returnees to become eligible to so called “housing care” if they have Croatian citizenship and reside in the areas of special state concern. The eligibility excluded former tenancy rights holders in other areas of Croatia but also the individuals, who owned a house or apartment in the areas of special state concern and sold it or disposed of it in any other way after 8 October 1991. According to the Law, provided housing care “will promote sustainable return of pre-war population to the areas

³² Official gazette No 69/91 and 76/93

³³ Official Gazette 44/96 . The unknown number of apartments was seized *ex lege* on grounds of the Law on the Lease of Apartments on the Liberated Territories, enacted immediately after the end of military action in summer 1995.

³⁴ Official Gazette No 73/00

of special state concern and the settlement of citizens of Croatia who can contribute to economic and social revitalisation of those areas” in Croatia. One of the models of providing accommodation foreseen by this Law is the lease of the state-owned apartments. In most of cases, Serbs use to live in those apartments, and the apartments were seized after they fled in accordance with the Law on the Lease of Apartments on Liberated Territory. However, those apartments, in accordance with the provision of housing care list of priorities will be allocated to temporary users or settlers.

- **Decree on the Conditions and Standards of Housing Care in the Areas of Special State Concern**³⁵

The Law on the amendments to LSSC could not be directly enforced because it did not contain conditions and criteria for establishing the eligibility to housing care. Therefore, six month later, in February 2001, the Government passed the Decree on Conditions and Criteria for Accommodation in the Areas of Special State Concern.

- **The Law on the Amendments to the Law on the Areas of Special State Concern**³⁶

In July 2002 the Law on the Areas of Special State Concern was amended again. The essential changes relate to the following:

- Several housing care models are foreseen for the former inhabitants of this territory who do not own any property and want to return to Croatia. The tenancy rights holders are not explicitly mentioned, but the Ministry explained that the law also refers to that category.
- Citizens of Croatia who own/co-own a house or an apartment in any Yugoslav successor state (not only in Croatia), those who owned such a property but sold it or disposed of it in any other way after October 8, 1991, or who have acquired the status of protected lessee are not eligible for the provision of housing care.
- The law also stipulates the order of priority for housing care to be provided to eligible beneficiaries (1) temporary users of claimed property (2) temporary users of unclaimed property (3) other applicant. As former OTR holders are not explicitly mentioned, one could conclude that they would fall under the last category. Legal Interpretation of the Constitutional court³⁷ in that regard has been differently interpreted in practice.
- Temporary housing care is provided to the individuals who own a house or an apartment, or who acquired the status of protected lessee on the territories of Yugoslav successor states but either can not repossess their property, or the property is too damaged to be habitable, until the conditions for the repossession are created (this exception usually referred to the Croats from BiH and from S/MN).
- **Rulebook on the Order of Priority for Housing Care in the Areas of Special State Concern** published in October 2002³⁸ applies to the third category of applicants, and establishes three sub-categories within this category: (1) Persons in collective centres; (2) Persons who wish to return to their former permanent residence or settle in the ASSC; (3) Former occupancy/tenancy rights holders whose tenancy rights were terminated *ex lege* in ASSC under certain criteria.

One has to notice that former tenancy rights holders are being explicitly mentioned for the first time.

- **Conclusion of the Government on the Housing Care of the Tenancy Rights Holders Living Outside the Areas of Special State Concern** was passed in August 2003.

³⁵ Narodne novine (Official Gazette) 10/2001

³⁶ Narodne novine (Official gazette 24/02)

³⁷ The order of priority was examined by the Constitutional Court and it was decided that this provision could not be legally interpreted as priority of any of the 3 listed categories and fact that the “other applicant” are the last on list doesn’t mean that housing for the individuals from this category could not be provided before categories listed under point 1 and 2 (U-II-3255/2004)

³⁸ Official Gazette No. 116/02

Conclusion provides housing options for former tenancy rights holders whose tenancy rights were terminated on the territories that were under Croatian jurisdiction during the conflict, mostly in larger Croatia's cities. Potential beneficiaries can apply for one of the housing models foreseen by the Conclusion if they decide to return and live in Croatia. Individuals who own/co-own residential property in the states of former Yugoslavia is ineligible for housing care.

The Conclusion foresees two models of housing care:

1. Protected lessee (approximately 1.5 HRK per square meter) of a State-owned apartment; (basic 35 sq. m plus additional 10 sq. m per each family member) while the remaining living space would be subject to freely stipulated rent; or
2. The purchase of apartment under the conditions set by the Law on the Socially – Subsidised Construction of Apartments. This Law has actually been adopted in order to resolve housing problems of young families giving them the opportunity to buy apartments for the prices lower than the market price. But, it is quite unlikely that former OTR holders, majority of who are refugees, poor and unemployed could afford the cash of 15% in the moment of signing the contract on the purchase. They need to be credit-worthy to get the loan, which is not possible, unless they have a job. Furthermore, the conditions for purchasing under this Law are less favourable than under the LASC that refers to the territory inside the ASSC.

The application deadline was initially set to expire on 31 December 2004. After the OSCE Mission and its international partners as well as Serb representatives in the Parliament suggested the extension of the deadline, it was extended for additional 6 months, till 30 June 2005.

Applicant need to provide proof that they once held OTR over a socially owned apartment and that they do not own or co-own any other residential property in the territory of SFRY states successors.

Apartments constructed in accordance with the Law on the Subsidised Housing Construction (Official Gazette 109/2001) would be awarded to former tenancy rights holders in the areas where they used to have residence. If this was not possible, the apartment would be provided in other locations depending on the availability of vacant/available apartments.

The prices of such apartments would be cheaper and they could be bought on long-term loan (30 years at maximum), with favourable interest rate and one year of grace period, with the buyer's deposit equal to 15% of estimated cost of the apartment.

- **On 12 July 2003, the Minister for Maritime Affairs, Tourism, Transport and Development as foreseen by the Government's Conclusion signed an Implementation Plan.**³⁹ On 24 October 2003, an updated version of the Implementation Plan⁴⁰ was issued.

³⁹ The Implementing Plan specifies the following elements of the 12 June Conclusion:

Purpose of the Plan: provision of housing care to returnees who wish to return and live in the RoC regardless of the fact whether their current residence is in or outside the RoC; housing care can also be provided in other areas of the RoC if an adequate housing can not be provided in the areas where the beneficiaries had resided i.e. used socially owned apartments.

Application procedure: all former dwellers of one and the same occupancy/tenancy right apartment can submit only one request for housing care.

Appeals procedure: An Appeals Commission will consist of 5 members (3 from Ministry of Justice, SAO and Ministry of Labor and Social welfare + 2 representatives of city/municipality and county where an applicant wishes to return). Up to three NGOs can observe the work of the Committee.

While examining the appeal the Committee can either return the application/request back to the Ministry for renewal of the procedure or can confirm the negative decision of the Ministry. However, the applicant retains his right to initiate regular court proceedings. It is questionable could the Government Conclusion and Implementation plan, which are not "laws" could serve as a ground for court proceeding.

⁴⁰ With regards to the eligibility of former JNA members, the Plan refers to the provisions of the Law on Reconstruction (Article 5, Item 2,3 and 4, Official Gazette, No.24/96, 54/96, 87/96 and 57/00) that limit eligibility only to those who were sentenced for war crimes while not excluding the eligibility of their family members. If the housing care can not be provided in the former place of residence and the beneficiary refuses the one offered outside the

Plan indicates that decision on the provision of housing care may be issued only after the Ministry/ODPR has established all relevant facts including the status of the property, place of residence and other facts relevant for housing care.

This approach, if implemented, would differ significantly from the relevant procedure inside the ASSC, which is based on the verified statement given under criminal and material liability. Current appeal procedure that foresees two different appeal options can lead to confusion and possible loss of legal remedies by the applicant due to the fact that the applicants may tend to rather use the internal remedy than regular administrative court remedy.

