

Serb Refugees: Forgotten by Croatia?

Deprivation of acquired rights for former tenancy rights holders as the key impediment to securing durable solutions for refugees from Croatia in Serbia and across the territory of the former Yugoslavia.

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Executive Summary

The refugee situation of the early 1990's in the former Socialist Federal Republic of Yugoslavia (SFRY) was one of the most serious post-World War II crises in Europe. Nearly 15 years following the conflict, the plight of some 97,000 refugees forced to flee their homes in present-day Croatia and Bosnia and Herzegovina remains unresolved. For the approximately 70,000 ethnic Serb refugees from Croatia, the chief impediment to securing durable solutions is Croatia's unwillingness to recognize their acquired rights as former tenancy rights holders.

In 2005, Bosnia and Herzegovina, Croatia, and Serbia signed the Sarajevo Declaration in an effort to resolve the refugee situation in the region by 2006. Though the Declaration called for the creation of political and legal conditions necessary to secure durable solutions for refugees, this has not yet come to bear. The major stumbling block in the negotiations has been the deprivation of acquired rights for mainly Serb former tenancy rights holders expelled from their homes in Croatia during the conflict. The government of Croatia revoked these rights when the conflict came to a close in 1995.

In this report, we focus on the most pressing unresolved issues of the refugee problem in the region -- the deprivation of acquired rights granted by previously established legal principles of tenancy rights and the status of specially protected lessees of socially owned flats.

The Constitution of the former SFRY defined tenancy rights as family, social and property-related rights. The Constitution stipulated that tenancy rights holders, who enjoyed the status of specially protected lessees of socially owned flats, could lose their status in the event of an unjustified absence from their flat of more than six months. Although the law stipulated that the main justification of tenancy right termination was absence from the flat for a period exceeding six months, the selective and discriminatory implementation of the law against Croatian citizens of Serb ethnicity has caused them to remain without access to their flats.

The OSCE estimates that approximately 100,000 individuals, mostly ethnic Serb refugees and displaced persons hailing from urban areas in Croatia, were deprived their tenancy rights from 1991 to 1995. In a majority of cases, tenancy rights terminations occurred without the presence of tenancy right holders. After the dissolution of the SFRY and the end of the war, the Republic of Croatia eventually abolished the principle of tenancy rights in 1996.

Today, there is little evidence that Croatian authorities are inclined to resolve the problems of former tenancy rights holders or to recognise property acquired rights outright.

Under pressure from the international community, the Republic of Croatia in 2000 developed two housing programmes to accommodate a subset of former tenancy rights holders; one is specific to the accommodation of former tenancy rights holders inside the

areas of special state concern, or war-affected area, while the second entails former tenancy rights owners outside the areas of special state concern. The latter aims to provide accommodation, i.e. state-owned housing units, to those refugees who are tenancy rights holders and to the members of their households who wish to return and settle permanently in Croatia.

At best, the programmes are more akin to a humanitarian effort and address neither the legal aspects of tenancy rights termination for former holders nor the issue of recognition of acquired rights to privatise flats under favourable conditions. Since official data on former tenancy rights holders, the ethnic background of beneficiaries, or their previous status is unavailable, it is difficult to ascertain to what extent the implementation of the housing care programmes have contributed to the return of refugees to Croatia.

A majority of terminated tenancy rights cases are specific to housing care for former tenancy rights holders outside the areas of special state concern. Request for housing care in these areas, which tend to be more urban and developed, are resolved in a much less favourable manner than cases related to housing care inside the more rural areas of special state concern. The deadline for filing requests for housing care outside of the areas of special state concern expired on September 30, 2005. No deadline exists for requests for housing care inside the areas of special state concern.

The implementation of the housing care programme can best be described as opaque, unpredictable, discriminatory and subject to arbitrary rule. The practice of housing care offers no guarantee that the applicant will be awarded a flat, and even if they are, it may not necessarily be their original former residence. Moreover, housing care programme beneficiaries cannot repurchase the flat under the conditions other tenancy rights holders in Croatia enjoy.

Presuming that housing care is only intended for refugees who have chosen to return to Croatia and who have not had rights to another flat or house within the former SFRY, we can conclude that refugees who have opted not to return remain permanently deprived of the opportunity to access their rights to housing on the basis of their former tenancy right.

Croatia made the first serious attempt to address the deficiencies in the housing care program for former tenancy rights holders in 2008, following the initiation of Croatia's negotiations regarding human rights with the European Commission. Although official data is not yet publicly available, unofficial data indicates that former tenancy rights holders were awarded a total of approximately 6,200 flats, of which approximately 860 were located inside the areas of special state concern, predominately the interior war-torn regions of Croatia.

