

REGIONAL LEGAL ASSISTANCE PROGRAMME
Support to the Return of Refugees and Internally Displaced Persons through Legal Aid

A STUDY

**on Access to Pertaining Rights and (Re)integration of Displaced Persons in
Croatia, Bosnia and Herzegovina and Serbia in 2006**

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National Political-Legal Frameworks and Their Implementation in Practice

A SUMMARY PAPER

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Introduction

The study on Access to Pertaining Rights and (Re)integration of Displaced Persons in Croatia, Bosnia and Herzegovina and Serbia in 2006 was elaborated within the framework of the Regional Legal Assistance Programme¹ (RLAP). This specific project “Support to Return of Refugees/IDPs Through Legal Aid”, has been implemented in the period between 5 October 2005 and 5 October 2006. Under the auspices of the OSCE Mission to Serbia and with the participation of the OSCE Missions to the Republic of Croatia and Bosnia and Herzegovina, the project was implemented by the regional network of twelve non-governmental organizations of the three states.² The project was financially supported by the Government of the United States of America.

The project’s basic objective was to facilitate access to rights by and local (re)integration of displaced persons through provision of legal aid and permanent monitoring of the status of representative legal cases in specific legal areas. The project monitored the activities aimed at meeting the undertaken obligations and observing the principles of the regional framework for

¹ The Regional Legal Assistance Programme has been implemented since 2002 with a view to strengthening cooperation between and building and promoting technical and human resource capacities of the non-governmental organizations of Croatia, Bosnia and Herzegovina and Serbia engaged in extending charge-free legal aid and advice to refugees and displaced persons.

² The network consists of twelve non-governmental organizations of **Serbia** - the Humanitarian Centre for Integration and Tolerance; the Serbian Democratic Forum; the Balkan Centre for Migration and Humanitarian Activities; PRAXIS; Group 484; **Croatia** – the Serbian Democratic Forum; the Association Gorica; the Civil Rights Project – Vukovar, the Civil Rights Project – Sisak; the Centre for Peace, Legal Advice and Psychosocial Assistance – Vukovar; **Bosnia and Herzegovina** - International Lex; and, finally, the regional project Movimiento por la Paz, el Desarme y la Libertad (MPDL) with offices in all three states.

a just and permanent solution of refugee problems, established by signing the Sarajevo Ministerial Declaration on Refugee Return³ on 31 January 2005.

The study analyzes and considers some issues concerning access to acquired rights by displaced persons in practice, as well as those concerning the possibility of return and local (re)integration in the territory of the three states, and, in that connection, the existence of political will to establish mechanisms in order to reach the final solution of the problems of refugees and displaced persons and to make the existing legal frameworks effective.

The content of the study is based on information which was collected and processed by the NGOs constituting the Regional Legal Assistance Programme network (the RLAP network), through careful monitoring of specific legal areas and selected individual cases.

The study was officially published and made available at the OSCE Mission to Serbia website (http://www.osce.org/serbia/item_11_23473.html) in March 2007.

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The RLAP network representatives use this opportunity provided by the ODIHR HDIM to address all interested intergovernmental, governmental and non-governmental parties on the key issues of concern preventing closure of the regional refugee file which have been identified and elaborated within the Study. When planning this side-event, the RLAP network was led by facts that the OSCE is playing a key role in working on resolution of refugee plight in the region of South-East Europe, and that the OSCE human dimension commitments represent a broad protection framework which is reflecting traditional human rights and freedoms but also some areas beyond the scope of traditional human rights law. More importantly the OSCE human dimension commitments are addressed, in line with other international human rights instruments, to the OSCE participating States.

The RLAP network is convinced that resolution of the refugee issues is directly connected to the security and stability of the region. Therefore the OSCE broad concept of security which includes dealing with human rights among other issues as well represents an adequate framework for addressing refugee related issues. It also represents an adequate mechanism for supporting efforts of all, international community, respective states and NGOs alike in their efforts to close refugee file and create a comprehensive framework for peace, security and stability in South-East Europe.

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³ The Declaration was signed by the ministers in charge of refugees and displaced persons in Bosnia and Herzegovina, Serbia and Montenegro and Croatia, as a result of the successful joint initiative of the OSCE Missions, the UNHCR Offices and the delegations of the European Commission to the three states.

