



Coalition for Promotion and Protection of Human Rights

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CHALLENGES TO PERMANENT RESOLUTION OF REFUGEE PROBLEMS IN THE REPUBLIC OF CROATIA – IMPLEMENTATION OF SARAJEVO MINISTERIAL DECLARATION ON REGIONAL REFUGEE RETURN

INTRODUCTION

By signing Sarajevo Ministerial Declaration on regional refugee return, the Republic of Croatia, Bosnia and Herzegovina and Serbia and Montenegro have accepted, on 31 January 2005, a regional framework for a just and durable resolution of refugee problems that occurred as a result of the war from the first half of 1990s.

Reaching of this interstate agreement is a result of successful initiative of representatives of the missions of Organisation for Security and Cooperation in Europe (OSCE), Office of High Commissioner for Refugees of the United Nations (UNHCR) and European Commission Delegations (EC) in three states, also known as the “3x3” initiative.

By accepting the Declaration principles, three states expressed the need and readiness, and accepted the obligation to, with the assistance of and in cooperation with the representatives of international community, through regional approach and mutual cooperation, and by putting additional individual efforts, resolve remaining refugee and internally displaced persons’ issues by the end of 2006.

Consistent respect of the principles and accomplishment of goals of the Declaration are important for all displaced persons. Accepted principles of non-discrimination and access to all associated rights in resolution of the subject in matter issues are, however, extremely important for refugees belonging to numerical minority communities in states or local regions to which they are returning.

This document reviews the process of implementation of Sarajevo Declaration up to now and, in the same context, challenges to refugee return to the Republic of Croatia, and relays on the content of the discussion from the roundtable “Challenges to permanent resolution of refugee problems in the Republic of Croatia – Implementation of Sarajevo Declaration on Regional Refugee Return”¹ held in the occasion of the celebration of the World Refugee Day on 20 June 2006 in Zagreb.

Goals of this document are to raise public awareness on the implementation and principles of Sarajevo Ministerial Declaration on Regional Refugee Return, and to support efforts of the Croatian Government in its way to overcome challenges to creation of efficient and sustainable mechanisms for permanent resolution of refugee problems in Croatia.

OBLIGATIONS AND PRINCIPLES ACCEPTED BY THE DECLARATION

Sarajevo Declaration foresees two approaches to a just and durable resolution of remaining refugee issues in the regions – return of refugees to the states of their origin or their local integration in the states of their current residence.

Signatory states confirmed to all refugees their full and undeniable right to individual decisions on the state of their permanent residence and expressed their decisiveness to undertake all necessary national and administrative measures for making exercise of that right in practice possible.

Return or local integration is, therefore, the issue of freely expressed will of every refugee, and those processes

should be done without discrimination and with the assistance and support of Declaration signatory states. It has been agreed that the refugees will be provided with access to all associated rights in a fair and transparent manner and that all required social, legal, procedural or other preconditions will be fulfilled in the spirit of the Declaration. All refugees are, upon their return or local integration, guaranteed enjoyment of all rights but also the same obligations as other citizens. As to the returnees, an extensive awareness on their right to safe and dignified return has been expressed.

Three governments have agreed to undertake all measures necessary for removing of all remained political-administrative-legal impediments for return or local integration of refugees by the end of 2006. In order to accomplish this goal, the governments have taken the obligation to develop detailed national action plans (Road Maps) that would include comprehensive list of tasks and for whose implementation every state would be individually responsible. Deadline established for development of national action plans is three months as of the day the Declaration is signed, meaning by the end of April 2006. National Road Maps should be unified in a Joint Implementation Matrix.

Declaration foresees establishment of an expert working group (Task Force). Appointed representatives of signatory states, as well as representatives of the three OSCE missions, UNHCR offices and the EC Delegations will participate in the work of that Task Force. Main tasks of the Task Force that will meet at least four times a year are reviewing and uniting tasks from national Road Maps in a Joint Implementation Matrix, monitoring of its implementation and preparation of meetings at ministerial level.

