



Center for Peace, Legal Advice and Psychosocial Assistance

ANALYSIS

Annex G of the Agreement on Succession Issues:

Regional mechanism for resolving proprietary and legal issues and recognition of the acquired rights of refugees and displaced persons in the area of former Yugoslavia (?)

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INTRODUCTION

Righteous and permanent resolution of refugee and displaced persons issues presents one among the basic challenges in overcoming the consequences of the war in the area of former Yugoslavia. This problem has regional character but can also be viewed from the political, legal, humanitarian and social, development, security and regional cooperation aspects and fulfillment of international obligations by the states it refers to.

In spite of the progress achieved in the past decade, finding righteous and permanent solutions for all categories of displaced persons remains an obligation, but also the interest of the Republic of Croatia, Bosnia and Herzegovina, and Serbia and Montenegro. These three states have confirmed it by accepting the principles of the **Sarajevo Ministerial Declaration on Regional Refugee Return** that has been signed on 31 January 2005.

Declaration signatory states showed the awareness on the necessity of mutual operative cooperation and determination in undertaking all necessary measures that would ensure righteous solutions for refugees and enable respect of their complete and inalienable rights to individual decision on the country of permanent residence.

Righteous and permanent solutions for refugees are in the interest of a person but also the nations. Further on, according to the text of the Declaration, those solutions need to contribute additionally to the peace and stability in Southeast Europe and the efforts by three states in the process of joining to European Union. Declaration foresees particular measures, both individual and joint, that the three states need to undertake in following period with the assistance of the international community, presented by

missions of the Organization for Security and Cooperation in Europe (OSCE), UN High Commissioner for Refugees (UNHCR) and European Commission (EC) delegations in all three states.

The States took the obligation to, in accordance with the principles and aims of the Declaration, produce individual national strategies (Road Maps) that would contain detailed list of measures and activities aimed on creating conditions to provide sustainable return of refugees to countries of their origin or possibilities for their local integration in the country in which they currently live. Consolidation of national strategies needs to result in adoption of joint regional implementation matrix.

Declaration foresees for remained refugee issues in the region to be resolved by the end of 2006. However, current implementation dynamics of the process initiated by Sarajevo Declaration significantly differs from the agreed one and jeopardizes achievement of final goal within foreseen time limit. This is also severely influenced by discrepancies in relation to resolving of acquired rights of refugees along with the need for additional attitude coordination of the three states in reference to those issues.

The aim of this analysis is to, in the light of Sarajevo Declaration implementation, examine specific issue of protection of private property and acquired rights of refugees and displaced persons according to the provisions of the **Annex G of the Agreement on Succession Issues** of former Yugoslavia. Analysis starting point is the content of the Agreement on Succession Issues, and the discussion and issues examined at the regional roundtable "Protection of private property and acquired rights of refugees and displaced persons according to the provisions of the Annex G of the Agreement on Succession Issues"¹, that was held in Vukovar from 21 – 22 April, 2005. Analysis, partially,

refers to relevant international standards and the practice of dealing with the subject matter up to date.

AGREEMENT ON SUCCESSION ISSUES²

Problem of succession of Former Socialist Federal Republic of Yugoslavia (SFRY) developed as a consequence of its disintegration and disappearance from the international scene.

New situation resulted in the need and necessity for resolving open questions in relation to fair division and transfer of the rights and obligations of former SFRY for five newly established successor states: Bosnia and Herzegovina, Republic of Croatia, Republic of Macedonia, Republic of Slovenia, and current State Union of Serbia and Montenegro.

After several years of negotiations ran with the mediation of the international community³, showing their readiness to resolve open succession issues in accordance with the principals of international law, the five successor states, in their sovereign equality the successors of former SFRY, reached an agreement and concluded the Agreement on Succession Issues. The Agreement has been signed on 29 June 2001, in Vienna.