Despite the revised 2008 housing care program, the Republic of Croatia passed in 2008 The Law on Areas of Special State Concern, which requires far more stringent conditions to access the rights to housing care within the areas of special state concern than the previous legal framework. New restrictions stipulate that individuals who have met the conditions for the realisation of the right to housing care under the previous law can no

longer realize this right. Based on its provisions, we consider the new law to be discriminatory toward refugee former tenancy rights holders as compared to other categories of housing care beneficiaries

Since the end of conflict in 1995, Croatia's policy toward Serb refugees has been the most prominent obstacle to resolving the refugee issue in the region. A number of conditions for sustainable return remain unfulfilled. Former tenancy rights holders of Serb ethnicity do not have the right to return to the homes where they resided prior to the conflict. Moreover, they do not enjoy the acquired right to purchase a flat under the favourable conditions offered to other tenancy rights holders and non-tenancy rights holders alike. Most significantly, they have not been justly compensated for the homes they lost. By contrast, we want to emphasize that property restitution in Bosnia and Herzegovina, including private houses and flats for tenancy rights holders, has been successful in 99.8% of cases.

There is however new hope that the United Nations Human Rights Council will reconsider the former tenancy rights holder issue. The Council recently examined a case related to the loss of an acquired tenancy right on the pretence of a human rights violation, a viewpoint that Croatian institutions and local courts have chosen to ignore. Regardless of the final outcome of the case, the international community cannot turn a blind eye to the longstanding problems of former tenancy rights holders, refugees and exiled persons from Croatia.

Physical return or permanent settlement in Croatia must not be a condition for either the recognition of acquired rights or compensation for former tenancy rights holders. The right to just compensation is one of the prerequisites that refugees must have as they decide whether to return to their country of origin or integrate locally.

The European Union along with other members of the international community must leverage its authority to convince the government of Croatia to resolve the issues of former tenancy rights holders, refugees and displaced persons. Doing so will adhere to both the international legal framework and the international obligations undertaken by Croatia. A just solution for former tenancy rights holders is critical not only to the permanent resolution of the refugee issue in the region but also to fostering reconciliation and establishing long-term stability and cooperation between the countries in the region.

Introduction	1
1. Deprivation of Acquired Rights of Refugees/Former Tenancy Rights Holders	3
2. Housing Care: Return and Housing Accommodation Programmes Created by Croatia for a Subset of Refugees/Former Tenancy Rights Holders	7
3. Differences in Programmes and the Rights of Former Tenancy Rights Holders	9
4. The New Law on Areas of Special State Concern	10
Conclusion	11

Introduction

The refugee situation of the early 1990's in the former Socialist Federal Republic of Yugoslavia (SFRY) was one of the most serious post-World War II crises in Europe. Nearly 15 years following the conflict, the plight of thousands of refugees forced to flee their homes in present-day Croatia and Bosnia and Herzegovina remains unresolved.

In 1996, Serbia had 540,000 registered refugees, 300,000 of whom were from Croatia. Though the overall number has since decreased as a result of return to the country of origin, integration in Serbia and resettlement to a third country, there is still a great deal of work to be done. According to 2008 data, there were 97,000 registered refugees in Serbia; 70,000 were from Croatia and 27,000 were from Bosnia and Herzegovina. For these remaining refugees who seek durable solutions, life continues in limbo. With the help of the government of Serbia, international donors and their own efforts to persevere, some have managed to integrate into Serbia to some degree.

The United Nations Refugee Agency (UNHCR) in 2008 named Serbia one of its five focus countries with a protracted refugee situation. The initiative is an effort by the Agency to resolve the situation of refugees in select countries and to improve the quality of life for populations that have lived in exile for an extended period of time.¹

In 2005, Bosnia and Herzegovina, Croatia, and Serbia signed the Sarajevo Declaration to resolve the refugee situation in the region. The effort was carried out in partnership with UNHCR, the Organization for Security and Cooperation in Europe (OSCE) and the European Union. The Declaration was an expression of political will by the signatories to resolve the refugee caseload in the former Yugoslavia by allowing refugees to either integrate or to return.

Though the process of creating the necessary political and legal conditions to implement the principles adopted by the Declaration was to have been completed in 2006, it has not yet come to bear. The stumbling block has been the deprivation of acquired rights to mainly Serb former tenancy rights holders expelled from their homes in Croatia during the conflict. This right was revoked when the conflict came to a close in 1995.

In a letter to state authorities in Bosnia and Herzegovina, Croatia and Serbia, the OSCE, UNHCR and the European Commission expressed concerns that the "political consensus on adequate redress mechanisms among the governments had not yet been reached". The letter cited "finding a comprehensive and just solution for terminated occupancy and tenancy rights holders" as the most critical open issue.²

¹ UNHCR, *Protracted Refugee Situations: Revisiting the Problem*, EC/59/SC/CRP.13, June 2008 (According UNHCR countries with protracted refugee situations include: Afghan refugees in the Islamic Republic of Iran and Pakistan, Rohingya refugees in Bangladesh, Bosnian and Croatian refugees in Serbia, Burundian refugees in the United Republic of Tanzania and Eritrean refugees in eastern Sudan)

² Letter signed by heads of OSCE Missions, UNHCR Offices, EC Delegations in Bosnia and Herzegovina Croatia and Serbia, 9-207/75.