According to the presented legal framework there are two models of housing. These models are not based on the recognition of legal essence of the problem of the loss of tenancy right, instead, they satisfy more or less imposed international commitment to enable the return of those refugees who lived in so called socially owned apartments and for that purpose the housing accommodation must be provided. Also different rights of former OTR based on their pre-war residence lead to the inequality before the law.

The first model is regulated by 2002 Amendment to the Law on the Areas of Special State Concern and the accompanying Priority Criteria of the Housing Care regulate the first model
The second model is created by the 2003 GoC Conclusion with the accompanying Implementation Plan for Provision of the Housing Care.

Besides these two models, the specific situation refers to the tenancy rights holders on the territory that was under transitional administration of UN (so called UNTAES) that was peacefully returned under the control of the Croatian Government in January 1998. Former OTR holders on this territory have been living in a legal limbo since their acquired rights have not been cancelled, but they have not universally been granted the status of so called protected lessees as foreseen by law, as it happened to former OTR holders from other parts of Croatia who eventually did not manage to privatise their former socially owned apartments. There is another, still unsolved problem and it refers to the tenants who held OTRs over private/nationalised apartments before the tenancy rights were cancelled.

III.3.2. Impementation

Housing care based on the Amendment to the Law on the Areas of Special State Concern due to the lowest priority is mostly theoretical, not yet implemented in praxis. Currently available apartments are being used to accommodate temporary users of occupied property.

As for the implementation of the Government's Conclusion, even the informative campaign that should have started immediately in order to introduce potential returnees to opportunities for housing actually started in October 2004, i.e. only 3 months before the expiration of initially set deadline for submission of applications. Also, none of the remaining commitments from the Chapter "Planned Procedures" was fulfilled within the past 20 months, except that the applications began to be submitted on the prescribed form.

Former occupancy/tenancy rights (OTR) holders, remain the largest category of refugees and internally displaced persons in need of a permanent housing solution in Croatia. This problem affect almost exclusively Croatian Serbs.

Obviously, such a controversial legal framework and different position of the eligible applicants, depending in which part of Croatia they reside or resided before the war, makes the confusion not only among potential beneficiaries but also among those who are going to implement such a confused regulation.

However, even with such legislative framework some results can be achieved if real willingness exists. The goal of all mentioned legal acts was to enable the return by providing the housing

municipality or town of former residence, the beneficiary will be provided with an housing care option in the area of former residence when the conditions for it are created.

accommodation for former tenancy right holders, but its implementation has not started yet. The degree of the achievement of the goal can be expressed only in figures concerning the number of people who received housing care.

There is no official data on how many former tenancy rights holders received housing care in the areas of special state concern since 2000 when such a possibility was foreseen by the law. According to the official data, by the end of February 2005, total of 11,488 families has been provided with housing in ASSC. Most of them were temporary occupants – refugees who fled from BiH and S/MN “but also other returnees without any private property, including the **tenants in socially-owned apartments** whose tenancy right was cancelled.” However, the number of those tenants was not specified. Without statistical breakdown of the data it is impossible to find out how many former tenancy rights holders received housing care. The failure to highlight these figures in the statistics (although they should be highlighted because this special category was mentioned in Art. 3, paragraph 3 of the Rulebook of Priority in the Eligibility to Housing Care in the Areas of Special State Concern, Official Gazette 116/2002) raises grave doubts implicating that the statistical data can not show things that do not exist or that this category is only a handful of cases among otherwise important number of people who have received housing care.

To date, these programs had no significant practical impact on the availability of housing for this segment of population. In the main urban centres of Croatia, i.e. outside the war-affected areas (referred to as Areas of Special State Concern /ASSC) where 80 percent of the potential beneficiaries resided, even the processing of applications had not started by January 2005.

Inside the ASSC, i.e. in the mainly rural war-affected areas, only few applicants had received housing.

. According to the Ministry/ODPR, by the end of February, outside the ASSC, 2,336 applications were submitted, out of that number, 982 requests were submitted for lease and 1,354 for purchase of an apartment. Most of those applicants - 1,053, are residing in Croatia; 825 in live in S/MN and 344 in BiH. 845 of them applied for purchase of an apartment. The processing of applications has started in February 2005 but no housing in that regard has yet been provided. The apartments available for lease or purchase by these beneficiaries have neither been bought nor built. In 2004, none of 400 apartments planned for construction started to be built. The funds allocated to housing care program (23 million HRK) for 2004 budget were not spent and are not available any more for that purpose.

III.4. COMPENSATION OF DAMAGED CAUSED BY TERRORIST ACTS, AND BY ACTIVITIES OF ARMS FORCE AND POLICE

III.4.1. Legal framework

- **Act on Civil Obligations and the 1996 and 1999 Law on the Amendments on the Law on Civil Obligations**⁴¹

In accordance with the Article 180 of the Act on Civil Obligations, until the beginning of 1996, owners of the properties destroyed or damaged in “terrorist acts” were allowed to file civil claims for compensation from the State in case of personal injuries or property damages. However, this article was repealed in January 1996⁴² and all pending cases were stopped until enactment of a new legislation.

In 1993, the Croatian Parliament passed three laws addressing different but related issues that replaced the repealed article 180 of the Law on obligations.

- **Law on the Responsibility of RC for Damages Caused by Acts of Terrorism**⁴³

⁴¹ Official gazette No. 53/91,73/91 3/94, 7/96 and 112/1999

⁴² Official gazette No. 7/1996

⁴³ Narodne novine (official Gazette) No 117/03

Eight years after the Article 180 of the Law on Obligations was cancelled and all court claims for compensation of damage dropped, by mid-2003, the Croatian Parliament finally passed legislation replacing the repealed Article 180. Parliament acted in response to two judgements of ECHR finding that the indefinite suspension of pending court claims violated the right of access to court. While the cancelled Article 180 of the Law on Obligations ensured the compensation of damage for physical injury or death as well as for the damage or destruction of private property, the new Law on the Compensation of Damage Caused by Acts of Terrorism limits damage claims solely to the personal injury or death. As to the compensation for destroyed property, it could be awarded in accordance with the Law on Reconstruction. According to that, the right to reconstruction is limited to 35 m² per owner of the residential house and additional 10 m² per each member of the family.

Retroactive enforcement of the Law on Compensation eliminates the action for compensation of damages lodged before the Article 180 was repealed, probably making this Law contrary to the Article 89 of the Croatian Constitution. The Constitutional Court will decide on this.

According to the data gathered by non-governmental organisations in period 1990 - 1997 on the territory under Croatian government control or after military operations that took place in summer 1995, more than 22.000 houses were mined or set on fire (primarily Serb-owned property). The owners of properties damaged or destroyed by "terrorist act" were ineligible for the reconstruction under the 1996 Reconstruction Law; also, in the beginning it was not clear whether the 2000 Law on the Amendment to the Reconstruction Law could be considered as a legal ground for such cases. As it was mentioned a year after the Amendment came into force, competent ministry explained that amendment referred also to such cases. However the Law eliminates without any remedy compensation claims for damage resulting from terrorist acts for types of property that are not eligible under the Law on Reconstruction.

- **Law on the Responsibility of RC for Damages Caused by the Actions of Croatian Army**⁴⁴

The Amendment to the Law on Obligations adopted in 1999, suspended all pending cases for compensation of damages caused by members of Croatian Army and police forces. In mid-2003, the Law on the Compensation of Damages caused by the actions of Croatian Army or police during the patriotic war replaced it. Its amendments refer only to damage not described as "war damage". As the law is full of shortcomings and gaps, it is very difficult to prove that damages are not "war damages".

- **Law on Responsibility of RC for Damages Emerged in Former SFRY** refers to the damages which RC inherited as a successor to former SFRY.

III.4.2. Implementation

Although it is too early for any conclusion, the practical enforcement of the Law, judging from several pending cases, showed that it would be very difficult to get compensation for death or injury because of the interpretation of the State Attorney establishing on what can be considered as a "terrorist act".⁴⁵ Despite the opposition by the State Attorney, so far, 3 verdicts have been passed in favour of the plaintiffs in cases of murder after the end of military operations.