Interstates agreement on resolution of open succession issues has been reached in the interest of all successor states and their citizens, and in the interest of regional stability and mutual good relations, having in mind the attitude of the United Nations Security Council⁴ on desirability of consensus resolution of unresolved succession issues.

Coming into effect of the Agreement on Succession Issues is preconditioned by ratification of the Agreement before national parliaments of all successor states, and it was impossible to make reserves in reference to its content. The Agreement became effective on 2 June 2004, 30 days after disposal of the final, fifth, ratification document (by the Republic of Croatia) before the Agreement Depositor. The Agreement Depositor was the Secretary General of the United Nations who ensured the registration of the Agreement in accordance with the United Nations Charter.

The Agreement on Succession Issues consists of the Preamble and 13 Articles, seven Annexes to the Agreement, and Appendixes to both the Agreement and the Annexes that the integral part of the Agreement.

The Annexes of the Agreement set out the terms on which the rights and obligations from the following areas are settled:

- Annex A: Movable and immovable property;
- Annex B: Diplomatic and consular properties;
- Annex C: Financial assets and liabilities (other than those dealt with in the Appendix to this Agreement);
- Annex D: Archives;
- Annex E: Pensions;
- Annex F: Other rights, interests, and liabilities;
- Annex G: Private property and acquired rights.

The most important political and legal achievement of the Agreement on Succession Issues is stated in its Article 7:

“This Agreement, together with any subsequent agreements called for implementation of the Annexes to this Agreement, finally settles the mutual rights and obligations of the successor States in respect of succession issues covered by this Agreement.”

Besides its significance in regulation of relations and division of the rights and obligations on the issue of succession between the successor states, the Agreement provisions are also important for the protection and recognition of the rights of natural persons and other legal entities of former SFRY. This, especially, refers to the provisions of the Annexes G and E, and, partially, Annex C that shall be elaborated later.

Pursuant to the Article 8, each successor State, on the basis of reciprocity, are obliged to take the necessary measures in accordance with its internal law to ensure that the provisions of the Agreement are recognized and effective in its courts, administrative tribunals and agencies, and that the other successor States and their nationals have access to those courts, tribunals and agencies to secure the implementation of this Agreement. Further on, the successor States accepted the obligation to implement the Agreement in conformity with the Charter of the United Nations and in accordance with international law (Article 9 of the Agreement).

The Agreement establishes Standing Joint Committee of high representatives of each Successor State. Main role of the Committee is to supervise efficient implementation of the Agreement and examine the issues that may occur during the implementation. The work of the Committee may be assisted by experts. The Committee may, if needed, adopt appropriate recommendations for the successor States governments. Provisions of the Agreement foresee the mechanisms and procedures to settle the differences that may arise from the interpretation and implementation of the Agreement.⁵

ANNEX G OF THE AGREEMENT ON SUCCESSION ISSUES

Annex G of the Agreement on Succession Issues consists of eight articles and regulates areas of recognition, protection and access to private property and acquired rights of citizens and other legal entities of former SFRY.

This Annex is important because it guaranties, on the basis of the reciprocity and without discrimination, exercise of the protection of rights in matter to all citizens and other legal entities of former SFRY on all the territories and before all the institutions in all successor States (Article 7 of the Annex G).

This provision is of a significant importance for recognition and exercise of the rights of all persons displaced outside and inside the States of their origin (refugees and internally displaced persons), but also other legal entities of former SFRY whose property and acquired rights were limited or challenged due to the war consequences, loss of citizenship status, or as a result of the communication break down between some of the former SFRY successor States.

Protection of the right to movable and immovable properties is guaranteed by the provisions stated in the Article 2 of the Annex G:

(1) (a) The rights to movable and immovable property located in a successor State and to which citizens or other legal persons of the SFRY were entitled on 31 December 1990 shall be recognized, and protected and restored by that State in accordance with established standards and norms of international law and irrespective of the nationality, citizenship, residence or domicile of those persons. This shall include persons who, after 31 December 1990, acquired the citizenship of or established domicile or residence in a State other than a successor State. Persons unable to realize such rights shall be entitled to compensation in accordance with civil and international legal norms.