Despite considerable progress by Croatia toward European Union accession, the country has yet to recognize the acquired rights of ethnic Serb refugees and exiled individuals who once resided within its borders. The European Commission recently pointed out that “further efforts are needed to resolve the outstanding issues, in particular how to deal with compensation claims of those who lost occupancy and tenancy rights (OTRs) in Croatia”.³

In an effort improve its image within the international community, Croatia has publicly stated its intention to protect the human rights of all its citizens and to ensure the unhindered and sustainable return of Serbian refugees and expellees. These public affirmations however have garnered few concrete actions. In a 2007 paper on minority return, UNCHR reported that 44% to 50% of registered returnees do not permanently reside in the Republic of Croatia.⁴

The policy of the Republic of Croatia toward displaced persons of Serbian origin is evident if we look at the official position of the Croatian Parliament. It states that that the mainly ethnic Serb owners of empty houses and flats left their properties voluntarily in order to join the ‘Great Serbian aggressor’. In fact, the Croatian government used the properties to accommodate large numbers of mostly ethnic Croat exiles and refugees.⁵ This transfer of collective guilt to a specific ethnic group has negatively impacted minority return to Croatia and has contributed to the deprivation of rights to former tenancy rights holders.⁶

Croatian authorities have only recently undertaken measures to prosecute the Croatian military and paramilitary for crimes committed against ethnic Serbs in Croatia during the conflict. Despite the fact that a number of cases involving wartime atrocities have been successfully tried in courts at the local level, this has not contributed to broader changes in the official policy toward expelled Serbs.

Furthermore, there are a number of individuals working inside administrative and legislative bodies in Croatia who for political or quasi-legal reasons, have obstructed the minority return process and have denied Serb refugees and expellees their acquired rights.

Although a number of issues remain outstanding, we focus on the most pressing -- the deprivation of acquired rights granted by previously established legal principles of tenancy rights and the status of specially protected lessees of socially owned flats.

³ European Commission, Croatia Progress Report, 2008.

⁴ UNHCR: Sustainability of Minority Return in Croatia, 2007

⁵ True interpretation of Article 14 of the Law on the Status of Expellees and Refugees (Official Gazette, No.96/93 and 39/95) of the Assembly of the Croatian Parliament of March 12, 1999.

⁶ Lj.Mikić, Republic of Croatia: Refugees and Displaced, Former Tenancy Rights Holders – review on the access to acquired rights and housing care of minority returnees in 2008, Centre for Peace, Legal Advice and Psychosocial Assistance – Vukovar and the Coalition for the Promotion and Protection of Minority Rights, October 2008.

1. Deprivation of Acquired Rights of Refugees/Formal Tenancy Rights Holders

The Constitution of the former SFRY defines tenancy rights as family, social and property-related rights. The legal mechanism for acquiring tenancy rights of socially owned flats during the Yugoslav era was via a contract between the tenancy right holder and the relevant public fund. The Constitution stipulated that tenancy rights holders could privatize their flats under favourable conditions. Thus, tenancy rights holders had the status of specially protected lessees of socially owned flats. Tenancy rights holders, as outlined in the Constitution, could lose their status in the event of an unjustified absence from their flat of more than six months.

The OSCE estimates that approximately 100,000 individuals were deprived their tenancy rights from 1991 to 1995. Almost all were ethnic Serbs, refugees and displaced persons hailing from urban areas in Croatia.⁷

The total number of cases of tenancy rights terminations is estimated to be 29,800⁸. Of this caseload, 23,800 were terminated by courts in the territories outside of the Areas of Special State Concern (ASSC) controlled by Croatian authorities during the conflicts of the nineties. The remaining 6,000 cases were terminated by law⁹ inside the ASSC, which 1995, was territory controlled by local Serbs. In a majority of cases, tenancy rights terminations occurred without the presence of tenancy right holders.

The principle of tenancy rights in the Republic of Croatia was abolished in 1996¹⁰. Because Croatian legislation no longer recognizes this principle, it is more appropriate to address the issue of the deprivation of acquired rights derived from tenancy rights than the need to restore acquired tenancy rights to former tenancy rights owners.

Acquired rights allow users to repurchase or privatise socially owned flats under favourable conditions and at rates that are considerably below market price. Individuals who entered the flats of ethnic Serbs who were forcibly evicted during the conflict invoked these rights. In some cases, flats were privatized even before the court revoked tenancy rights of owners who were absent from their flats for over six months.

The Case of Tenancy Right Holder V.G.

V.G. worked as a medical technician for the former Military Hospital in Split, Croatia until his retirement in 1989. In 1963, he signed a user agreement with the Split Construction Company and moved his family to a flat on 15 Domovinskog Rata Street, formerly 19 Žrtava Fašizma Street. Several months later and in

⁷ OSCE Mission to the Republic of Croatia, Options for Housing Care for Former Tenancy Rights Holders, April 2005.

⁸ Source: Ministry of Justice of the Republic of Croatia, from the UNHCR Representation in the Republic of Croatia – Summary Statistics on Refugee / Return and Reintegration, January 1, 2008.

⁹ Since they had not returned to the abandoned flats within 90 days from the date the Law on Lease of Flats in the Liberated Territory came into effect, i.e. September 27, 1995, Official Gazette No.73/95.