1. STATISTICAL OVERVIEW OF THE DISPLACEMENT IN THE REGION

Bosnia and Herzegovina

Out of 4.3 million pre-war B&H population 2.2 million got displaced in period 1992 – 1995. 1.2 million of displaced sought refugee protection in over 100 countries the world over, while some 1 million people have been internally displaced within B&H.

Over 1 million returns to B&H have been registered so far, almost half of which account for minority returns. However, field research conducted by some B&H NGOs that only a third of total number of displaced persons actually returned to their homes.

Ministry of Human Rights and Refugees assesses that around half a million persons who left B&H still live outside the country and are registered as refugees from B&H. Almost 100,000 refugees from B&H and 180,000 internally displaced persons still seek a permanent solution, particularly through return.

Croatia

Between 1991 and 1997, around 950,000 pre-war Croatian citizens were displaced within the country and abroad. Around 550,000 displaced persons were mainly ethnic Croats, while the remaining 400,000 were mainly minority Serbs, 330,000 of whom were displaced in Serbia & Montenegro, 40,000 in Bosnia & Herzegovina and 32,000 in Croatian Danube region (the former UNTAES region).

Since 1995, 341,081 returnees have been officially registered, of whom 64% mainly account for minority population, while 36% account for displaced Serbs. According to the data of the Ministry of Maritime Affairs, Tourism, Transport and Development, out of 122,031 officially registered minority population returnees, by early September 2006, 89,428 of them returned from Serbia and Montenegro, 8,997 from Bosnia and Herzegovina, while 23,606 returned from Croatian Danube Region to other parts of Croatia. Estimates, however, show that only 60-65% minority returns can be considered sustainable and that some refugees return again to the country of refuge after returning to Croatia and staying in it for a short while, mainly due to the constant difficulties they face regarding access to housing, acquired rights and employment.

Number of refugees originating from other republics of the former Socialist Federal Republic of Yugoslavia is assessed at 2,594 persons.

Serbia

While in 1996 the number of officially registered refugees from the other republics of the former SFRY was 538,000, in early October 2006 it dropped to 106,000. After the review of refugee status there remained another 11,000 pending appeals against first instance decisions on refugee status termination.

According to the statistics of the Commissariat for Refugees of the Republic of Serbia, in the previous period 130,000 refugees returned to the country of origin (60,000 to Croatia and 70,000 to Bosnia & Herzegovina), about 20,000 resettled in third countries, while a large number of them acquired citizenship of the Republic of Serbia. The Commissariat assesses that there are around 350,000 refugees who need assistance in the process of local integration or repatriation, regardless of the official recognition of their refugee status in Serbia.

2. ACCESS TO RIGHTS AND THE POSSIBILITY OF (RE)INTEGRATION OF DISPLACED PERSONS

Bosnia & Herzegovina

The restitution of (private) property

Entity laws on the cessation of the application of laws on the use of abandoned property apply to all immovable properties in private ownership abandoned after 30 April 1991, including flats with occupancy/tenancy right over it.

More than 99% of occupied housing units - referring to 200.000 cases - were returned to their owners in B&H, which includes privately owned houses and socially-owned apartments alike. In spite of the high rate of execution of the positive decisions, local authorities still tend to hamper in a variety of ways the execution of decisions on property return.

The rate of pending cases is very low and makes only 1% of total number of submitted claims. These cases are mainly related to the flats which were subject to exchange or to the so-called "military apartments" (flats in the ownership of the former Yugoslav People's Army – JPA – in the Federation of Bosnia and Herzegovina). Entitlement for repossession of "military" apartments are conditioned by: continuing service in any armed forces outside B&H after 14 December 1995, non-recognition or lack of refugee status, acquisition of Occupancy / Tenancy rights from the former JPA housing stock or from any newly established military housing stocks.

Occupancy / tenancy rights were *ex lege* terminated to all former holders who submitted their requests for repossession outside deadline prescribed by law – referring to some 3% of all submitted requests.

The reconstruction of destroyed and damaged housing units in private ownership

Ever since the signature of the Dayton Peace Accords some 260,000 housing units have been reconstructed, out of which over 170,000 through donations. In relation to reconstruction assistance the RLAP network noted omissions in keeping the refugees informed of public appeals to apply for reconstruction in B&H, especially if they reside abroad, which has resulted in them missing the deadlines for application and consequently their inability to return.