(b) Any purported transfer of rights to movable or immovable property made after 31 December 1990 and concluded under duress or contrary to sub-paragraph (a) of this Article shall be null and void.

(2) All contracts concluded by citizens or other legal persons of the SFRY as of 31 December 1990, including those concluded by public enterprises, shall be respected on a non-discriminatory basis. The successor States shall provide for the carrying out of obligations under such contracts, where the performance of such contracts was prevented by the break-up of the SFRY.

The Article 3 of the Annex G prescribes that the successor States shall respect and protect rights of all natural and juridical persons of the SFRY to intellectual property, including patents, trade marks, copyrights, and other allied rights (e.g., royalties) and shall comply with international conventions in that regard.

The successor States shall take such action as may be required by general principles of law and otherwise appropriate to ensure the effective application of the principles set out in this Annex, such as concluding bilateral agreements and notifying their courts and other competent authorities (Article 4 of the Annex G).

Nothing in the foregoing provisions of this Annex shall derogate from the provisions of bilateral agreements concluded on the same matter between successor States which, in particular areas, may be conclusive as between those States (Article 5 of the Annex G).

As a specific issue within the area of protection of private property and acquired rights, the Article 6 of the Annex G regulates the issue of the rights in relation to the occupancy / tenancy rights. That Article states that domestic legislation of each successor State concerning dwelling (occupancy / tenancy) rights shall be applied equally to persons who were citizens of the SFRY and who had such rights, without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

The foregoing provisions of this Annex are without prejudice to any guarantees of non-discrimination related to private property and acquired rights that exist in the domestic legislation of the successor States (Article 8 of the Annex G).

Annex G, however, does not regulate open issues of protection and exercise of the rights of natural and juridical persons in relation to the guarantees by the SFRY or its National Bank of Yugoslavia of hard currency savings deposited in a commercial bank and any of its branches in any successor State before the date on which it proclaimed independence. In the Article 7 of the Annex C of the Agreement on Succession Issues, it is stated that the issue of the hard currency savings in question shall be negotiated without delay taking into account in particular the necessity of protecting the hard currency savings of individuals, and that this negotiation shall take place under the auspices of The Bank for International Settlements.

The importance of the Annex G of the Agreement on Succession Issues in relation to securing of preconditions for refugee return can be viewed also from the aspect of relevant international standards for protection of human rights in the context of refugees and displaced persons. So, for example, the United Nations Sub-Commission on the Promotion and Protection of Human Rights in the Preamble of the Resolution 2004/26 states that "Housing and property restitution" repeats that it is the right of all refugees and displaced persons to return freely to their countries and to have restored to them housing and property of which they were deprived during the course of displacement, or to be compensated for any property that cannot be restored to them.

SOME OPEN QUESTIONS OF PROTECTION OF PRIVATE PROPERTY AND ACQUIRED RIGHTS OF REFUGEES AND INTERNALLY DISPLACED PERSONS IN SENSE OF APPLICATION OF THE PROVISIONS OF ANNEX G OF THE AGREEMENT ON SUCCESSION ISSUES

Key problem for the analyses of issues in relation to the private property and acquired rights of refugees and internally displaced persons in accordance with the provisions of Annex G of the Agreement on Succession Issues is the lack of practice in application of relevant provisions of the Agreement. In that sense, the problems of the lack of comprehensive and generally accepted official interpretations and efficient mechanisms for their implementation, which additionally affect creation of the environment of legal insecurity, were noticed. Therefore, one should bear in mind that the Annex G of the Agreement on Succession Issues currently isn't efficient mechanism for protection of the rights it regulates.

Open issues in question elaborated in the following text are mostly examined through the prism of the situation in the Republic of Croatia.

