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# Republic of Croatia: Displaced former tenancy rights holders – Review of the approach to acquired rights and provision of housing care for minority returnees in 2008

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Recognition of acquired (property) rights and return of exiled and displaced former tenancy rights holders – persons belonging to national minorities – are the key issues for closure of refugee and expellee dossier in the Republic of Croatia and wider region. Many years of neglecting these problems by authorities of the Republic of Croatia have negatively reflected on their adequate and fair resolution and remain being the subject for discussions at national and cross-border levels even today. Only during last few years, the Republic of Croatia started taking more concrete political and legal measures for enabling return of exiled and displaced former tenancy rights holders, mostly, ethnic Serbs. Undertaken measures refer exclusively to adoption of two models for provision of housing for those who have decided to return and live in the Republic of Croatia, under specific, and for some potential returnees, very limited conditions. Measures that would, in accordance with international obligations of the Republic of Croatia, substantially review ways of tenancy rights termination, recognition of acquired rights and respect for human rights of exiled and displaced former tenancy rights holders, have, however, failed out. It is possible to review that gap from several perspectives such as respect and protection of human rights, fulfilment of international obligations and, for example, fulfilment of Copenhagen political criteria<sup>1</sup> for membership of the Republic of Croatia in the European Union, but also from

the perspectives of long-term stabilization and normalization of international and interstate relations in the territories of former Yugoslavia (SFRY) and south-east Europe, and strengthening of cross-border cooperation and security.

This document reviews some of the key opened political and legal issues related to the recognition of acquired rights and approach to provision of housing care to displaced former tenancy rights holders over socially owned apartments<sup>2</sup> in the Republic of Croatia in 2008.

This document aims to contribute to and point at the significance of the continuation of discussion and undertaking measures for final and fair resolution of problems facing targeted population for over a decade

This overview does not end with general conclusions or recommendations as it would usually be the case with such a document since it considers two different approaches to resolution of problems of former tenancy rights holders.

The first approach refers to the recognition of acquired rights and creation of possibilities for free and unconditioned deciding by displaced former tenancy rights holders on their way of return to the Republic of Croatia or local integration in the country where they currently reside and could exercise their acquired rights. This approach is based on fulfilment of obligations from international agreements and respect for relevant standards of human rights protection.

The second one refers to limited and preconditioned possibility to exercise rights to housing and permanent return to the Republic of Croatia, without recognition of the acquired rights, based on specific national models and legal frames of provision of (social) housing care to returnees.

## **Displacement and return of displaced population in the Republic of Croatia**

Armed conflicts and hostile atmosphere in 1991 – 1997 period resulted in displacement of around 950.000<sup>3</sup> residents of Croatia. 550.000 displaced citizens were ethnic Croats and around 400.000 were mostly ethnic Serbs out of which 370.000 fled to Serbia and Montenegro, 40.000 to Bosnia and Herzegovina, and 32.000 to Croatian Danube region (former UNTAES region).

According to data by Croatian Government, since the beginning of the return of displaced persons in 1995, 345.920 returnees have been officially registered out of which 125.450 were ethnic Serbs: 92.556 refugees from Serbia and 9.358 from Bosnia and Herzegovina; and 23.536 internally displaced from Croatian Danube region.<sup>4</sup> In the middle of 2008, the Government of the Republic of Croatia states:

*“Return of ethnic Croats is mostly completed with the exception of wider Vukovar area where the reconstruction is still in process. What Republic of Croatia is facing at the moment is the return of exiled ethnic Serbs who are still residing in Serbia and Montenegro for whom the reconstruction of houses continues and other return preconditions are being ensured. Precise number of refugees who want to return to Croatia is not available.”<sup>5</sup>*

Official number of registered returnees, however, does not reflect realistic number of sustainable returns in the Republic of Croatia. OSCE Mission to Croatia estimated, in 2006, that only 60-65% of minority returns can be considered sustainable and that certain number of refugees after returning to and staying in Croatia for a short period, returns to the country of their exile mostly for persistent difficulties in the approach to the housing, acquired rights and employment.<sup>6</sup> An independent 2007 UNHCR ordered study assessment point at even more defeating results of the sustainability of minority

return:

*„...we could conclude that between 44% and 50% of registered returnees do not permanently reside in Croatia. If we translate our findings to the whole population of 120,000 registered Serb (minority) returns, we arrive at a realistic estimate of 46,000 and 54,000 registered returnees living permanently in the country, of who 42,000 to 49,000 reside in their place of origin.”<sup>7</sup>*