¹⁰ When the Law on Lease of Flats came into effect, Official Gazette No.91/96.

compliance with the legal regulations at time, V.G. signed a new agreement with the Yugoslav People's Army's (JNA) Housing Fund Management Agency. The agreement was based upon a prior decision to award the flat of the former Military Housing Fund to JNA Garnizon in Split. V.G. invoked his tenancy right without interruption and in accordance with the law until March 25, 1993.

In September 1991, V.G. was arrested and imprisoned in Bilice under false allegations that he was part of an association that engaged in hostile activities (from Article 242, para.1, related to Article 230, 231 and 232 of the former Criminal Code of RC). Under pressure from the Peace Mission in the Republic of Croatia, the investigating judge in Split's District Court released V.G. from custody to await trial (Decision No: Kio-110/91 of November 2, 1991). The decision was carried out with the consent of Split's District Prosecutor and as part of a prisoner exchange program. In 1996, the Military Court in Split ruled that the investigation proceedings against V.G. be terminated (No: Kio-32/96 of March 21, 1996).

V.G. was rearrested in March 25, 1993 and held at the *Lora* military facility in Split. Amnesty International and UNHCR eventually intervened to secure his release though he received strict orders from the military and civil police not to approach his flat under that pretence that his private collection of rare books had to be "inspected and verified". In 1979, Zagreb University's Library had deemed V.G.'s collection of approximately 4,600 books especially valuable.

Authorities then denied V.G. access to his apartment. His personal belongings, including a book, coin and map collection, pictures, furniture, clothing and footwear were subsequently stolen from the flat. On a number of occasions, military and police officers pressed him to partake in a prisoner exchange program. V.G. refused, attesting he was neither a war prisoner nor guilty of any charges.

UNHCR's office in Split deemed V.G.'s case "a drastic violation of human rights". Croatia's military and police deprived V.G. of all rights, including his right to a home, pension and health insurance. Furthermore, he was intimidated, mistreated and pressed to "trade places" with war prisoners. Stripped of the rights outlined in Croatia's Constitution and fearing for his personal safety, on June 25, 1993 V.G. asked police authorities in Dubrovnik permission to leave Croatia. He was escorted to Belgrade under the protection of several international humanitarian organisations.

Once relations between the Republic of Serbia and the Republic of Croatia normalized, V.G. petitioned Croatia's Ministry of Defence for his flat. He received a note from the Ministry's Sector for Economy, Department of Housing Affairs (class: 371-01/94-01/43, No: 512M3-030301-99-13 of November 04, 1999, which V.G. received on May 24, 2001) stating his request had been denied because his tenancy right had been terminated by the legally binding adjudication of the Municipal Court in Split (No: P-1893/94 of December 21, 1994).

Since he was not present during the adjudications, V.G. was assigned a provisional

administrator to “protect his rights and interests”.

In the meantime, the Defence Ministry’s Department of Housing Affairs in Split (class: 371-01/94-01/43, No: 512M3-030301-99-13 of February 21, 2000) informed the Department on Housing Activities in Zagreb that V.G.’s flat had been occupied by S.Š. and his family since 1993. S.Š. asserted he received permission to use the flat by the Ministry’s Housing Committee on June 10, 1994. S.Š. claimed the flat was empty when he moved in.

On August 10, 2000, V.G. filed a complaint with the Municipal Court in Zagreb against the Republic of Croatia, the Ministry of Defence and S.Š. from Split requesting repossession of the flat. The court rejected the complaint outright. (Adjudication No: II-Ps-967/00 of July 16, 2008).

Despite the fact that the law stipulates that the main justification of tenancy right termination is absence from the flat for a period exceeding six months, the selective and discriminatory implementation of the law against Croatian citizens of Serb ethnicity caused them to remain without the right to access to their flats. Furthermore, the legal procedure with respect to the appointment of legal representatives was has not been upheld.

Court proceedings for tenancy rights terminations have largely been initiated and carried out without the presence of the tenancy rights holder. Ignoring the Law on Civil Procedure, the courts have appointed a provisional administrator for special cases instead of a temporary representative, normally from the Family Law Institute, to represent the interests of the tenancy rights holder.

In many cases, these appointed administrators have failed to present evidence or to invoke available legal remedies in favour of the defendants. As a result, verdicts have become final and irrevocable.

Due to the expiration of legally foreseen deadlines, the situation has been further aggravated by the fact that certain legal remedies can no longer be used. For example, instead of implementing the provisions of the Law on Civil Procedure (Chapter Four: Parties and their Legal Representations), particularly Article 84 of the Law that regulates the appointment system for temporary representatives, Croatian courts introduce changes to the legal system that terminate tenancy rights on the basis of ethnic background. This practice, which completely defies the principles of the Croatian Constitution, mainly affects refugees and displaced populations. It is also reflective of the political influence on the court system in Croatia.