A. THE RIGHTS IN RELATION TO THE OCCUPANCY / TENANCY RIGHTS

The most complex open question for righteous and permanent resolution of the problems facing refugees in the region refer to recognition and exercise of the rights of former tenancy rights holders over socially owned apartments who fled from the Republic of Croatia. These problems are also discussed within the process of

implementation of Sarajevo Declaration on regional refugee return. Unlike in Bosnia and Herzegovina, establishment of efficient mechanisms for protection and exercise of the rights of exiled tenancy rights holders in the Republic of Croatia failed to happen in the previous period.

The issue of regulation of the right in relation to the occupancy / tenancy rights in accordance with the provisions of the Article 6 of the Annex G aroused great interest of refugees and displaced persons – citizens of the Republic of Croatia, mostly ethnic Serbs, whose occupancy / tenancy rights over socially owned apartments were cancelled under, according to many opinions, discriminatory circumstances. The interpretation of this article of Annex G caused more doubts, differences in opinions, and opposed attitudes of legal experts that any other. It, up to the highest level, occupied the attention of the participants of the roundtable on protection of private property and acquired rights of refugees and displaced persons according to the provisions of the Annex G of the Agreement on Succession Issues that was held in April 2005 in Vukovar.

Analysis of the issue of protection of the refugee rights in relation to the occupancy / tenancy rights in the **Republic of Croatia** demands for this subject in matter to be viewed from several perspectives:

1. Legal character of the occupancy / tenancy right institute

According to the constitutional provisions of former SFRY, the occupancy / tenancy right was a family and legal, social, and property and legal category. It could have been characterized as kind of a proprietary right (*sui generis*). Constitutional provisions were the fundamental base for the tenancy rights holders to, under beneficial terms, participate in the process of privatization of socially owned apartments they possessed in sense of acquirement of a occupancy / tenancy right.

Issues in relation to occupancy / tenancy rights fall under the Annex G of the Agreement on Succession Issues that regulates private property and acquired rights protection subject matter. One may conclude that, according to the provisions of the Agreement on Succession Issues, the rights in relation to the occupancy / tenancy rights are considered property and acquired rights. This conclusion, however, opposes the opinion of the authorities of the Republic of Croatia that claim that occupancy / tenancy rights cannot be considered as ownership rights.

According to certain opinions, term “possessions” in case of occupancy / tenancy rights issue should be interpreted in the sense of provisions of the Article 1 of Protocol no. 1 of the European Convention on Human Rights and Fundamental Freedoms (ECHR):

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.”

The practice of the European Court for Human Rights points that the term “possessions” meaning “ownership” can be widely interpreted and that it includes wide spectrum of different (economic) rights and interests. The opinion of the Court is that the concept of “possessions” in the sense

of the provisions of Article 1 of Protocol no. 1 has an autonomous meaning which is not limited to “ownership” of physical goods but also includes certain other rights and interests that present the ownership and can also be regarded as property rights.⁷

The Court believes that pecuniary assets, such as debts, by virtue of which the applicant can claim to have at least a “legitimate expectation” of obtaining effective enjoyment of a particular pecuniary asset, may also fall within the notion of “possessions” contained in Article 1 of Protocol No. 1.⁸

European Court for Human Rights, in its verdict dated 30 June 2005, in case *Teteriny vs. Russia* found that legally acquired occupancy / tenancy right over socially owned apartments fall under “possessions” in the sense of Article 1 of Protocol No. 1.

The Court explained that by acquiring the occupancy / tenancy right, family Teteriny would realized the right to possess and use the apartment and to, under specific terms, privatize it in accordance with domestic legislation. According to that, from the moment the legal act on acquiring the occupancy / tenancy right was issued, the applicant has had an established “legitimate expectation” to acquire a pecuniary asset or rights.