IMPLEMENTATION OF THE DECLARATION

By mid 2006, the process initiated by signing of the Declaration has been characterized with accomplishment of certain progress but also with significant delays in implementation of particular activities. Five regional meetings of the Task Force and two ministerial conferences were held. The process was conducted at “high politics” level without significant transparency at lower levels.

Delays and different dynamics in development of detailed national Road Maps, constant need for their amending and concretisation, misunderstandings and non-unified attitudes of the states on particular issues have pointed out the complexity and challenges of the implementation process at regional level.

Croatia was, despite delays, the first signatory of Sarajevo Declaration that drafted the national Road Map. The Road Map was presented to the international community partners on 12 July 2005, and Croatian government adopted it ten days later, on 22 July 2005.

International community representatives have the key role in provision of support to the initiated process. They, however, did not always have unified standing points in relation to finding resolutions of certain issues.

At the regional meeting of Heads of the OSCE and UNHCR missions and the EC Delegations dedicated to the

implementation of Sarajevo Declaration, held on 27 March 2006, it has been concluded that, for very slow progress in the implementation of trilateral process, three governments need to further intensify their efforts and create conditions for the achievement of durable solutions and ensure access to all associated rights, including the right to housing in line with international standards. The governments were encouraged to discuss and resolve all outstanding issues at next ministerial conference. Further on, the governments are invited to individually include remaining issues in their respective Road Maps as well as to define clear mechanisms and suitable fora for their resolution.²

However, all outstanding issues have not been resolved on the ministerial conference held on 31 March 2006. Aforementioned facts resulted in a way that the Joint Implementation Matrix has not been agreed and adopted yet. They have, further on, created uncertainty in relation to removing of all political and legal impediments and establishment of clear and efficient mechanisms for final resolution of refugee problems within foreseen deadline.

RESOLUTION OF REFUGEE PROBLEMS IN THE REPUBLIC OF CROATIA

Targeted groups

Final resolution of refugee problems in the Republic of Croatia refers to two categories of refugees; those who fled from Croatia to Serbia, Montenegro and Bosnia and Herzegovina, and those who fled from Serbia, Montenegro and Bosnia and Herzegovina to Croatia. Access to associated rights is important to all refugees regardless of their formal status and regardless of their decision on return or local integration in states of current residence.

Number of potential returnees to Croatia, mostly ethnic Serbs, is impossible to determine precisely. Based on the requests for return, claims for reconstruction of housing units and requests for provision of housing care submitted by refugees from Croatia, Croatian authorities have, in July 2006, estimated that there are 20.000³ potential returnees to the Croatia. That number, however, could be larger having in mind the fact that the number of officially registered refugees in neighbouring states in 2006 is approximately 85.000⁴, out of which 78.000 in Serbia and Montenegro and 7.000 in Bosnia and Herzegovina. Experiences of some nongovernmental organisations point at the number of former refugees who acquired citizenships of neighbouring countries but expressed interest to return. Real number of returnees will, for sure, depend on dynamics of creation of preconditions for their sustainable return including access to all associated rights.

2.681⁵ refugees from Bosnia and Herzegovina and Serbia and Montenegro are officially registered in Croatia. Croatian government provides assistance in return and reconstruction of houses through delivery of construction materials to refugees who wish to return to Bosnia and Herzegovina, while the possibility of local integration in Croatia should be made possible for the others.

Exercise of associated rights and creation of presumptions for the full (re)integration and sustainable return should be secured for many refugees who have already returned to Croatia having in mind that only 60-65%⁶ from around 120.000 registered minority returns are assessed sustainable "mainly because of persistent difficulties with access to housing, acquired rights and employment."⁷

National Road Map

National Road Map contains four thematic activity areas aimed towards resolution of refugee problems, including deadlines and financial resources designated for their implementation:

1. Return to the Republic of Croatia through provision of housing accommodation to returnees (reconstruction of damaged and destroyed housing fund, property restitution, provision of housing care to former occupancy/tenancy rights holders) and through implementation of infrastructural and development programs in the areas of return (reconstruction of electrical network, reconstruction and building of communal and social infrastructure and programs of economic development, de-mining);
2. Creation of final solutions for remaining refugees in the Republic of Croatia through provision of assistance to return or by facilitating local integration in Croatia;
3. Data exchange with Bosnia and Herzegovina and Serbia and Montenegro;
4. Provision of basic social protection to returnees and care for remaining refugees in Croatia.