The Republic of Croatia has never recognised the property rights refugees and displaced persons, although this practice existed in the former SFRY.¹¹ The 2006 decision by Croatia's Constitutional Court however stipulates that a tenancy right is by its nature a property right. It further stipulates that the right to repurchase a flat is at its core a property right and carries with it the option to realise the right to property.¹² In the court practice there is also an example where the value of tenancy rights was expressed with a concrete monetary value.¹³

Until the disintegration of the former Yugoslavia, tenancy and other rights of beneficiaries in Bosnia and Herzegovina were legally regulated much in the same way as in the Republic of Croatia. Following disintegration, Croatia reversed its legal regulations on this issue. Unlike the politically influenced legal procedure in Croatia, tenancy rights holders in Bosnia and Herzegovina who had left their flats after April 30, 1991 were granted the right to return to their pre-war homes.¹⁴ "All administrative and legal acts regarding tenancy rights terminations have been legally proclaimed invalid. Tenancy rights in Bosnia and Herzegovina are protected as property rights according to Article 1 of Protocol 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms."¹⁵

Agreement on Succession Issues of the Former Yugoslavia

Although Croatia has ratified the Agreement on Succession Issues of the former Yugoslavia, it does not in fact support the recognition of property rights as they apply to the principles of tenancy rights and the specific acquired rights of former tenancy rights holders.

"Despite the fact that former tenancy rights holders do not enjoy property rights status as part of their tenancy rights, Croatia has ratified and accessed the Agreement on Succession of the Former Yugoslavia, where the rights of former SFRY nationals with respect to tenancy rights are outlined in Annex G: Private

¹¹ I.e., The Supreme Court of Croatia, in a 1971 verdict, took the position that "a tenancy right is also a property right, and that the unlawful loss of that right presents valid grounds for damage compensation". Verdict and decision of the Supreme Court of Croatia, No: Gž. 801/70-5 of March 31, 1971.

¹² Decision of the Constitutional Court of the Republic of Croatia No: U-III-3136/2003 of January 25, 2006.

¹³ The verdict of the Supreme Court of the Republic of Serbia No: Gž. 557/72-2 of January 17, 1973, states the following: "...Therefore, it is not possible to accept the statement of the defendant in the complaint that the first instance court has never explained the reason it has assessed the lost tenancy right in the concrete case to 25,000 dinars."

¹⁴ According to Article 1 of Annex VII of the General Framework Agreement for Peace in Bosnia and Herzegovina, individuals who left their flats between April 30, 1991 and April 4, 1998 are considered refugees and displaced persons, and they have the right to return to their homes, i.e. regain ownership over the flat for which they have tenancy right.

¹⁵ Lj.Mikić, Republic of Croatia: Refugees and Displaced, Former Tenancy Rights Holders – review on the access to acquired rights and housing care of minority returnees in 2008, Centre for Peace, Legal Advice and Psychosocial Assistance – Vukovar and the Coalition for the Promotion and Protection of Minority Rights, October 2008.

¹⁶ *Ibid.*

Property and Acquired Rights. The Agreement came into effect June 2, 2004 and is legally binding for all successor states of the former SFRY. Its practical implementation however, particularly regarding the realisation of rights and obligations outlined in Annex G, has thus far proven to be problematic.”¹⁶

Today, there is little evidence that Croatian authorities are willing to resolve the problems of former tenancy rights holders or to recognise property acquired rights outright.

2. Housing Care: Return and Housing Accommodation Programmes Created by Croatia for a Subset of Refugees/Former Tenancy Rights Holders

Facing pressure from the international community, Croatia began to formulate in 2000 a set of measures to accommodate a subset of former tenancy rights holders. Two housing care programmes have since been adopted. The programmes however address neither the legal aspects of tenancy rights termination for former holders nor the issue of recognition of acquired rights to privatise flats under favourable conditions.

The first programme (originally regulated by the 2000-2002 Law on Areas of Special State Concern) focuses on housing for various categories of beneficiaries, including former tenancy rights holders inside the areas of special state concern (ASSC). These areas comprise regions in Croatia affected by the war.

The second programme, originally developed by the Croatian government in 2003, addresses housing for former tenancy rights holders outside of the areas of special state concern. Here, former tenancy rights holders either pay a monthly lease or enter into an agreement to repurchase their flats. The program aims to provide accommodation, i.e. housing units owned by the state, to those refugees, tenancy rights holders and members of their households who wish to return and settle permanently in the Republic of Croatia. Program beneficiaries cannot own or co-own another family house or flat. They also must not have sold, given away or in any other way abandoned the house or flat at any point after October 8, 1991.¹⁷

The two programmes are actually more akin to humanitarian effort and do not address the fundamental issues related to the recognition of acquired rights for former tenancy right holders. This is evidenced by Croatia’s position that there are no legal obligations toward former tenancy rights holders.”¹⁸

According to June 2008 data from Croatia’s Ministry of Regional Development, Forestry and Water Management, former tenancy rights holders filed 13,137 requests for housing care, of which 12,543 were deemed valid; 8,578 requests were filed for housing care

¹⁷ This condition does not apply just to the territory of Croatia, but to other states in the territory of the former SFRY, as well as to the territories of other states where returnees possibly resided prior to returning to Croatia.