Compensation for damages inflicted by war

The legislative framework in the Republic of Srpska covers not only ongoing judicial proceedings initiated by previously filed claims, but also the obligations to compensate damage established by enforceable court judgments.

Existing legal arrangements give rise to serious dilemmas about fundamental principles of the legal order, because in the adjudicated court matters we have a situation of interference of the executive branch with the judicial branch of power. Namely, this results in the change of the court judgments in matters involving claims for damages, in which the respondent (the Republic of Srpska) has been put under an obligation to pay damages in cash.

In such a manner, the constitutional standard of the division of power, which prevents arbitrary interference of one branch with the other, is directly violated and furthermore, such an approach undermines the equality of all citizens before the law and violates their property rights.

In the Federation of Bosnia & Herzegovina all claims for compensation for damages have been converted into public debt on the basis of the existing legislative framework.

In case law, despite judgments in favour of plaintiffs, which put the state under an obligation to provide compensation for damage by invoking the provision of law on tort liability, it often

happens that court judgments cannot be executed because of the lack of budget resources. Such conduct is in contravention of the provisions of the B&H Constitution and Article 6 of the European Convention on Human Rights, since the fair trial principle includes the right to enforcement of the final court decision, the right to access to courts as well as the right to an effective legal remedy.

Obviously the existing legal framework in B&H, in the part that governs the issue of staying the execution of court decisions, has not been harmonized with the relevant international standards, which mandates its urgent rescission or replacement by new laws.

Annulment of contracts concluded under duress and/or in contravention of the provisions of civil law

Declaring contracts and other legal transactions concluded under duress null and void particularly refers to different court practices in B&H and Croatia in relation to cancellation of contracts on purchase or exchange of the real estates concluded between refugees originating from two different successor states, if such contracts had been entered under pressure or contrary to the provisions of the domestic Civil Code and/or international law. These contracts are annulled in B&H in almost all cases⁴ where the lawsuit is instigated, while this is not the case in Croatia, which results in a situation that a party occupying exchanged property in Croatia is recognized as a lawful owner in both states. This problem remains unresolved, although the legal framework for resolution of such issues exists in the form of the treaty ratified by all former SFRY republics⁵.

Issues related to refugee rights to local integration

Local integration of refugees is rendered more difficult by the lack of provisions in the applicable regulations on the acquisition of B&H citizenship on privileged terms through naturalization. Despite the Agreement on Dual Citizenship, the legislation, and especially practice, preventing access to citizenship have not yet been harmonized.

Croatia

The restitution of (private) property

The Government's effort to close the process of repossession of the temporarily occupied private housing units is near its successful end. As of September 2006, 18 cases remained to be solved out of total of 19.280 occupied housing units. However, properties claimed in court proceedings, those addressed to the State Attorney's Office and unclaimed properties relate to more than 200 additional cases of still occupied housing units. In administrative and court proceedings involving the restitution of private housing units supremacy is given to temporary occupants over rightful owners. This principle was successfully challenged before the European Court for Human Rights (judgments Radanovic vs Croatia; Kunic vs Croatia).

Unlike in B&H, flats with occupancy/tenancy are not subject of restitution eg. the rights arising from former institute of occupancy/tenancy right in Croatia do not have the legal status of acquired property rights for former occupancy/tenancy rights holders, whose occupancy/tenancy rights were terminated during their displacement. In termination procedures the fact of armed conflict is not recognized as a justified reason for abandoning the apartment. The occupancy/tenancy rights issues in Croatia remain outstanding within the Sarajevo Declaration process

⁴ In cases where the claimant / initiator of the court procedure have not made any further legal transactions in regard to the property which is in his/her possession and which was the object of the null and void contract

⁵ e.g. Agreement on Succession Issues

Administrative mechanisms for the restitution of illegally taken agricultural land and business premises have not been established, while the reported numbers of unresolved cases vary between 20 and 125.

No administrative mechanisms for repossession of movable properties placed under temporary administration of the Republic of Croatia were established. This issue was not subject of consideration under Sarajevo Declaration Process. Further on, the RLAP network registered problem of unavailability of movable property inventory lists composed by authorities in charge.