According to the revised 2000 Reconstruction Law, the state reconstruction assistance also provides for property damage resulting from terrorist acts that occurred in Government controlled areas. Potential beneficiaries could file an application within the extended deadline. So far, we are

⁴⁴ Narodne novine (official Gazette) No. 117/03

⁴⁵ In two rejected complaints for the compensation the opinion of The State Attorney was that State could not be held liable because State bodies did not order committing of the terrorist act and although the perpetrators wore uniforms and served in the Croatian Army/or Police, they did not commit the criminal act while on duty. So far only three verdict of the court of first degree ruled that the family of the man killed outside combat zone was eligible for compensation

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lacking any data on granted reconstruction assistance in such cases, and, therefore, it is too early to bring any conclusion on the success of enforcement of the Law on Reconstruction.

The situation is identical with the enforcement of the Law on the Compensation of Damages Caused by the Actions of Croatian Army or Police during the 1991-95 war. The implementation of the law will be monitored and reported on in the forthcoming period.

IV. CITIZENSHIP

IV.1. Legal Framework

- **Constitution of the Republic of Croatia**

According to the Article 9 Paragraph 2, no Croatian citizen can be deprived of his/her citizenship.

- **Law on Croatian Citizenship (LCC)⁴⁶**

The principle of legal continuity of citizenship, as a primary criterion for regulating citizenship issues after dissolution of SFRY, is stipulated in transitional provision of the article 30 Paragraph 1 of the LCC “All citizens of SFRY, who on 08 October, 1991, had citizenship of Socialist Republic of Croatia, regardless of where they actually resided, are considered to be citizens of the RoC”

In the same article in Paragraph 2, the law distinguishes between those who are of Croatian ethnicity and those who are not ethnic Croats. While ethnic Croats are eligible to become citizens, even if they were not citizens of former Socialist Republic of Croatia and have never resided or even visited Croatia so long as they submitted written statement that they want to be Croatian citizens. Such regulations discriminated non-Croats. While the majority of Croats from Bosnia and Herzegovina, who came to Croatia after 1991, either as refugees or settlers, acquired Croatian citizenship, the applications by former residents of Croatia (mostly Serbs and Bosniacs-Muslims) for the status of Croatian citizens were rejected.

The Constitutional Court did not find this provision unconstitutional.

Shortcomings of the provision of LCO in regard to dual citizenship enable discrimination based on the ethnic affiliation. While Croats usually do not need to be released from other citizenship, persons of other ethnicity should prove that they submitted application to be released.

Non-Croats who were not registered Croatian Citizens must satisfy more rigorous requirements in order to obtain citizenship through naturalisation – they are required to be registered residents for five years prior to the day they submit the application, as well as to fulfil several other law requirements. Even those who were lawful residents of Croatia for many years they were compelled to provide proof of previous residence. Such regulations affected many pre-war Croatian residents, particularly those who fled from Croatia. After Law on Croatian Citizenship entered into force, their status was translated into the status of foreigners and they were deleted from the Registrar of Residents so that they can not prove their 5-year or permanent residence in Croatia. They also had difficulties to gain the foreigner’s status as they could not meet conditions prescribed by the Law on the Status of Foreigners (permanent income, housing) which was in force till December 2003.

- **2003 Law on Foreigners**

The Law on Foreigners entered into force on 1 January 2004. The Law’s transitional provisions are designed to enable former habitual residents to return and regularise their status under privileged conditions apart from foreigners who did not reside in Croatia for the last five years. The Law states that if they return within 12 months after the Law has entered into force, they can be reinstated into their pre-war status of former habitual residents without any further requirements, such as meeting housing and financial income conditions, and can subsequently

⁴⁶ Narodne novine (official Gazette No. 53/01)

apply for Croatian citizenship. The deadline for application was extended for six months and expires on 30 June 2005.

IV.1.2. Implementation

The essential problems regarding the citizenship issues were affected less by the quality of the Law on Croatian Citizenship than by its enforcement and interpretation based on the policy governed through several years. The intention was to deny Croatian citizenship to refugees of non-Croat ethnicity (mostly Serbs) and thus to impose restrictions in relation to the return of refugees, because citizenship was the basic right for obtaining all other rights

As a result of this, the case of confirming Croatian citizenship or residency became the hardest and most sensitive problems of internal legal political structure, particularly in 1998 when the Program on Return was adopted as this program, before the Law on Citizenship entered into force contained rather complicated procedure for confirming that someone was Croatian citizen.

Through the years, there has been some progress in administrative procedures in relation to the issues of citizenship and, presently, the refugees who were registered by the Croatian Citizenship Register before 1990 do not face incredible obstacles in obtaining "Domovnica" as it was the case before.

Finally, after Croatia failed, for many years, to produce satisfactory solution to the issue of naturalisation into Croatian citizenship of non-Croats who had former long-term habitual residence in Croatia prior to 1991, 2003 Law on Foreigners legally resolved this issue.

However, the Ministry of Interior does not fairly and uniformly apply the provisions of the Law on the whole territory of Croatia. Thus they continue the practice when identical cases regulated by specific law are being addressed in different ways.

Although the general situation has improved, the discrimination based on ethnic origin still affects more persons belonging to some other minorities, such as Bosniaks, Roma and Albanians. Thus what could happen is that about 200 Bosniaks living on the territory of Croatia along the Bosnian border would still be fighting to obtain the Croatian citizenship⁴⁷. As Roma NGOs reported it⁴⁸, about 25% of Roma population have no citizenship documents.

Compared to the previous period, the situation has significantly improved but, naturalisation applicants still face different administrative barriers and they are exposed to high administrative fees of naturalisation. At the same time they need to be released from other foreign citizenship.

V. EMPLOYMENT

V.1. Legal Framework

The Labour Law and several other accompanying regulations that represent, mostly appropriate, legal framework and reasonably protect employee rights regulate employment and labour rights. Despite constant initiatives for certain changes that should insure better employee protection, problems are not caused by the quality of law but by the violation of the legal rights in its implementation such as:

- Lack of the supervision over the law implementation and punishment of those avoiding to obey the laws;
- Institutional and organisational weaknesses, as well as the lack of responsibility by the administration competent for the supervision over employers in relation to the law implementation;
- Weaknesses in organization of Trade unions
- court weaknesses in running of the court procedures in relation to the labour violations

⁴⁷ Statement of the Bosniak representative in Parliament

⁴⁸ Country report on Human Rights Practice _ US Bureau of Democracy, Human Rights and labor, The Report on Human Rights in Croatia in 2003

2003 Amendment to the Law on Labour prohibit discrimination on basis of ethnic origin, among other grounds, but discriminatory practice still exist and it is almost impossible to get protection in such cases.

V.1.2. Implementation

In an environment of ongoing transition of the Croatian economy and the slow economic development, and therefore high unemployment rate (around 20%) access to this right, guaranteed by the Constitution, is restricted for large number of unemployed people.

The workers rights are violated in different ways - they are not paid for their work or the payments of wages are late; employers avoid the payments for their pension insurance or they reduce it; the standards for worker protection are often not met; illegal loss of the job etc. In practice, workers cannot de facto access their rights guaranteed by laws, since there is no binding power behind them. There are no effective inspections and special labour court to ensure a justice. The number of 45.000 unsolved court cases in 2004 (in which 75% of employees sued employers for payment debts) demonstrate the level of the worker's protection.

In the areas of refugee return the rate of employment is much higher and job possibilities are very restricted, except the limited possibilities in state and local administration and public institutions. Particularly in a difficult position are Serbs who are still discriminated and their access to job is almost impossible.

While very few Serbs have been able to find jobs in private businesses owned by Croat entrepreneurs, virtually no Serb returnees are employed with the state, county and municipal administration or in public services, such as health centres, schools, post offices, power-supply companies etc. The situation is identical in the judiciary (*for more, see in the chapter of Minorities rights*)

VI. PENSION RIGHTS

VI.1. Legal framework

- **The Constitution** defines the Republic of Croatia as a social state⁴⁹. The Constitution stipulates requests of social justice, social security and insurance of social peace.