¹⁸ Human Rights Watch, Broken Promises – Obstacles in Return of Refugees to Croatia, September 2003.

inside the areas of social state concern; 3,965 were filed for housing case outside of the areas of special state concern (a total 4,559 requests were filed for outside the areas of special state concern, but 594 requests were deemed not valid).¹⁹

UNHCR data from January 2008 data reveals that there were fewer housing care beneficiaries than presented by the Croatian government. UNHCR states that 730 housing units were awarded to housing care beneficiaries inside the areas of special state concern and that 155 housing units were awarded to individuals outside the areas of social state concern.²⁰

As per unofficial estimates, approximately 33% of the beneficiaries who received housing care in 2007 inside the areas of special state concern were ethnic Serbs.²¹ Since there is no available official data on former tenancy rights holders, the ethnic background of beneficiaries, or their previous status, it is difficult to ascertain to what extent the implementation of the housing care programme has contributed to the return of refugees to Croatia.²²

The first serious attempt to address housing care for former tenancy rights holders occurred in 2008²³. As official data is not publicly available, it is not yet possible to analyze any progress made.²⁴ According to unofficial data for 2008, former tenancy rights holders were awarded a total of approximately 6,200 flats, approximately 860 of which were located inside the areas of special state concern.

¹⁹ The Ministry of Regional Development, Forestry and Water Management: Draft Action Plan for accelerated implementation of the housing care programme in and out of the areas of social state concern for refugees – former tenancy rights holders who want to return to the Republic of Croatia, June 23, 2008.

²⁰ Lj.Mikić, Republic of Croatia: Refugees and Displaced, Former Tenancy Rights Holders – review of the access to acquired rights and housing care of minority returnees in 2008, Centre for Peace, Legal Advice and Psychosocial Assistance – Vukovar and Coalition for the Promotion and Protection of Minority Rights, October 2008.

²¹ Ratko Bubalo, Ljubomir Mikić, *Analysis of the access to housing care of refugees and displaced, former tenancy rights holders in RC*, (realised under the auspices of OSCE and with the financial support of the United States Agency for International Development), Regional Legal Assistance Programme, January 2008.

²² *Ibid.*

²³ Positive steps in 2008 include the fact that the Government adopted the Action Plan for accelerated implementation of housing care programmes. It is linked to the start of negotiations between the Republic of Croatia and the European Commission outlined in chapter 23, Reform of Legislation and Fundamental Human Rights. The Plan contains specific measures, responsible parties for the creation and implementation of the measures, a timeframe for the realisation of the measures and the amount of necessary funds.

²⁴ However, the key problems of monitoring and evaluation of achieved results in 2008 included the lack of transparency in the work of the competent Ministry and its regional offices, as well as the lack of access to relevant information. It is true that in August 2008, the Ministry of Regional Development, Forestry and Water Management created the Catalogue of Information, which included descriptions of content and purpose, way of ensuring the right to access information in all institutional units of the Ministry. However, the realisation of the right to access relevant information via website of the Ministry or by request according to the Law on Access to Information remains either limited or impossible. (Lj.Mikić, Republic of Croatia: Refugees and Displaced, Former Tenancy Rights Holders)

In July 2009, UNHCR's Mission to the Republic of Serbia submitted to the Serbian Commissariat for Refugees results of the implementation of the housing care programs for the previous period²⁵:

Inside the areas of special state concern, 3,158 (35%) out of a total 8,964 requests were filed by Serb refugees or expellees residing in Serbia; 5,327 requests were successfully resolved. Of these, 1,270 (24%) were requests by individuals registered as refugees in Serbia from 1996 to 2005.

Outside of the areas of special state concern, 2,631 out of a total 4,562 requests were filed by Serb refugees or expellees residing in Serbia; 1,458 requests were successfully resolved; of these, 629 (32%) were filed by refugees in Serbia.

The housing care programmes stipulate that housing care beneficiaries must sign a contract on the lease of the flat after they have been awarded the property. In the event they do not use the awarded flat, the relevant institution can break the leasing contract and beneficiaries risk losing the property. Since a number of returnees find it difficult to secure employment and gain access to acquired rights, including the right to a pension, the rights to shares in the companies where they once worked, the provision of accommodation does not necessarily ensure the sustainability of minority return.

Moreover, beneficiaries of the housing care programmes returning to Croatia are subject to additional expenses, as the state does not provide any assistance for purchasing household appliances. Croatian authorities have not established adequate administrative mechanisms to enable displaced individuals to claim movable property that was temporarily repossessed by the Republic of Croatia. This issue has not been taken into consideration by the Sarajevo process. "Authorities were apparently required to make official inventory lists of movable property belonging to displaced individuals that was found in abandoned facilities or in flats with property rights and to protect it from destruction or damage. Because former tenancy rights owners have no access to these lists, which serve as evidence of their possessions, they are less likely to try and claim their belongings via court proceedings."²⁶

3. Differences in Programmes and the Rights of Former Tenancy Rights Holders

Approximately 80% of the total number of terminated tenancy rights is specific to housing care for former tenancy rights holders outside the areas of special state concern.

²⁵ Statement of the Commissariat for Refugees of the Republic of Serbia, July 2009.

²⁶ Ratko Bubalo, Ljubomir Mikić, *Analysis of the Access to Housing Care of Refugees and Displaced, Former Tenancy Rights Holders in RC*, (realised under the auspices of OSCE and with the financial support of the United States Agency for International Development), Regional Legal Assistance Programme, January 2008.