Croatian Government ensured 2,3 billions of Croatian Kunas (cca. 300 million EUR) in its budget for 2005 and around 2,1 billions for 2006 for the implementation of the tasks from the Map Road. Most of these funds will be aimed towards the return of refugees to Croatia and resolution of their housing problems.⁸

After reviewing certain remarks and suggestions of representatives of international community in Croatia for the need of amendments of the initial Road Map with specific issues, Croatian government accepted most of these remarks and suggestions and subsequently incorporated them into the Road Map.

Nongovernmental human rights organisations⁹ also sent their comments on the initial Road Map and suggestions for amendments and concretisation of the Road Map to the Government. However, the Government completely ignored suggestions for involvement of nongovernmental organisations into the process of implementation and monitoring of activities, realization of goals from the national Road Map and the establishment of inter-sector working groups at national and local levels.

Representatives of Serbia and Montenegro and Bosnia and Herzegovina pointed at eight, in their opinion, open issues in reference to the Road Map. Two issues that remain open completely relate to finding of comprehensive solutions for former occupancy/tenancy rights holders who had occupancy/tenancy rights over socially owned apartments and who do not wish to return (compensation issue), and extension of the previous deadline (10 April 1999) for submission of convalidation claims for the working years realised in the areas that were controlled by local Serbs during 1991-1995 war. While compensation for former occupancy/tenancy rights holders remains politically extremely sensitive at all levels, Croatian government did not review the possibility for the extension of the convalidation of working experience deadline despite the fact that this same issue was specified as a short-term priority in the process of Croatia Accession Partnership with the European Union. Namely, in the Decision of the European Council dated 20 February 2006, it is stated that "Reopen the possibility for convalidation claims and review all applications made since expiry of previous deadline"¹⁰ is one of the political priorities of the Accession Partnership.

The OSCE Mission to Croatia claims that there are two main tasks for Croatian government; to continue providing good offices in the search for comprehensive and acceptable solutions of issues which remain open; and to ensure that all benchmarks outlined in the Croatian Road Map, including financial commitments, are implemented in a timely manner.¹¹

In the beginning of 2006, the UNHCR Croatia office produced the Matrix for monitoring of the Road Map implementation and resolution of refugee problems in Croatia. The Matrix will be updated continuously and in details and will be used as base for the information exchange and reviewing of achieved progress and remaining problematic issues between the representatives of the international community and Croatian authorities.

Challenges to the final and fair resolution of refugee problems in the Republic of Croatia

Main challenge to resolution of refugee problems in Croatia is the establishment of adequate, efficient and transparent administrative mechanisms that will ensure fulfillment of commitments accepted through the Sarajevo Declaration in practice. This precondition refers to the fulfillment of the tasks from the Road Map, but also to the access to and exercise of acquired and human rights of refugees that were not included into the Road Map.

Years of experiences in relation to minority returns to Croatia point at the fact that despite certain progress has been achieved, formal expression of genuine will to resolve this problem remains extremely problematic in practice. Namely, Sarajevo Process shows that even eight years after Croatian government adopted the Program of Return and Provision of Care to Expellees, Refugees and Displaced Persons (1998), the refugee issue is still not resolved completely and in accordance with internationally taken obligations.