A social state means that the state is responsible for the social situation facing its citizens, primarily poor, unemployed, and disabled persons, and for all forms of care provision such as the education and health care for the children and youth, retired persons and other categories of citizens.

A social state also means the responsibility for social situation of its citizens, who are forced migrants, being socially excluded in a specific manner.

Social measures are introduced through the old age and disability insurance, sick leave, maternity leave and unemployment insurance, child allowance, insurance for accidents at work, occupational diseases and other. The right to a social welfare is guaranteed (sustentation, social assistance, medical care and other). Everyone is guaranteed the right to the health care⁵⁰ in compliance with the law.

- **Law on Pension Insurance**

1999 Law on Pension Insurance⁵¹, stipulates that rights stemming from pension insurance, by their nature, are inalienable, personal and material, they are the acquired rights that may not be transferred to another person, nor may be inherited. The outstanding payments that were unpaid before the death of a beneficiary may be inherited. The statute of limitations cannot be applied

⁴⁹ Article 1 of the Constitution of the Republic of Croatia NN 56/90

⁵⁰ Article 58 of the Constitution of the RoC, cleared text 41/2001

⁵¹ Narodne novine No. 102/98

to these rights, with the exception of outstanding but unpaid pensions and other financial contributions in cases determined by law. Rights stemming from pension and disability insurance are considered acquired rights and, as such, may be cancelled, or such rights may have a restricted use only in certain cases and under conditions determined by the law.

Article 87, Paragraph 2 says that “The pensions and other money instalments, which were not paid due to the circumstances caused by the beneficiary, may be paid later, retroactively for one year” (since December 1998; according to the previous Law, unpaid pension could be paid retroactively for three years)”.

The list of constitutional guarantees is supplemented by international agreements. The international agreements, concluded and ratified in an appropriate procedure, constitute a part of the internal legal system, and in terms of their legal force they are above laws. The Convention for the Protection of Human Rights and Fundamental Freedoms⁵², the European Charter on Fundamental Social Rights of Workers⁵³, several relevant conventions of the International Labour Organisation No. 48 and 102⁵⁴, and the European Social Charter regulate the undertaken commitments from social insurance and social welfare, as well.

- **Bilateral agreements**

The Republic of Croatia concluded and ratified treaties i.e. agreements on social insurance with many countries among which the agreements with the states successor of former SFRY are of particular importance. Conclusions of these agreements enabled the pension payments to refugees in the states of their residency several years after Yugoslavia collapsed.

- **Law on Convalidation**⁵⁵

The adoption of the Law on Con-validation was requested due to the grounds of legal practicality, legal security, humanity and protection of individual basic citizens' rights. After heated exchange in the Parliament, the Law on Con-validation was adopted in order to alleviate the war consequences and to accelerate the normalisation of life in the areas of the Republic of Croatia under protection or administration of the United Nations, and to integrate people from that area into the constitutional and legal system of the Republic of Croatia. In order to recognise legal facts and rights based on the acts issued by authorities in the areas under the UN protection or administration the Croatian Parliament adopted the Convalidation Law in 1997. Pursuant to the provisions of that Law, a person with a legal interest could submit a request to the relevant body in order to recognise the acts issued by afore-mentioned authorities

The Law itself was markedly of sub-standardised quality and, as such, could not have been directly implemented. It was left to sub-legal acts to determine, in a detailed and normative manner, rights and commitments stemming from the Law, as well as the procedural provisions.

A total of six months had passed before the implementation sub-legal acts were adopted. The Government of the Republic of Croatia adopted three Decrees⁵⁶ on the implementation of the Law. One Decree is related to the implementation of the Law on Con-validation for the Administrative Scope of Employment, Pension and Disability Insurance, Child Allowance, Social Welfare and Protection of Disabled Persons - Military and Civil War Victims. But even than, many questions remain open, and other sub-legal acts and considerable number of different instructions for the Law implementation were provided.

The implementation of this Decree started on 10 April 1998. A preclusive period of one year was specified for submitting requests for con-validation of documents, which the mentioned Decree referred to. After the expiration of that deadline, i.e. after 10 April 1999, received requests were rejected as untimely.

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VI.1.2. Implementation

During several years, refugees who were retired before the war or got retired under the decision of the authorities in UN zones were exposed to different discriminatory treatment and often to a long lasting administrative procedure in reestablishment of their pension payments. Instead of enforcing the laws, authorised state bodies issued and made operative various sub-legal acts or guidelines of questionable legality and content.

Although, in the last 2-3 years, the obstacles in exercising pension and other social rights significantly decreased, particularly after Croatia signed bilateral treaties on social rights with BiH and Serbia/Monte Negro, some problems have remained unsolved, such as:

- **Validation of Working Service in Areas Under the Protection and Temporary Administration of the UN**

Due to lack of clarity in these acts, many open issues could not be solved and there was a possibility left for authorised administrative bodies to interpret them differently and in an arbitrary manner. Particular problem refers to the recognition of the employment, pensions and social rights acquired because of difficulties in proving that applicants were employed and were making payments to the retirement fund in Kraina, or even to the Croatian Retirement Fund. In addition to valid documentation, such as the employment record card with registered years of service, a confirmation by the competent company or institution with all elements of public document as foreseen by Article 171 of the Law on Administration, a database certificate from the Pension Fund of the former RSK (Republika Srpska Krajina), the certificate of citizenship, personal identification card, registration of residence, as of December 1991, the clients were also requested to submit the following, as well:

- decisions from the former company or institution;
- the health-insurance booklet of the former RSK;
- a copy of the former RSK Health Insurance Institute list;
- a copy of the Registry Book of Employees and similar.

If applicant have not the required documents, Law foresee possibility to prove working service by witnesses, but in practice implementation of this law provision only witnesses who have validated their own employment status can testify that the applicant was employed in the same company.

Regional retirement offices claimed that documents evidencing the payments were destroyed or stolen during the war and most of the requests were rejected after lengthy administrative procedure. However, the same Regional Offices are eager to admit as legally relevant the list of pension instalments between 1991 and 1995 that was found in retirement fund in Kraina, as a ground to deny retroactive payment of pensions for the war time period (see below for more details). Also, many refugees did not even have a chance to submit request for the recognition of social and pension rights and length of service due to one-year deadline set out in the Decree for submission of claims. In that time frame, potential applicants could not meet residence requirement and could not prove their Croatian citizenship. So far, the GoC did not accept NGOs proposals to establish a new deadline.

- **Unpaid pension accruals for the period between 1991 and the date when the beneficiaries applied for reactivation of the pension.**

At the first signs of the looming conflict on August 30, 1991, Croatia stopped all bank transactions and financial transfers, with legal persons in the part of its territory later labelled as so called "Krainia". Annulment of payment of pensions soon followed, and all pensioners in "Krainia" who acquired their pensions before the war on the basis of their payments to Croatian Pension Fund ceased receiving their pensions. The issue affected the retirement insurance rights of almost 47.000 registered pensioners who lived in the above-mentioned territory and it hit the most vulnerable social group. This group of pensioners was exempt from any legal provisions mentioned above. Retirement rights are, according to their character and legal definition "acquired" rights, which are

the result of the obligatory payment of legally determined contributions from the salaries of the insured persons in order to ensure material and social security in the case of old age and disability. Upon their return to Croatia, Pension Fund continued the payments of the pension one month after application was submitted, and at the same time rejected to pay pension accruals⁵⁷ with the argument that they have received the pensions in so called Kraina and that double payment for the same period is not allowed by the law. In most of those cases, the Pension Fond did not prove that they received any pension in Kraina although it was obliged to do so. Furthermore, the Pension Fund refused to provide back-payment not only for the period of existence of so cold Kraina but also for the period the pensioners were residing as a refugees in other countries, although the Law on Convalidation cannot apply to that period.