Thus, these cases are resolved in a much less favourable manner than cases related to housing care inside the areas of special state concern.

The deadline for filing requests for housing care outside of the areas of special state concern expired on September 30, 2005. Unfortunately Croatian law does not regulate the housing care program outside of the areas of special state concern; this makes the status of beneficiaries in this category highly unstable. The Croatian government however is still accepting requests for housing care inside the areas of special state concern.

The implementation of the housing care programme can best be described as opaque, unpredictable, discriminatory and subject to arbitrary rule.²⁷ The practice of housing care offers no guarantee that the applicant will be allowed to move back into their former flat. Even if the applicant is awarded a flat, it does not mean it will necessarily be their original former residence.²⁸ Moreover, housing care programme beneficiaries cannot repurchase the flat under the conditions other tenancy rights holders in Croatia – those who did not flee the country – enjoy. .

Presuming that housing care is only intended for refugees who have chosen to return to Croatia and who have not had rights to another flat or house within the former SFRY, we can conclude that refugees who have opted not to return remain permanently deprived of the opportunity to access their rights to housing on the basis of their former tenancy right.

4. The New Law on Areas of Special State Concern

The new Law on Areas of Special State Concern²⁹ came into effect which in 2008. It outlines far more restrictive conditions to realize the rights to housing care within the areas of special state concern in comparison with the previous legal framework. The provisions of the 2008 law were implemented based on proceedings initiated, but not completed, by the previous Law on Areas of Special State Concern. New restrictions stipulate that individuals who have met the conditions for the realisation of the right to housing care, according to former provisions of the previous Law, can no longer realize this right. Thus, these individuals are in a far less unfavourable position as compared to those individuals who had benefited from this right prior to the enforcement of the 2008 law.³⁰

²⁷ One of the examples for such an assessment is the fact that the offered contracts on leasing flats are of temporary character, and their individual provisions are contrary to the Law on Lease of Flats. Furthermore, prior to the conclusion of the leasing contract, competent regional offices require a host of documentation that parties have already submitted while filing housing care requests.

²⁸ The exception is related to a part of former tenancy rights holders for the flats in the territory of the former UNTAES (Eastern Slavonia). Since their tenancy rights were not terminated in court proceedings or by the law, according to the Law on Lease of Flats of 2006 they gained the status of 'protected lessees' for the flats in which they had lived before the war.

²⁹ Official Gazette, No.86/08

³⁰ Lj.Mikić, Republic of Croatia: Refugees and Displaced, Former Tenancy Rights Holders – review on the access to acquired rights and housing care of minority returnees in 2008, Centre for Peace, Legal Advice and Psychosocial Assistance – Vukovar and Coalition for the Promotion and Protection of Minority Rights, October 2008.

As per its provisions, we perceive the new Law on Areas of Special State Concern to be discriminatory toward refugee former tenancy rights holders as compared to other categories of housing care beneficiaries. The Law stipulates that beneficiaries of state-owned flats, in accordance with the law that regulates the lease of flats in the areas of special state concern, now have the opportunity to become the owners of the flats in which they live, without any additional payment. In essence, this Law allows individuals, mainly ethnic Croat refugees from Bosnia and Herzegovina to own flats given to them after being taken from expelled Serbs following the *Lightening* and *Storm* Croatian military operations of 1995.

By contrast, we want to emphasize that property restitution in Bosnia and Herzegovina, including private houses and flats for tenancy rights holders, has been successful in 99.8% of cases. In effect, ethnic Croat refugees from Bosnia and Herzegovina now enjoy the benefits of owning a flat in Croatia despite the fact that they have ownership or co-ownership rights to their original house or flat in Bosnia and Herzegovina.³¹

Conclusion

Since the end of conflict in 1995, Croatia's policy toward Serb refugees has been the most prominent obstacle to resolving the refugee issue in the region. Although some Serb refugees have returned to urban areas in Croatia over the past few years, this has only come to bear as a result of pressure from the international community.

The measures taken thus far to ensure former tenancy rights holders return to Croatia are based neither on international standards of human rights protection nor on the willingness of Croatia to fulfill its international commitments.

A number of conditions for sustainable return remain unfulfilled. Former tenancy rights holders still do not have the right to return to the homes where they resided prior to the start of the conflict. They do not enjoy the acquired right to purchase a flat under the favourable conditions offered to other tenancy rights holders and non-tenancy rights holders. Moreover, tenancy rights holders still do not have access to the possessions taken from their homes by the Republic of Croatia. Most significantly, they have not been justly compensated for the homes they lost.

³¹

Ibid.