One year upon the adoption of the Road Map, refugees are still, in different ways, limited in their access to acquired and associated rights, and in substantial (re)integration. In its annual report for 2005 the Ombudsman of the Republic of Croatia stated that "in part of complaints against work and actions of state and local administration, especially, length of procedures that are the main area of concern of the Ombudsman, many complaints come from Serbs relating, in over 70% of cases, to issues of property restitution, provision of housing care, reconstruction and pension insurance rights. These records similar to those for 2005 show that many returnees and those who would like to return to the Republic of Croatia still did not resolve many problems important for return or normal life in the Republic of Croatia."¹² Length of the procedures, lack of financial resources and limited possibilities for exercise of the right to free legal aid are forcing refugees to give up on the initiation of court procedures, which is the only alternative left for realisation of particular rights.

Absence of efficient mechanisms, issues of the law implementation in practice, delays in relation to deadlines initially established in the Road Map and discrimination can be reviewed in, for example, areas of provision of housing care, property restitution and reconstruction.

Croatian Government adopted the Conclusion on Provision of Housing care to Former Occupancy/Tenancy Rights Holders who held Occupancy/Tenancy Rights over Socially Owned Apartments outside the Areas of Special State Concern (outside war affected areas) in 2003 and ensured budgetary means for its implementation in 2004 and 2005. In total 4.463 claims have been submitted.

Process of provision of housing care started in the end of 2005, and by mid 2006, only a few families were provided with the housing care. Development of the plan for provision of housing care is still pending and the Government announced that the housing care process should be completed in 2011!²

In once war affected areas, former occupancy/tenancy rights holders are at the very bottom of the priority list for exercise of the right to provision of housing care. The process is not transparent and decision procedure in relation to the refugee claims is unreasonably delayed.

While the restitution of temporarily occupied privately owned refugee housing units despite delays and particular remaining problems is almost completed, adequate administrative mechanisms for restitution of occupied agricultural land and business premises (issue that has been additionally included into the Road Map) have not been established yet. The issue of restitution or compensation for movables placed under state administration were not even examined or incorporated into the Road Map as a task. Annulment of contracts on exchange or sale of refugee real estates concluded under duress or contrary to legal norms remains problematic despite commitments arising from the Agreement on Succession Issues¹³.

Referring to the claims for reconstruction of houses damaged or destroyed during the war decision process, the Ombudsman, in the end of 2005, concluded that "Records submitted by the Office for Reconstruction of Family Houses show seriousness of the situation in this area. The Office registered 14.787 unresolved second instance cases, among which there were around 800 repeated appeals. The Office has no official data on the number of the first instance procedures or number of officers working on these cases. ... Approximately 100 cases are being dealt with on second instance monthly, and 4 officers are working overtime."¹⁴

Speaking of the remaining issues in relation to the realisation of return and reintegration of refugees from Croatia, among the rest, the following issues may be mentioned: non-transparency of the war crimes procedures; lack of fulfillment of legal commitments of proportional representation of persons belonging to national minorities in bodies of state administration and judiciary, and discrimination in employment of returnees; problems of assurance of economic and social sustainability of returnees; problems of regulation of the status and exercise of acquired rights of returnees who are not Croatian citizens; interethnic intolerance and increase in the number of ethnically motivated incidents, and (in)security of returnees, etc.

Absence of legal framework and concrete mechanisms for local integration of refugees in the Republic of Croatia present a problem related to local exercise of that particular right. There is a problem of non-transparent procedures for the cessation of refugee status in Croatia, as well.

Implementation of the activities and fulfillment of commitments from Sarajevo Declaration are characterised by insufficient transparency in relation to the authorities at local levels, nongovernmental organisations and wider public, including refugees and domicile population. Awareness of all structures of the society and assurance of wide public support and prevention of obstructions of the implementation of Sarajevo Process and tasks from the Road Map are invaluable for creation of the atmosphere necessary for the final and just solution of refugee issues in the Republic of Croatia.