Possibility of partial expiry of received and not paid pensions was established by the provision of the article 87, item 2 of the valid Law on Retirement Insurance which came into force on January 1, 1999. According to that order, received payments based on pensions and other money instalments, which were not paid due to the circumstances caused by the users, may later on be paid retroactively for a past year. This article replaced previous provision valid until the end of December 1998 under which the unpaid pensions may later on be paid retroactively for the past three years. This amendment to the law coincided exactly with somehow increased return of the refugees and therefore a greater number of retirement requests were received. The goal of this change in law was to restrict and disable payment of the remaining pensions and the responsibility was to be attributed to the beneficiaries of that right, in spite that pensioners in question do not carry any responsibility for failure to establish a contact with the authorised state institutions in the Republic of Croatia.

Latest development

Finally, after several meetings held with officials of the Pension Fund and Ministry of Labour and Social Care within LIG Advocacy project, by mid of 2003, the Administrative Court issued the instruction according to which the unpaid pensions should be paid for one year retroactively from the day of submission of the request for continuation of pension payments. However, problem was just partly resolved because the instruction did not give any right to those pensioners who were already validly rejected (without the right to reopen their request). As it was reported by NGOs some field offices of the Croatian Pension Fund do not even execute court valid rulings for one-year payment.

VII. HEALTH CARE

VII.1. Legal Framework

• Law on Health Care and Law on Health Insurance

In compliance with universal sources of the right to the health care ratified by agreements, national legislation ensues the right to an equal health care as the basic human rights. Health Care regulates the system of health care, promotion, maintenance and return of health. Health care is also partially regulated by the Law on Health Insurance.

Health care is organised on three levels:

- *primary* (general practice, school medicine, emergency medical aid, industrial medicine, hygienic and epidemiological care, dental care, primary protection of women and medical practice),
- *secondary* (specialist and consultation health care and hospital health care) and
- *tertiary* (the most complex forms of health care, scientific-research work, education at faculties of health orientation).

⁵⁷ For more see the article printed in Balkan Human Rights 2003 Year-book pages 140

Health care is set of rights, obligations and responsibilities among its subjects. The state guarantees primary health care through the Croatian Fund for Health Insurance. Those citizens, who want a higher standard in medical treatment, may additionally insure themselves.

Insured persons in compulsory health insurance are always natural persons who are:

- employed;
- beneficiaries of pensions, of the right to professional rehabilitation under condition of permanent residence in the Republic of Croatia, Article 5, Paragraph 1, Item 9 of the Law;
- persons, for whom farming is the only or main occupation;
- unemployed persons according to the employment regulations;
- Croatian defenders from the Homeland War, military and civilian war disabled persons and members of armed forces of the RoC, if they are not insured by other regulations;
- pupils and students attending regular education, persons performing public work, civil service and monitoring service and other persons determined by the Law
- foreigners, which also comprises persons with refugee status as to the Law on Health Care of Foreigners in the Republic of Croatia³⁸.

Persons with expellee or returnee status embrace the previously determined rights from health care and rights to determined financial compensation and assistance, and therefore, those categories have free health care as long as they keep that status (6 months).

Displaced persons and other citizens who do not have obligatory health insurance and who do not have sustentation means, and those who are incapable of independent life and work, have insurance pursuant to the provisions on social welfare, according to their permanent residence.

The Law on Health Care of Foreigners regulates health care of foreigners in the Republic of Croatia. The Law recognises persons, who are considered foreigners, and who have the right to the health care pursuant to that status. This group also includes persons who have refugee status recognised, persons who are in the process of recognition of that status, as well as persons without citizenship. This Law further establishes on persons who are considered foreigners, and who have the right to the health insurance.

VV.1.2. Implementation

Health Care in practice is often restricted since the rights given by the law and financial State budget possibilities are disproportional.

VIII. SOCIAL WELFARE AND SOCIAL CARE

VIII.1. Legal framework

- **Constitution** defined Republic of Croatia as a social state, which accepted the principle of social justice, as well.
- **The special Law on Social Welfare** regulates the right to social welfare. Particular age and other social groups were embraced by special laws, such as the **Law on Child Allowance**, the **Law on Defenders from the Homeland War** etc. Social welfare is conceived on the basic principle that each person is obliged to take care about fulfilment of own living needs, as well as the needs of persons he/she is obliged to support by law. **The Law on Family** establishes on persons who are obliged to support other persons. Therefore, his/her work, income and property oblige everyone, to contribute to elimination, prevention or alleviation of own social jeopardy, as well as of social jeopardy of members of his/her family.

The tasks of this nature are performed in Centres for Social Welfare for persons who need assistance. The Centres are financed from the budget of the Republic of Croatia, and local self-governments and administrations on local level are also the obliged to ensure specified-purpose

³⁸ The Law on Health Care of Foreigners in the Republic of Croatia, NN No. 114/97

funds for the needs of social welfare in the amount of 5% of their income. Those funds have specified purpose and can be used as assistance in settling the expenses of dwelling and other types of social assistance, pursuant to their programmes.

Social supports, pursuant to the Law on Social Welfare, may be:

- *in money* (sustentation assistance, assistance for settling the expenses of dwelling, one-time assistance, allowance for assistance and nursing, personal disability pay and other assistance, such as settling of funeral expenses, heating expenses etc.);
- *in services* (counselling, assistance in overcoming special difficulties (legal and other assistance), assistance and nursing at home, enabling for independent life and work etc.);
- *in kind* (food assistance, assistance in clothes and footwear, one-time assistance, care outside one's own family, etc.);
- *and other stimulating measures* (customs and tax privileges in the areas of special state concern, where persons from the category of forced migrants are mostly located).

Following are different conditions for realisation of rights stemming from social welfare: citizenship, permanent settlement of a foreigner or a person without citizenship, illness, old-age, incapacity, alcohol and drug addiction, socially unacceptable behaviour, death of a family member, birth of a child etc.

Rights on social care for number of different social groups are regulated with set of laws. In these documents the rights of refugees/returnees and IDP-a are in focus.

VIII.1. 2. Implementation

The state provides social care for the forced migrants. The Ministry of Public Works, Reconstruction and Construction takes care about expellees and returnees through the Directorate for Expellees, Returnees and Refugees, by providing them with necessary accommodation, food, assistance in social adaptation and psychosocial assistance, constant financial assistance and assistance in settling necessary living needs.

The Government of the Republic of Croatia, at its thematic session in Knin on 29 March, 2001, adopted, by its conclusion, measures of social care, which also include measures relating to the category of forced migrants. By the adopted Social Programme for Emergency Assistance to the Persons in Need, families of expellees and returnees who constitute an independent household, realise the right to food assistance if their monthly income per family member is under 1,000.00 HRK, as well as subsidy for electricity expenses, if they are entitled to additional monthly financial assistance. Apart from the above-mentioned, in compliance with the Conclusion of the Government of the RoC and according to the interpretation of the Branch Service, an expellee or returnee is also entitled to constant monthly financial assistance in the amount of 150.00 HRK per person, if the income per family member is under 1,000.00 HRK per month, as well as to additional monthly financial assistance in the amount of balance of income per family member up to the amount of basis for realisation of rights on the basis of social welfare of persons who constitute an independent household. Those accommodated in organised accommodation realise the right to constant monthly assistance in the amount of 100.00 HRK per person, if a family has no income. Those measures are already enforced in the field through the Regional Offices for Expellees and Refugees.

Persons validly sentenced for criminal acts as per Article 3, Paragraph 1 of the Law on General Amnesty cannot realise rights to social care, which does not pertain to members of their families. For persons, against whom a valid indictment was raised for criminal acts from the same Law, the realisation of rights is postponed until a court decision has become valid, as regulated by Article 1 of the Law on Amendments to the Law on Status of Expellees and Refugees.

In exercising the rights on social care the main problem is lack of financial means on the one side and big needs on the other, and therefore the payments are often late.