Legal foundation for acquiring occupancy / tenancy rights were decisions issued by apartments providers on allocation of apartments and contracts on use of apartments concluded between a tenancy rights holder (occupant) and relevant public fund (landlord). Legal institute of occupancy / tenancy right in Croatia was cancelled completely in 1996 with the Law on Lease of Apartments becoming effective⁹ and domestic legislation is no longer recognizing this institute. In that sense, claims and discussions in reference to the recognition, restitution and reestablishment of “acquired” occupancy / tenancy rights and reinstating of the situation from 31 December 1990 cannot be considered relevant. Protection of acquired rights, in this case, does not mean that the State is obliged to retain certain legal institutes established by interior legislation forever. That would affect impossibility of necessary development of the law and social relations after the socialism period. Provisions of the Article 6 of the Annex G of the Agreement on succession Issues also do not refer to reinstatement of the occupancy / tenancy rights.

However, the Article 6 does not dispute the possibility to recognize the rights acquired and arisen from former right to possession of a socially owned apartment to all tenancy rights holders who had that right on 31 December 1990. Those rights should, at first, refer to the right of former tenancy rights holders to exercise the right to privatization under beneficial terms based on the Law on Privatization of Apartments over which the occupancy / tenancy rights are instituted, or to exercise the right to lease an apartment in accordance with the provisions of the Law on Lease of Apartments. Such a solution would not oppose domestic legislation and would, in reference to tenancy rights, be applied equally to persons who were SFRY citizens and had that right, without discrimination at any ground such as sex, race, color, language, religion, political or other affiliation, national or social origin, association with a national minority, social status, birth or other position. The issue of protection and recognition of rights in relation to tenancy rights can also be examined in the sense of paragraph 2 of

Article 2 of Annex G in case of those former tenancy rights holders who realized those rights on the basis of a contract.

2. Loss of occupancy / tenancy rights of refugees and protection mechanisms

Issues in relation to the loss of occupancy / tenancy rights in the Republic of Croatia are of significance for viewing discrimination of refugees and displaced persons of, mostly, Serb ethnicity, and legitimacy of cancellation of those rights. Mentioned persons have lost their occupancy / tenancy rights through court processes, in many cases in absentia and without knowledge of the beneficiaries, or by the power of the law. Those issues the authorities of the Republic of Croatia have never examined in a constructive and objective manner.

In the court processes, occupancy / tenancy rights would be cancelled on the basis of implementation of provision of the Law on Housing Affairs¹⁰ from the former SFRY times. As a reason for cancellation of a occupancy / tenancy right, among the rest, the Law foresaw unjustified non use of the apartment by beneficiary in the period longer than six months. Courts of the Republic of Croatia applied that provision of “peacetime” law also in extraordinary, war, circumstances. Displaced tenancy rights holders were unable to prove that their absence from apartments in question was justified, and the fact of war was not recognized in their cases as relevant. There are examples of cases of forced expelling of beneficiaries from their apartments after which their occupancy / tenancy rights were cancelled by court verdicts based on earlier mentioned Law provisions.

The situation was similar in cases of loss of occupancy / tenancy rights cancelled by the power of the law on lease of apartments on liberated areas¹¹. The law prescribed that all those who abandoned their apartments and who failed to use those apartments for over 90 days as of 27 September 1995 – the day the Law become effective would lose their occupancy / tenancy rights. Subjective and objective circumstances that affected the possibility to return of most of beneficiaries who left Croatian territory during military and police operations “Storm” and “Flash” have never been examined.

European Court for Human Rights, in its verdict dated 29 July 2004, established that in the examined case of cancellation of occupancy / tenancy rights for abandoning and non use of the apartment in six months period (*Blečić vs. Croatia*), there was no violation of the right to home pursuant to the article 8 of the ECHR, or the violation of the right to peaceful enjoyment of possessions in the sense of the Article 1 of Protocol no. 1 of ECHR. The Court found that the cancellation was done in accordance with provisions of domestic legislation. The Court, however, did not examine the effect of the cancellation of occupancy / tenancy right to refugee return or possible discriminatory consequences of such procedures. That case, also, due to its specificities cannot be considered representative for most of refugees affected by the problem of occupancy / tenancy rights cancellation.