REMARKS

¹ Roundtable organized by Coalition for Promotion and Protection of Human Rights within two-year program "Minority Rights in Practice – National Strategy for Croatia" Roundtable participants, 25 of them, were representatives of the Ministry of Maritime Affairs, Tourism, Transport and Development - Office for Displaced Persons and Refugees and Office for Reconstruction of Family Houses; Ministry of Foreign Affairs and European Integration; Office of Croatian Ombudsman; minority MPs; OSCE and UNHCR Missions to Croatia; foreign embassies and non-governmental organizations for human rights

² OSCE Mission to Serbia and Montenegro, Press release: OSCE, UNHCR and EC reiterate support for implementation of Sarajevo Declaration on refugees, 27 March 2006

³ Ministry of Maritime Affairs, Tourism, Transport and Development: Return of Expellees and Refugees in Croatia, 7th July 2006

⁴ OSCE Mission to Croatia: 2006 Review: Report on Croatia's progress in meeting international commitments since 2001, 9th June 2006, page 13

⁵ Ministry of Maritime Affairs, Tourism, Transport and Development: Return of Expellees and Refugees in Croatia, 7th July 2006

⁶ OSCE Mission to Croatia: 2006 Review, page 14

⁷ Ibid

⁸ Ministry of Maritime Affairs, Tourism, Transport and Development: Return of Expellees and Refugees in Croatia, 7th July 2006

⁹ For example: Serbian Democratic Forum, Center for Peace, Legal Advice and Psychosocial Assistance - Vukovar

¹⁰ Official Journal of the European Union: Council Decision of 20 February 2006 on the principles, priorities and conditions contained in the Accession Partnership with Croatia and repealing Decision 2004/648/EC (2006/145/EC); 3.1 Short term priorities, Political Criteria, Regional Issues and International Obligations, 25th February 2006

¹¹ OSCE Mission to Croatia: 2006 Review, page 14

¹² Ombudsman of the Republic of Croatia: Activity Report for 2005, page 154

¹³ All successor states joined to the Agreement on Succession Issues (of former Socialist Federal Republic of Yugoslavia). The Agreement came into force on 2nd June 2004

¹⁴ Ombudsman of the Republic of Croatia: Activity Report for 2005, page 51

CONCLUSIONS AND RECOMMENDATIONS:

By signing Sarajevo Ministerial Declaration on Regional Return of Refugees a realistic perspective of final and fair resolution of this difficult and complex issue in the Republic of Croatia, Bosnia and Herzegovina, Serbia and Montenegro has been opened. Signatory states need to accelerate initiated process and implement it in a good will and with full dedication to relevant international and legal commitments and standards in order for all remaining political issues to be resolved by the end of 2006. National Road Maps and Joint Implementation Matrix need to be completed within the shortest possible time with continuous assistance of the international community representatives.

Road Map of the Republic of Croatia presents solid political framework of issues and tasks that the authorities need to deal with aiming to bring final and practical resolutions of refugee issues at national level. Particular issues and tasks for the Government from the Road Map, however, need to be amended and additionally concretised. Having in mind the fact that fifteen years have passed since the refugee crisis started, these tasks need to be implemented within reasonable deadlines and without unnecessary delays.

For the realisation of the principles and goals of Sarajevo Declaration and the rights from the Road Map in practice, but also other acquired rights of refugees that are not incorporated in these documents, the Government needs to determine and establish adequate, efficient and transparent implementation mechanisms.

The Government should insure access to free legal aid in relevant court procedures for returnees in need. This can be done through establishment of special fund or by including returnees to the list of beneficiaries of the rights from the Law on Free Legal Aid, announced to be adopted by the end of 2006.

The Government needs to take measures for raising wide public awareness, including raising awareness among representatives of the authorities at local levels, on commitments taken by signing Sarajevo Declaration and on the content of the Road Map. Media and other activities aimed towards assurance of wide public support to Sarajevo Process, prevention of possible obstructions in its implementation, strengthening of interethnic tolerance and assurance of safe and dignified return should to be planned at local and national levels and implemented continuously.

Aiming to assure transparency of the process and enable public inter-sector dialogue on resolution of refugee issues, the Government should establish firmer contacts with representatives of relevant nongovernmental organisations and refugee and returnee representatives, and include them in the process of implementation of activities and monitoring of goals from the national Road Map.

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