IX. JUSTICE AND JUDICIARY – WAR CRIMES ARRESTS AND TRIALS

IX.1 . Legal framework

- **The Constitution of the Republic of Croatia** in its Articles 14 and 29 (Paragraph 2) stipulated:
 - “All the citizens shall be equal before the law”.
 - “Everyone shall have the right to the independent and fair trial provided by law...”
 - “In the case of suspicion or accusation for a penal offence, the suspected, accused or prosecuted person shall have the right to be informed in detail, and in the language he/she understands, within the shortest possible term, of the nature and reasons for the charges against him/her and of the evidence incriminating him/her”
- **Law on General Amnesty**
 - This law grants the general amnesty from criminal prosecution and proceedings for perpetrators of criminal offences committed during the aggression, armed rebellion or armed conflicts and in connection with the aggression, armed rebellion or armed conflicts in the Republic of Croatia.”
 - “Criminal prosecution and criminal proceedings against perpetrators of criminal offences as stated in article 1 of this law shall not be undertaken.
 - If criminal persecution is undertaken it shall be stopped and if criminal proceedings were commenced, the tribunal shall suspend proceedings ex-officio.
 - If a person, granted amnesty according to paragraph 1 of this article is deprived of his/her freedom, by the decision of the court, the person shall be freed.”

IX.1.2. Implementation

Several thousands of proceedings against Serbs were initiated during or immediately after the conflict. In 1996, The Law on General Amnesty was adopted and in numerous instances where Serbs were originally charged with war crimes, the charge was later reclassified as one subjected to the Amnesty Law. At the same time, the number of cases was reclassified from “armed rebellion” to war crimes or common crimes. Some persons previously convicted of “armed rebellion” and granted amnesty continue to have criminal records. It was not until mid- 2001 that the State Prosecutor ordered a re-opening and modification of inappropriate indictments for war crimes to criminal acts, which are subject to amnesty. Consequently, the Minister of Justice said that more than 21.000 persons were granted amnesty. The information on the lists of persons who were amnestied should have served as re-assurance that there would be no charges pressed against them. In practice, many amnestied individuals have no way of finding out about their status and getting information whether they would be arrested upon their return to Croatia.

Many arrests are based on long-standing indictments after years of inactivity. The scope of proceedings for war crimes since 1991 varies depending upon the sources, but, according to some general observations, final verdicts have been passed against 800 to 900 persons. Procedures are pending against another 1400 to 1500 people and judicial investigation is in the process against another 850 to 900 persons. Many of these proceedings involved criminal allegations against large groups of individuals, (100 or more persons in same cases) which fail to specify an individual defendant’s role in perpetrating of the alleged crime. Therefore, many proceedings were characterised by notion of collective guilt rather than individualised guilt under generally applicable standard of due process. In numerous cases, conviction and lengthy prison sentence, often in absentia, were based on lack of evidence or evidence of questionable quality.

There are many examples that illustrate that Croatian judiciary was not able to avoid strong political influence and that some judges still had difficulties to act professionally.

For example, Gospić County Court found NN, Serb returnee guilty not only for crimes, but also for 500-year history of Serb crimes against Croats, and explicitly criticised the provisions of Government assistance to returned refugees.

The number of arrests on war crimes charges has increased in the last three years and it has been a major deterrent for return of Serb refugees, and consequently for the members of their family. Significant number of arrested persons often does not reach the trial stage at all, because the evidence is lacking. In such case prosecutors drop charges during investigation and release the prisoner. However, some of them are imprisoned for months before being released, and that also has negative impact on those who are willing to return.

Reports on monitoring war-crime trials show disadvantages of defendants of Serb ethnicity at all stages of judicial proceedings, when compared to Croats, and double standards of criminal responsibility are applied based on ethnic affiliation. Serbs are much more likely than Croats to be convicted when put on trial.⁵⁸ It does not mean that equal number of Serbs and Croats should face prosecution, but the figures show that the standards are not equal for all that face war crime charges.

Since half of the Serbs arrested for war crimes in 2002 were recent returnees there is no need to emphasise that the lack of even-handed administration of criminal justice in war crimes cases, continues to be an obstacle to refugee return.

X. RIGHTS OF MINORITIES

Background

It is rather difficult to give an unambiguous overview on the minority rights in Croatia, as the position of specific minorities varies and greatly depends of their historical background, traditional status, organisational level, their numerousness at a specific territory, and public perception of the certain minority. For example, traditional and well-organised Italian minority that has recognisable national identity with the different mother tongue and great support of king-country has different position in comparison with Serbian minority who does not have all this preferences and whose actual position is closely linked to the rights of refugees. Roma population as a minority group with specific problems cannot be observed only in the contexts of the minority rights because they have many other unresolved problems in the society and they deserve special attention.

The position of Serb minority is in a distinct situation in Croatia. Their minority rights need to be observed in the context of the refugee related legal framework and law implementation as it was overviewed in this document. Therefore, only some specific rights guaranteed by the Constitutional Law on the Rights of Minorities will be presented in this chapter. .

After the Croatian State gained its independence, the Serbs lost their status of constitutional nation and suddenly became the national minority. In such situation, the authorities faced the problem of solving the issue of the new minority and creating their rights in a way that could please nationalistic political leaders, Serbian population, and demands of the international community. On the other side, Serbs, as a new minority without any traditions and with rifts, were not able to articulate their minority rights, and to find the optimal balance of two basic goals: protection and preservation of their national identity, on one hand, and elimination of the danger of ghettoisation, on the other hand. Besides, general circumstances in society, war conflict, and strong anti-Serbian

⁵⁸ From the total of 57 Serbs, 47 of them were found guilty, only 3 Croats out of 17 were convicted. For example, in 2002, Serbs represented the vast majority of defendants at all stages of judicial proceedings: 28 of 35 arrested persons; 114 of 131 persons under judicial investigation; 19 of 32 indicated persons; 90 of 115 persons on trial; 47 of 52 convicted persons. This trend has continued in 2003 (Source: OSCE Monitoring Report on War Crimes Proceedings In Croatia)

rhetoric did not leave much space for Serbian minority members to open dialogue with the Government and other social groups on their minority position.

Legislative position of the minority status had undergone changes between 1990 and 2002, and, in the first decade of the last century, has reflected the state policy, aimed towards restriction or denial of minority rights. The majority of provisions of 1991 Constitutional Law on Human Rights and Rights of Minorities, which was the precondition for Croatia's international recognition as an independent state, in 1995, were "temporarily" suspended. This act has been justified by the fact that the great part of Serbian population has left Croatia, and that the legal regulation of their minority rights would be possible only after the population census foreseen to be held in 2001 takes place.

After democratic changes in 2000, the Law has been amended and some suspended provisions were re-introduced, but majority of provisions related to the rights of Serbs were repealed. Finally, after several years of putting off its international obligations and long-lasting political disputes, under the pressure of international organisations and minority groups, it was only at the end of 2002 that the Croatian Parliament passed the Constitutional Law on the Rights of National Minorities. With that law, and previously adopted ones, as well as with ratified international documents (in particular Framework Convention, the Law on Use of Minority Languages and Script, Law on Education, adopted in 2000, and the Amendments of Election Legislature in 2003), Croatia reached important level of normative protection of minority rights. However, positive legislature is just a legal prerequisite for the enforcement of the rights contained in it. Only the full practical enforcement of all laws, which visibly lags behind legislative solutions, and efficiency of institutions protecting those rights will legitimise Croatia as a state that treats its minorities in compliance with the European standards.

The census in the Republic of Croatia was conducted in 2001. However, official census results were published one year later, in 2002 for some political reasons. Persons who spent over one year abroad were not registered by the 2001 census and thus more than 200.000 Serb refugees are not considered in official statistic as a Croatian population, although according to the official data since that time about 60.000 Serb refugees have returned.

Results from the 2001 census confirmed earlier speculations on the changes of the ethnic structure of the population in the Republic of Croatia in comparison to the results of the 1991 census.

According to 2001 population census, the portion of national minorities in Croatia, when compared with 1991 census, dropped from 21% to 7.47 in the total number of 4,437,460 inhabitants of Croatia. The largest decrease was noted for Serbian national minority. Compared to the 1991 census results, the number of Serbs dropped from 581.663 to 201,631 or from 12,02 percent to 4.5 per cent.⁵⁹ Such decrease of Serbian minority population was the result of the policy led by the government that took power in 1990, followed with various restrictions of legal framework and lack of the appropriate measures regarding the return of refugees after the political changes in 2000.