The case *Blečić vs. Croatia* has also been examined before the Grand Chamber of European Court for Human Rights. The Court, however, brought a decision on incompetence for the fact that the final decision on cancellation of

occupancy / tenancy right in this case was brought before the ECHR became effective in the Republic of Croatia (application of the *rationae temporis* institute). This Court decision can be considered a precedent for most former tenancy rights holders exiled from Croatia bearing in mind that occupancy / tenancy rights to almost all of them were cancelled before the ECHR became effective.

Latest practice by the European Court in case *Blečić vs. Croatia* points at the lack of existence of efficient legal mechanisms for examining refugee rights and proving discrimination and illegality when canceling occupancy / tenancy rights to particular categories of former beneficiaries. In that sense, solution of this problem needs to be searched in the interpretation and application of the provisions of the Agreement on Succession Issues and the Annex G of the Agreement. When interpreting provisions of the Article 6 of the Annex G understanding that the provisions of domestic law of each successor State shall be applied, one should bear in mind that the provisions of ratified international agreements are also an integral part of domestic legislation.

In that sense, although it has no binding power of an agreement, the Principals of the Economic and Social Council of United Nations on housing and property restitution for Refugees and Displaced persons¹² need to be viewed. This document is important since it reflects widely accepted principles of international human rights standards, refugee rights, humanitarian law and other similar standards.¹³ These Principles are created in a way to help all relevant subjects, national and international, in addressing legal and technical issues in relation to the housing, land and property restitution in situations in which displacement resulted in persons being arbitrary and illegally deprived of their homes, land, property or the place of their usual residence. The Principles refer to all refugees and displaced persons regardless of formal and legal recognition of their status.

Item 16 of the Principles speaks of the rights of tenants and other non-owners, and states that the States should ensure that the rights of tenants, socially-occupancy rights holders and other legitimate occupants or users of housing, land and property are recognized within restitution programs, meaning reestablishment of the law. States should, to the maximum extent possible, ensure that such persons are able to return and to repossess and use their housing, land and property in a similar manner to those possessing formal ownership rights.

3. Issue of Return: provision of housing for former tenancy rights holders exiled from the Republic of Croatia

Provision of adequate housing for former tenancy rights holders' families is one of the basic presumptions for their physical return. The Republic of Croatia, in that sense, adopted two models of humanitarian provision of housing care that have been examined also in the sense of Sarajevo Ministerial Declaration on Regional Refugee Return and included into national strategy of the Republic of Croatia for implementation of the Declaration provisions.

These housing programs, however, cannot be considered permanent resolutions of the problems of former tenancy rights holders exiled from the Republic of Croatia in the sense of the provisions of the Annex G. Housing programs,

among the rest, do not create legal framework which would provide for equal application of the domestic legislation of the Republic of Croatia in relation to termination of occupancy / tenancy rights on all persons who were the citizens of former SFRY and who were former occupancy / tenancy rights holders.

...

Exercise of the rights in relation to occupancy / tenancy rights, in sense of provisions of Annex G, in Bosnia and Herzegovina, and Serbia and Montenegro is considered permanently solved through recognition or restitution of occupancy / tenancy rights and enables participation in apartments' privatization under beneficial conditions. In Bosnia and Herzegovina, only unresolved problems in relation to refugees and displaced persons are the issues of former tenancy rights holders who had those rights over "military" owned apartments of former Yugoslavian National Army.

B. PROTECTION OF THE MOVABLE AND (OTHER) IMMOVABLE PROPERTIES

Bearing in mind limited scope of this analysis and wide spectrum of the rights that can come under protection of the right to movable and immovable properties, brief presentation of the part of open subject matter shall follow in further text.