The reconstruction of destroyed and damaged housing units in private ownership

Ever since the reconstruction process started in Croatia, 141,160 destroyed or damaged houses and flats have been reconstructed. In the last couple of years, most reconstruction beneficiaries (some 80%) have been displaced citizens of Serb nationality. According to official figures, in September 2006 there remained 2,410 outstanding requests for reconstruction assistance. However, these figures do not include or reflect pending second instance cases, the number of which was 14,787 in 2006, including 800 repeated appeals.⁶

Identified issues of concern mainly refer to shortcomings in implementation of the Law on General Administrative Procedure (principles of legality, efficiency, hearing the parties, cost-effectiveness, extending assistance to the lay party, observing deadlines for passing decisions, and the obligation to notify a party of the reasons for not passing a decision within a legal time limit), excessive lengths of proceedings - exceeding prescribed deadlines in bringing decisions, poor quality of the first instance proceedings, numerous mistakes in damage assessment procedures, evidence establishment procedure and assessment of validity of evidence, extending eligibility conditions beyond those stipulated by the Law on Reconstruction. The majority of the complaints received by the Ombudsman's Office of RoC mostly relates also to the length of the procedures in various administrative fields. However, not only that the deadlines prescribed by law are not respected but the decision making process often exceeds reasonable time, since many proceedings last for several years.

Additional aggravating factor is the lack of the proper registry system within the state administration which results in the lack of precise records on the number of cases, specific problems, outcomes of the procedure, etc. Therefore an efficient monitoring system is also lacking. This makes the control or supervision of performance of the administrative apparatus, as it was foreseen by the law, almost impossible in practice.

Access to housing care by former holders of occupancy/tenancy rights to socially-owned flats

In relation to the provision of the Housing Care in the Areas of Special State Concern former OTR holders are placed at the bottom of priorities for housing care assistance in accordance to 2002 Rulebook on the Order of Priorities for Housing Care. Although the Constitutional Court interprets⁷ that Rulebook does not give precedence to any of 3 priority groups of beneficiaries, the Regional ODPR⁸ offices continue to apply the Rulebook in accordance with their own interpretations and give some groups preferential treatment.

Concerning the discrepancy in application of the Law and preferential treatment applied in that regard, the RLAP network possess data about approximately 30 cases in which certain category of beneficiaries were provided with the housing care assistance more than once – this mainly relates to ethnic Croat families settled from Bosnia and Herzegovina and Kosovo.

⁶ The Ombudsman of the Republic of Croatia: the 2005 Work Report, page 51

⁷ Constitutional Court's decision of 10 November 2004. File No. U-II/3255/2004

⁸ Governmental Office for Displaced Persons and Refugees

Additional problem is the fact that refugees/returnees who are provided with the housing care, use these housing units on the basis of the Consent which is issued by the Office for Displaced Persons and Refugees (ODPR). This ODPR practice is in discrepancy with the Law on General Administrative Procedure which stipulates obligation of the first instance body to issue a decision when determining the particular right of the applicant. As a consequence of such ODPR practice, legal remedy is not available and beneficiaries are lacking ability to request protection of their rights in the court procedure.

Regarding Housing Care Programmes outside the Areas of the Special State Concern (hereinafter ASSC), in September 2006 implementation of this housing scheme was still in its initial phase, with just few beneficiaries registered to that date. However, the lawyers participating in the project emphasized disputable regulatory framework in regard to the Housing Care Programme which is based on the Conclusion of the government of the Republic of Croatia rather than on the Law. Some lawyers stand at the point that we cannot talk about existence of the right/entitlement in legal sense if the claim is not based on the law but rather on the Conclusion. The Conclusion does not produce any legally binding effect, thus there is no remedy and no court protection available, since the Conclusion merely serves as a form in which the Government is expressing its intentions and strategies.

Access to acquired rights - Convalidation

Regarding issues related to processing of the Convalidation claims for the working years realized in the formerly occupied areas (that were controlled by local Serbs during 1991-1997 conflict), many of potential beneficiaries missed the 10 April 1999 deadline for applying for convalidation of their working years. The deadline of 10 April 1999, is stipulated in the Decree from 1998, but not in the Law on Convalidation.

The issue of extension of the time limit for filling of convalidation claims is one of the open issues discussed within Sarajevo Declaration process. This issue has also been highlighted as a short-term priority in the Accession Partnership process with the European Union.