Furthermore, in the beginning of 90s and during the population census, many persons belonging to Serbian minority, despite their subjective will, declared to be the members of the majority population or undecided, thinking that they would in such a way avoid troubles that Serbian minority faces since 1990. Partly, that was the cause for "disappearance" of total of 400.000 Serbian minority members⁶⁰. The Constitutional Law guarantees the right to free choice of belonging to the national minority and the state bodies enforcing this law do not, by any means,

⁵⁹ Source: The Republic Bureau of Statistic

⁶⁰ For example, in Split only one citizen declared to be Serb although more realistic estimate could be made seeing full Orthodox Church during the services on the occasion of large religious festivities.

question it. However, the Government, despite some efforts to improve the position of Serbian national minority in Croatia, failed to create a political climate leading to inter-ethnic tolerance. It has never genuinely attempted to build a public atmosphere in which Croatian population would, at least, accept that national minorities do not threaten the rights of the majority. Also, the Government did not react to nationalistic and chauvinistic statements given by politicians who expressed unacceptable attitudes considering Serb's right to return⁶¹. There is still too much anti-Serbian rhetoric and lot of stereotypes and prejudices regarding this minority. The recent researches have shown significant social distance between Croats and the persons belonging to the minorities, which in the future might affect their free expression of national affiliation or even the "voluntary" assimilation.

Such an immense reduction of one national minority, to a third of its pre-war number, would require demographic analysis, rather than repeating untenable "official" statement that Serbs left the country on voluntarily bases by own choice.

X.1. Legal framework

• Constitutional Law on the Rights of National minorities

As it is stipulated in the Article 7 of the Law, the Republic of Croatia shall ensure the exercise of special rights and freedoms of members of national minorities which they enjoy individually or together with other persons belonging to the same national minority, and together with members of other national minorities when it is stipulated by this Constitutional Law or a special law, in particular:

1. the use of their language and script, privately and in public and official use;
2. education in the language and script which they use;
3. the use of their signs and symbols;
4. cultural autonomy by way of preservation, development and expression of one's own culture and the preservation and protection of one's cultural assets and tradition;
5. the right to confess one's religion and to establish religious communities together with other members of that religion;
6. access to the media and the performance of activities of public information (receiving and forwarding information) in the language and script which they use;
7. self-organising and association for the purpose of exercising mutual interests;
8. representation in the representative bodies at the state and local level, and in administrative and judicial bodies;
9. participation of members of national minorities in the public life and in management of local affairs through the councils and through representatives of national minorities;
- 8.** protection from any activity which endangers or may endanger their existence, the exercise of rights and freedoms.

Furthermore according to the Article 9 of CLNM:

(1) Members of national minorities shall have the right to use their surname and name in a language which they use, and to its official recognition for them and their children through the entry into registers of births, marriages and deaths and other official documents, in compliance with the regulations of the Republic of Croatia.

(2) Members of national minorities shall have the right to have the form for the personal identification card printed and filled out also in the language and script, which they use.

X.1.2. Implementation

⁶¹ A weakly review financed by the Government has published appeal by Ivo Rojnica, known as creator of racist laws in Independent State of Croatia during the World War II, demanding that Croatian Government should expel all Serbs who settled in Croatia in the period from 1918 to 2000. The same review is continuously publishing articles with nationalistic content.

So far, no significant steps have been taken yet towards the implementations of most of the rights given to the minorities by the laws. It particularly refers to:

- Proportional representation of the minorities in the judiciary, state administration and public service organisations.
- Access to legal profession (barristers) mostly, but not exclusively, for those who served in so called “Kraina”. Bar Association in several cases denied membership to Serbs and based such decisions on the lack of dignity to practice the law. In one case, the Constitutional Court invalidated, for the second time, a decision with such an explanation but Bar Chamber persists on own decision.
- Different treatment of former employees of so called Kraina companies in relation to their working rights. The employment of Serbs who remained on the occupied territory was terminated without the rights that were recognised to the Croat employees;

Right on employment

Discrimination in employment of minorities, Serbs and Roma in particular, continues to be a serious problem. Because of extremely difficult situation in the economy of the country and relatively high unemployment rate, especially in former conflict areas, it is, sometimes, hard to prove discrimination. All the more so considering also the high unemployment rate among the majority, ethnic Croat population. Around 2.000 ethnic Serbs returned to wider Korenica and Plitvice areas and only a few of them manage to get jobs there.⁶² There are no Serbs employed in the police and the court in Vojnic, although Serb returnees outnumbered local Croats and Croat settlers by 3,500 to 2,500.⁶³ “Judicial vacancies have remained unfilled in some instances in which Serbs were the only candidates considered by the State Judicial Council (for example in Dvor, Gvozd, Vojnic and Hrvatska Kostajnica)”⁶⁴, and in similar cases (where the only candidates for the jobs were ethnic Serbs), the employers decided to annul the announcements rather than to hire competent Serb applicants. Governmental statistics show that, in 2003, one year upon the adoption of the Constitutional Law on the Rights of National Minorities which guarantees proportional minority representation in state administration and judiciary, 66 judges were hired. 65 of them were ethnic Croats (there were no ethnic Serbs among them), and 23 State Attorneys, all ethnic Croats.⁶⁵ Field research conducted by Serbian Democratic Forum turned out that in many counties the proportional representation has not been reached yet.

Preservation and development of cultural identity

The Republic of Croatia, through the implementation of the Constitutional Law on the Rights of National Minorities, special laws and international agreements (possibility to regulate certain rights), and statutes of local and regional self-governments, improved and created formal preconditions essential for persons belonging to minorities in order to preserve and develop their culture and preserve important characteristics of their identity such as religion, language, tradition and cultural heritage as well as conditions for protection of persons belonging to national minorities from violent assimilation.

In the period 2000 – 2003, the Republic of Croatia ensured 73.534.076 HRK from its budget for different programs of the minority associations and institutions working in the Republic of Croatia whose members are, exclusively, persons belonging to minorities.⁶⁶ In 2004, different programs of the associations and institutions were supported by 22.000.000 HRK or 10% more comparing the

⁶²Human Rights Watch: Broken Promises – Impediments to Refugee Return to the Republic of Croatia, September 2003, page 55, data by Serbian Democratic Forum Field Office in Korenica

⁶³Human Rights Watch: Broken Promises – Impediments to Refugee Return to the Republic of Croatia, September 2003, page 55, data by Serbian Democratic Forum Field Office in Gracac

⁶⁴ OSCE, Status Report 12, July 2003, page 13

⁶⁵ Country Report on Human Rights Practices -US Bureau of Democracy, Human Rights and Labour, Report on Human Rights in Croatia in 2003, February 2004

⁶⁶ The Report of the Republic of Croatia on the Implementation of the Framework Convention on Protection of National Minorities, March 2004, page 18

amount spent in 2003 (20.000.000). In accordance with the decision by the Council, Serbian national minority was approved 5.753.400 HRK. For different national minorities' needs, 15.000 HRK were approved for the work of the council for national minorities, 154.400 HRK for co-financing of the radio programs at regional and local levels aimed to provide relevant information to persons belonging to minorities in the respective languages, 100.000 HRK for the training of the members of the councils and the representatives of national minorities and 50.000 for the training seminar for young Roma while the undistributed funds (current reserve) is about 50.000 HRK.⁶⁷ While other minority can enjoy their rights, initiatives of Serb minority regarding preservation of their identity often become political topic and such initiatives are not welcomed.

Building inter-ethnic tolerance

-Authorities, especially those at the national level, in principle, compared to the past periods, through their actions and publicly expressed opinions, were advocating the spirit of interethnic tolerance and interethnic dialogue and co-operation. However, the creation of social climate and inter-ethnic tolerance should be based on systematic and continued efforts of the GoC, and all segments of society as well. Although somewhat reduced, ethnically motivated incidents continued to appear in the war affected areas and elsewhere. The work of the police and other state and local self-government bodies was criticised since particular incidents were not qualified as crimes but merely as misdemeanours. The Law on Media prohibits transmission of media programs encouraging or magnifying ethnic, racial, religious, sexual or any other inequality as well as ideological and state products created on such basis that may cause ethnic, racial, religious, sexual or other animosities and encourage violence and war. According to the OSCE, the Croatian Television (HTV) still does not devote enough attention to important, past war issues such as refugee return and respect of human and minority rights. Although the hate speech is no longer an active sign of the HRT reporting, it continues to be tolerated by some TV news reporters and moderators.