Processes of recognition of rights and restitution of immovable properties formally owned by refugees and displaced persons are, in most cases, almost completed. This, at first, refers to privately owned housing units, while, in Bosnia and Herzegovina those processes also included restitution of occupancy / tenancy rights over socially owned apartments as their property and legal character has been recognized in that State.

Restitution of private housing units by introducing the owners to "legal" possession is not always followed by the fact of introduction into the "physical" possession. Those issues are, mostly, in relation with the problems of dynamics and provision of material resources for reconstruction of properties devastated and destroyed during war or in terrorist acts.

One of the remaining issues in relation to the access to rights in the Republic of Croatia, although, according to official records this refers to very few cases, are the slowness and lack of mechanisms for restitution of agricultural land and business premises owned by refugees. Further on, also the protection of right to restitution or compensation for refugee owned movable properties which in accordance with the Law on Temporary Takeover and Administration of Particular Properties were put under temporary administration of the Republic of Croatia, and

those movable properties found in abandoned apartments over which refugees had occupancy / tenancy rights that had to be listed by a commission and as such protected from destruction or damaging, remains open.

In the sense of application of provisions of paragraph 1(b) of the Article 2 of Annex G and regional approach to resolution of refugee problems, is especially needed to examine open issue of recognition and execution of court decisions of one successor State in the territory of the other one. That, at first, refers to the cases of cancellation of deeds of purchase concluded between refugees from two different successor states, or contracts on real estate exchange in territories of two different successor States that were concluded under pressure or against the provisions of the civil and/or international law. That problem is especially visible on relation between Bosnia and Herzegovina, and the Republic of Croatia. To be exact, mentioned contracts are, in most cases, annulled in Bosnia and Herzegovina while that is not the case in the Republic of Croatia. This practice leads to loss of properties belonging to persons originated from Croatia in both states.

The problem of mature and unpaid debts (for example unpaid pensions) and other pecuniary interests arising from unrealized rights and obligations based on contractual relations (exercise of the right to company shares based on privatization of socially owned economic subjects) should also come under the implementation of the Annex G provisions. Having in mind the provision of the paragraph 2 of the Article 1 of the Annex G stating that all contracts concluded by citizens or other legal persons of the SFRY as of 31 December 1990, including those concluded by public enterprises, shall be respected on a non-discriminatory basis and that the successor States shall provide for the carrying out of obligations under such contracts, statute of limitations foreseen by national legislations of successor States can be considered out of order.

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An important issue in reference to the practical implementation of provisions of Annex G of the Agreement on Succession Issues is the one that refers to the implementation of Articles 4, 5, and 7. Therefore, it remains to be seen whether the successor States will start concluding bilateral agreements aiming to ensure efficient implementation of the principles elaborated in the Annex G, and in which way they will regulate the issues of reciprocity and provide equal possibilities of access to courts, judicial agencies and bodies of another State to all interested persons? Resolution of all these issues would be important for return and exercise of the rights of refugees who are the citizens of one of the successor States in case when that State is not the one they wish to return to and/or in which they aim to realize a right guaranteed by the Annex G.

ENDNOTES:

- 1 Roundtable was organized by the Center for Peace, Legal Advice and Psychosocial Assistance from Vukovar with the financial support of the Embassy of the Kingdom of the Netherlands in the Republic of Croatia. Roundtable participants were the representatives of governmental institution from Bosnia and Herzegovina, and Serbia and Montenegro, and the OSCE Mission to Republic of Croatia.
- 2 Succession *lat. successio* – continuance, inheriting, inheritance
- 3 Negotiation were ran under the umbrella of the International Conference on Former Yugoslavia and High Representative within the mandate given to him by the decision of the Peace Conference in London on 8 -9 December 1995, and in the light of the agreement between the successor States and statements adopted by the Peace Implementation Council and its Coordination Committee.
- 4 The UN Security Council Resolution no.1022 (1995)
- 5 Article 5 of the Agreement establishes that differences which may arise over the interpretation and application of this Agreement shall, in the first place, be resolved in discussion among the States concerned. If the differences cannot be resolved in such discussions the States concerned shall either (1) refer the matter to an independent person of their choice, with a view to obtaining a speedy and authoritative determination of the matter which shall be respected and which may, as appropriate, indicate specific time-limits for actions to be taken; or (2) refer the matter to the Standing Joint Committee established by Article 4 of this Agreement for resolution. Further on, differences which may arise in practice over the interpretation of the terms used in this Agreement or in any subsequent agreement called for in implementation of the Annexes to this Agreement may, additionally, be referred to binding expert solution, conducted by a single expert, who shall not be a national of any party to this Agreement, to be appointed by agreement between the parties in dispute or, in the absence of agreement, by the President of the Court of Conciliation and Arbitration within the Organization for Security and Cooperation in Europe (OSCE).
- 6 E/CN.4/2005/2; E/CN.4/Sub.2/2004/48, page. 15. i 16.
- 7 See *Gasus Dosier v. Netherlands*; *Beyeler v. Italy*; *Iatridis v. Greece*
- 8 See *Pine Valley Developments Ltd and Others v. Ireland*; *Pressos Compania Naviera S.A. and Others v. Belgium*; *S.A. Dangeville v. France*
- 9 Official Gazette no. 91/96
- 10 Official Gazette no. 51/85
- 11 Official Gazette no. 73/95
- 12 E/CN.4/Sub.2/2005/17, dated 28 June 2005
- 13 Included those guaranteed by the universal Declaration on Human Rights; International Pact on Economic, Social and Cultural Rights; International Pact on Civil and Political Rights; Convention on Elimination of all Forma of Racial Discrimination, Convention on the Children's Rights; Convention on Refugees...

CONCLUSIONS AND RECOMMENDATIONS:

1. The Agreement on Succession Issues is multilateral international agreement. By the process of ratification before national parliaments and its coming into effect, the Agreement became an integral part of internal law of the successor States, and legally overrules domestic laws;
2. Fulfillment of obligations arising from the Agreement on Succession Issues relates to the issues of the rule of law, respect for human and minority rights and strengthening of regional cooperation as basic political criteria for joining of States in the region to the European Union membership;
3. Protection of private property and acquired rights according to the provisions of the Annex G of the Agreement on Succession Issues present the existing base for righteous and permanent resolution of refugees and displaced persons problems in the Republic of Croatia, Bosnia and Herzegovina, and Serbia and Montenegro. Having in mind obligatory character of the Agreement, it is necessary to examine its principles and provisions within the implementation of the Sarajevo Ministerial Declaration on Regional Refugee Return;
4. It is necessary to interpret and implement the Agreement on Succession Issues in a good faith, in accordance with relevant international agreements and international legal standards and principles of nondiscrimination and justice;
5. Recognition of property and acquired rights to refugees and expellees cannot be preconditioned by the fact of return or lack of material resources;
6. Priority in exercise of property rights should be given to natural restitution, and in case when the restitution is impossible, fair compensation should be ensured;
7. Successor States should start with the implementation of the provisions of Annex G of the Agreement on Succession Issues within the shortest possible time. All relevant information in that regard should be made available to all interested individuals.

The Center for Peace, Legal Advice and Psychosocial Assistance is a local non-governmental organization established in Vukovar, Croatia, in 1996. The aim of the Center is developing democratic society by protecting and promoting human rights with emphasis on refugees and displaced persons, and minorities; building a culture of peace and non-violence and developing inter-ethnic, inter-religious and inter-cultural tolerance and cooperation.

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The author of the text is Ljubomir Mikić, president of the Center for Peace, Legal Advice and Psychosocial Assistance, Vukovar. The text does not necessarily represent the collective view of the round table “Protection of private property and acquired rights of refugees and displaced persons according to the provisions of the Annex G of the Agreement on Succession Issues” participants or the official opinion of the Embassy of the Kingdom of the Netherlands in Croatia.

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