“When it comes to refugees and displaced former tenancy rights holder, the Republic of Croatia has turned a blind eye to the July 14, 1997 *UN Security Council Resolution 1120*, which reaffirms the right of all refugees and displaced persons originating from the Republic of Croatia to return to their original homes in the Republic of Croatia [...] The Croatian government has also disregarded several relevant international standards on the protection of human rights. This includes Resolution 2004/2 on *Housing and Property Restitution for Refugees and Displaced Persons of the UN’s Sub-Commission on the Promotion and Protection of Human Rights*³² and the July 2005 *United Nations Economic and Social Council’s Principles on Housing and Property Restitution for Refugees and Displaced Persons*, also known as The Pinheiro Principles³³. The Principles explicitly point to the need to secure the recognition of rights of lessees, social property flats tenancy rights holders and other lawful tenants within the framework of the program of return i.e. restitution of rights. Though the Principles are not binding, they reflect widely accepted international human rights standards, refugee rights, humanitarian law and other standards that embody international agreements³⁴ signed by the Republic of Croatia.³⁵

Due to the prevalence of political influences, the protection of acquired and human rights of former tenancy rights holders in Croatia’s court system is lacking. Since both the legal framework and judicial procedures operate under these influences, former tenancy rights holders who continue to seek access to their rights face a multitude of challenges.

³² E/CN.4/2005/2; E/CN.4/Sub.2/2004/48, UN Sub-Commission for the Promotion and Protection of Human Rights in the Preamble of the Resolution No.2004/2. *Housing and Property Restitution* repeats that the right of all refugees and displaced persons is to freely return to their countries and to be given back their housing space and property taken from them during displacement, or to be given compensation for the property that cannot be returned to them.

³³ E/CN.4/Sub.2/2005/17, Point 16 of the Principles outlines the rights of lessees and other individuals who are not owners, emphasising that countries must ensure the recognition of rights of lessees, tenancy rights holders over state-owned flats and other legal tenants within the programmes of regaining the rights. Countries should, to the largest extent possible, ensure return and repossession and use of their housing space, land and property, in a fashion similar to the one applicable for formal owners.

³⁴ International Pact on Economic, Social and Cultural Rights; International Covenant on Civil and Political Rights; Convention on the Elimination of All Forms of Discriminations against Women; International Convention on the elimination of all Forms of Racial Discrimination; Convention on the Rights of the Child; Convention on Refugees...

³⁵ Lj.Mikić, Republic of Croatia: Refugees and Displaced, Former Tenancy Rights Holders – review on the access to acquired rights and housing care of minority returnees in 2008, Centre for Peace, Legal Advice and Psychosocial Assistance – Vukovar and Coalition for the Promotion and Protection of Minority Rights, October 2008.

As evidenced by the single case on tenancy rights termination debated in the European Court of Human Rights,³⁶ appealing to international institutions to protect human rights has limited effects.

There is however hope that the United Nations Human Rights Council will reconsider the former tenancy rights holder issue. The Council recently examined a petition related to the loss of an acquired tenancy right on the pretence of a human rights violation. This is a viewpoint that relevant institutions and local courts in Croatia have chosen to ignore.

Views of the UN Human Rights Committee in the case Vojnović versus Croatia

In its review of *Vojnović vs. Croatia*³⁷, an individual petition on tenancy rights deprivation, the UN Human Rights Committee on March 30, 2009 stated the following:

“8.7. Taking note of the fact that the author and his family belong to the Serb minority, and that the threats, intimidation and unjustified dismissal experienced by the author’s son in 1991 were confirmed by a domestic court, the Committee concludes that it appears that the departure of the author and his family from the State party was caused by duress and related to discrimination. The Committee notes that despite the author’s inability to travel to Croatia for lack of personal identification documents, he informed the State party of the reasons of his departure from the apartment in question. Furthermore, as ascertained by the Zagreb Municipal Court, the author was unjustifiably not convoked to participate in the 1995 court proceedings before the latter. The Committee therefore concludes that the deprivation of the author’s tenancy rights was arbitrary and amounts to a violation of article 17³⁸ in conjunction with article 2, paragraph 1³⁹, of the Covenant (on Civil and Political Rights)

...
“10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including adequate compensation.”

Regardless of the final outcome of the *Vojnović vs. Croatia* case, the international community must not turn a blind eye to the longstanding problems of former tenancy rights holders, refugees and exiled persons from the Republic of Croatia.

³⁶ *Case Blečić versus Croatia*, 59532/00, the case was rejected *ratione temporis* (due to the time limitation of the possibility for implementation of the Convention on Human Rights, and in this case it could not have been implemented)

³⁷ UN Doc CCPR/C/95/D/1510/2006 (28 April 2009)

³⁸ Article 17 - 1.No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation 2. Everyone has the right to the protection of the law against such interference or attacks.

Physical return or permanent settlement in Croatia must not be a condition for either the recognition of acquired rights or compensation for former tenancy rights holders.

The right to just compensation is one of the prerequisites that refugees must have as they decide whether to return to their country of origin or integrate locally. This is the main principle of Sarajevo Ministerial Declaration with respect to the final and permanent resolution of the refugee problem.

The European Union along with other members of the international community must leverage its authority to convince the government of Croatia to resolve the issues of former tenancy rights holders, refugees and displaced persons. Doing so will adhere to both the international legal framework and the international obligations undertaken by Croatia. A just solution for former tenancy rights holders is critical not only to the permanent resolution of the refugee issue in the region but also to fostering reconciliation and establishing long-term stability and cooperation between the countries in the region.