Exercising of religious rights

According to data by Central State Register Office for Administration, 31 religious communities were registered in Croatia although the process is not finished yet.⁶⁸ There is no official state religion; however, the Roman Catholics are the majority, almost 90% of population. The Law on Legal Position of Religious Communities that was adopted in 2002 regulates their legal position, exercise of the right to financial support from the state budget, education at schools and similar rights. It is required to sign separate agreements with the Government in order to enable exercise of any other right. "...The Government has taken actions to eliminate religious discrimination, its approach is to negotiate with individual religious communities based on common framework rather than setting uniform, no-discriminatory standards and practices."⁶⁹ The Government, besides earlier agreement between the state and the Roman Catholic Church, signed agreements with Serbian Orthodox Church and the Islamic community in 2002, and several other agreements with different, mostly Protestant, churches. Jewish community is willing to do the same as soon as the problem over repossession of one building in Zagreb is solved. Adoption of the Law and signing the agreements were significant steps in equalising the position and rights of religious communities in accordance with own needs. Minority religion representatives expressed their satisfaction with communication and co-operation with the Government.⁷⁰ - Roman Catholic Church and the state-run Croatian State Radio and Television signed an agreement on media coverage of relevant events, as many as 10 hours per month. Other religious communities receive approximately 10

⁶⁷ Official Gazette "Narodne novine" no. 57/2004

⁶⁸ The Report of the Republic of Croatia on the Implementation of the Framework Convention on Protection of National Minorities, March 2004, page 29

⁶⁹ Croatia, International Religious Freedom Report 2003 - US Bureau of Democracy, Human Rights and Labour, December 18, 2003, www.state.gov

⁷⁰ Croatia, International Religious Freedom Report 2003 - US Bureau of Democracy, Human Rights and Labour, December 18, 2003, www.state.gov

minutes broadcast time per month or less. Topics of interest to major non-Catholic religious groups are covered regularly on weekly religious programming on HRT.⁷¹ Catholic, Islamic and Serbian Orthodox marriages are officially recognised by the State. Restitution of property nationalised or confiscated by the Yugoslav Communist regime remains slow and is a common problem of all religious communities whose properties were nationalised or confiscated. Roman Catholic Church signed the agreement with the Government regulating restitution of all seized properties while other religious communities have no such agreement and the law regulates their rights, exclusively. Some believe that the slowness in restitution of properties seized from the Serbian Orthodox Church may be result of a slow judicial system rather than a systematic effort to deny restitution of Orthodox properties.⁷²

It could be concluded that the situation is much better when compared with the previous period, especially normatively and institutionally, but also in overall social and political climate. The incumbent authorities, particularly the Government of the Republic of Croatia, display positive attitude towards minorities, sending encouraging messages. Although the previous government greatly contributed to the democratisation of the society after 2000 elections, it failed to send such a clear signal of the profound breakthrough in their minority policy.

In order to improve minority's rights, in December 2003, the new Government signed an agreement with the representative of Serb minority and, at the end of 2004, the Agreement between the RoC and S&MN on National Minorities has been signed. In Danube region, some important provisions of the Erdut agreement and the Government's Letter of Intent have been implemented. Obviously, the efforts in recognition of the rights of Serb minority are developing in the right direction. However, the proclaimed policies still have not produced convincing results in many areas important for the position of Serb minority. Therefore, the State still needs to make additional efforts to integrate the Serb community into Croatian society at all levels. Also Serb community shall act in same direction.

Roma minority

The Roma population officially accounts for 0.21 % of the population (9,463 persons, according to the 2001 census). However, their estimated number is significantly higher (30,000 to 40,000) as Roma often declare themselves as members of the majority group or do not register. Most Roma are not integrated into Croatian society and suffer discrimination in all fields of public life such as access to employment, health and political representation. Roma face many obstacles, including language (many, particularly women, had only limited Croatian language skills), lack of education, lack of citizenship and identity documents, high unemployment, and widespread societal discrimination. Roma NGOs estimated that 25 percent of Roma do not have citizenship documents and thus cannot obtain papers necessary to acquire social benefits, employment, voting rights, and property resolution. In October 2004, the Government adopted a National Program for Roma that was developed during the year with significant input from both international and local NGOs. The program identifies educational, health, social, and employment measures that, if taken, would help the Roma to integrate better into the social and political life; however, at year's end, the program have not been implemented and questions remained about the Government's willingness to address Roma issues.

Roma children faced serious obstacles in continuing their education, including discrimination in schools and a lack of family support. An estimated 10 percent of Croatian Roma children begin primary school, and only approximately 10 percent of them go on to secondary school.

⁷¹ Croatia, International Religious Freedom Report 2003 - US Bureau of Democracy, Human Rights and Labour, December 18, 2003, www.state.gov

⁷² Croatia, International Religious Freedom Report 2003 - US Bureau of Democracy, Human Rights and Labour, December 18, 2003, www.state.gov

International and local NGOs remained concerned about the practice of holding separate classes (allegedly of lower quality) for Roma students in northern Croatia. A National Strategy for Roma has not been adopted yet.

The attitude of actual Government in the minority policies should be evaluated in the context of the fulfilment of the conditions essential for realisation of the primary goals of the new Government. Top of their political priorities was the issue of opening new paths for Croatian accession to the European Union and getting the status of the Candidate State. On that path, Croatia has to satisfy certain criteria, among which were the protection of minorities and return of refugees.

CONCLUSIONS AND RECOMANDATION

Despite apparent changes in political climate and progress in areas vital to democratic credentials, the Government's statements about willingness to address the remaining obstacles to the return of Serb minority did not turn to the concrete actions.

Regarding remained impediments to return and access to rights it is needed:

- To accelerate the repossession of residential units.
- Stop favouring temporary occupants.
- To resolve the repossession of other property (farming land, business premises).
- Expedited procedure in Courts should be used in cases of repossession of property.
- Alternative housing could not be provided for temporary occupants who own/co-own property in Croatia or in other former FRY successors states.
- Temporary occupant who refuse offered alternative (permanent or temporary) accommodation should be evicted.
- In case when property is looted State prosecutors should prosecute temporary occupants. To the owners of repossessed but looted property MMTTD will provide organized repair assistance, or cash payment.
- The legislation relating to damages caused by terrorist act or act committed by Croatian army and police need to be reconsider and the provisions that retroactively eliminates damages suits lodged by property owners against state has to be removed.
- Urgently change current legislation and stop courts' practice in cases of seeking the compensation for the investment of temporary occupant.
- To established new deadline for submitting request for validation of the working service in so called Republika Srpska Kraina. To speed up already submitted requests relax the requirements for proving employment status.
- To revise the legislation on the housing for former OTR holders, taking into consideration legal aspect of the termination of tenancy rights as to established equal rights for all Croatian citizens/residents who use to be T/OR holders until Law on Lease of Apartments came into force.
- Charges for war crimes have to be based on credible evidence and thus change the practice of detention of Serb returnees when such evidence is lacking.

SOURCES:**OFICIAL GAZETTE (Narodne novine)****CONSTITUTIONAL COURT DECISION****OSCE MISION TO CROATIA - STATUS REPORTS****MINISTRY FOR MARITIME AFFAIRS, TURISM, TRAFIC AND DEVELOPENT****SERBIAN DEMOCRATIC FORUM - FIELD OFFICES' REPORTS****STATE BUIRO FOR STAISTIC****HUMAN RIGHTS WACH – REPORTS****U.S STATE DEPARTMENT BUREAU OF DEMOCRACY, HUMAN RIGHT AND
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