However even those applicants whose requests are submitted within prescribed deadlines, but not yet resolved, are facing myriad of problems in obtaining documents and evidences in relation to their working years during the period from 1991 to 1995. Inconsistent practice of the Croatian Pension Fund local branches was noted as a problem. In probative proceeding some branches do not apply administrative procedure principle of collection of evidence through testimonies of witnesses, in cases where the written documentation is not available or is destroyed. Additional problem is recognition of working years for those who were members of para-military forces (police and military personnel in Serb controlled areas) for a certain period of time. Any working period that is registered as service in the para-military forces is not subject to Convalidation, but claimants are often rejected with their requests for convalidation in its entirety, including the working period which is not related to the service in para- military forces.

Annulment of contracts concluded under duress and/or in contravention of the provisions of civil law

A specific problem is posed by the cases of housing units owned by displaced Serbs, which have been purchased by the State Agency for Real Estate Transactions on the basis of falsified powers of attorney which the owners allegedly gave to private real-estates mediators. By June 2006 the official investigation has confirmed at least 42 cases of such illegal sales of private houses.

Issues related to refugee rights to local integration

The main problem related to local integration of refugees is posed by the lack of a relevant legal framework for the exercise of that right. In addition, a specific problem is also posed by the lack of transparency in the procedures for deciding on the termination of refugee status in the Republic of Croatia.

Serbia

Issues related to refugee rights to local integration

Serbia adopted the National Strategy for Resolving the Problems of Refugees and Internally Displaced Persons as late as 2002, almost 11 years after the large scale refugee phenomenon had emerged in its territory. The Strategy, *inter alia*, describes the present situation, defines objectives and elaborates measures and activities which the Government of the Republic of Serbia and other competent state institutions are obliged to undertake in relation to the integration of refugees in Serbia. Four years after the adoption of the National Strategy, it is possible to note just a minor breakthrough in the accomplishment of its objectives and implementation of measures and activities aimed at local integration of refugees. One of significant reasons for slow implementation of the Strategy is related to the fact that it has, almost entirely, relied on international sources of financing.

A key precondition for successful integration of refugees in Serbia is provision of adequate housing. A majority of refugees living in Serbia do not possess their own housing. Only 18% of refugees and a mere 7.6% of IDPs in the Republic of Serbia have their own housing.⁹ So far, around 3,000 housing units have been secured for refugees in Serbia, of which more than 85% of the total value of the mentioned real estate was financed out of donations. Out of the total number of secured housing units, a significant part are housing units built with active participation of refugees, either through self-help construction or combined construction.

Naturalization of refugees in Serbia has been facilitated after the adoption of amendments to the Law on Yugoslav Citizenship of 2001, which created favourable conditions for naturalisation of refugees i.e. provided for the right of refugees to dual citizenship, that is, to be granted the citizenship of Serbia and to keep the citizenship of the other former SFRY Republic which they fled or from which they were expelled.

If the process of local integration of refugees is to be effectively implemented, it is necessary to establish inter-ministerial coordination among relevant Ministries in resolving numerous remaining issues and problems related to the integration of refugees in Serbia. Specifically, due to the lack of coordination of activities and the lack of inter-ministerial cooperation, refugees are faced with numerous problems including:

- the exercise of the right to health care;
- the resolution of status-related issues;
- the exercise of full freedom of movement;
- the settlement of certain relationships associated with property rights;
- employment and the exercise of rights arising from employment;
- the exercise of rights arising from social security and pension and disability insurance;
- the exercise of rights in the field of education and protection of children.

⁹ The National Strategy of the Government of the Republic of Serbia for Resolving the Problems of Refugees and Internally Displaced Persons

Issues related to the status of refugees

The bulk of the problems associated with status-related issues of refugees and expellees in Serbia arose during the registration exercise and refugee status review procedure completed in January 2005.

Judging by a large number of appeals¹⁰ against first instance decisions on the termination of refugee status, it is possible to conclude that the entire review procedure has not been thoroughly implemented, and that databases which were used were not reliable. Through their work on the provision of legal aid to refugees, the RLAP network member organizations have established that the non-existence of reliable databases represents in a large proportion the main reason for issuance of obviously unfounded decisions on the termination of refugee status, which puts refugees into an extremely vulnerable position and leads to violations of some of their fundamental human rights.

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¹⁰ Around 11,000