It is impossible to determine precise number of remained potential minority returnees to the Republic of Croatia. One independent study from December 2003 showed that 42% of ethnic Serbs living as refugees in Serbia, Montenegro, and Bosnia and Herzegovina would be interested to return if there was a housing and better economic perspective.<sup>8</sup> In September 2006, on the basis of return requests, the Ministry in charge assessed that there are at least 11.694 and not less than 20.000 potential returnees to the Republic of Croatia.<sup>9</sup>

## **Regional initiative for resolution of displaced persons' problems**

Considering regional dimension of displacement and return related issues of refugees to the countries of their pre-war residence, representatives of international community from the territory of the Republic of Croatia, Bosnia and Herzegovina, Serbia and Montenegro have fostered an initiative for acceptance of regional approach and regional interstate cooperation in resolution of refugee problems. That initiative of the three OSCE Missions, the UNHCR offices, and European Commission delegations resulted in adoption of Sarajevo Ministerial Declaration on regional refugee return that has been signed by the Republic of Croatia, Bosnia and Herzegovina, and Serbia and Montenegro. Signatory states have agreed to develop national strategies that would be consolidated into the regional strategic framework for resolution of remained refugee issues by the end of 2006. The strategies should have created legal and political presumptions for return or local integration of refugees depending on their individual decisions. Declaration foreseen deadline, however, was not respected, regional strategic framework was not created and the process initiated by signing of the Declaration was blocked.

Representatives of the Republic of Croatia

have many times, during 2008, emphasized that the process, as to the Republic of Croatia, is completed since Croatia produced and implemented national strategy. Nevertheless, the key opened issue within the “Sarajevo process” refers to the recognition of the right to possible financial or another kind of compensation for exiled and displaced former tenancy rights holders from the Republic of Croatia, mostly ethnic Serbs.

### **Problem of approach to acquired rights in the Republic of Croatia**

Problem of approach to acquired rights of displaced former tenancy rights holders and their families, mostly ethnic Serbs who fled to Serbia, Montenegro, and Bosnia and Herzegovina, can be considered from two angles – in the sense of exercise of the right to return to original housing units in places of their permanent pre-war residence in the Republic of Croatia, and in the sense of recognition and exercise of (property) rights arose from the fact that they used to enjoy the tenancy rights holder status over socially owned apartments such as the right to privatization under favorable conditions.

### **Tenancy rights in the Republic of Croatia**

The Constitution of the former Yugoslavia established tenancy right as family-legal, social and property-legal category, and it had characteristics of specific (*sui generis*) proprietary right. Decisions brought by the apartment providers on assignation of apartments and contracts on use of the apartments that were concluded between the tenancy rights holders and relevant public fund were the legal foundation for acquiring tenancy rights over socially owned apartments. Constitutional provisions were the foundation for the tenancy rights holders to, under favorable conditions, participate in the privatization of apartments they held in their possession.

With the *Law on Lease of Apartments*<sup>10</sup>, in 1996, the legal institute of tenancy right in the republic of Croatia has been cancelled and Croatian legislation no longer recognizes it. That is the reason why this document does not speak about the restitution of tenancy rights but about the problem of (non) recognition of acquired rights.

In order to analyze problems regarding loss

of tenancy rights that follow it is necessary to mention that one of the main reasons for tenancy rights cancellation as established in *the Law on Housing Relations*<sup>11</sup> from 1985 was unjustified non use of the apartments by beneficiaries in the period longer than 6 months.

### **Loss of tenancy rights and non-recognition of acquired rights**

Exiled and displaced former tenancy rights holders were denied the tenancy rights in two ways: in legal proceedings for the termination of tenancy rights due to the vacancy of their apartments in the period longer than 6 months, in many cases by in absentia verdicts and without beneficiaries' knowledge, or as they failed to return to the apartments they had lived in within 90 days from the moment the *Law on Leasing Apartments on the Liberated Territory*<sup>12</sup> came into force on 27 September 1995. In the first way, tenancy rights were terminated in the areas that were controlled by Croatian authorities during armed conflict, while in the other way tenancy rights were terminated in the areas controlled by local Serbs until 1995.

The total number of cases where tenancy rights were cancelled is estimated at 29,800, out of which 23,800 on the territory controlled by Croatian authorities during 1991 conflict (outside ASSC) and 6,000 on the territory that was under control of local Serbs until 1995 (inside ASSC). Around 100,000 people from urban areas of the Republic of Croatia were affected by that.<sup>14</sup>

The authorities of the Republic of Croatia did not accept armed conflicts, justified fear, direct or indirect pressure and threats, and in some cases forced and illegal evictions from the apartments, as well as inexistence of objective preconditions for physical return of beneficiaries and similar circumstances as legally relevant facts to justify the absence of tenancy right holders from or not returning to their apartments within legally prescribed deadline. In that sense, policy and attitude of the Republic of Croatia towards displaced ethnic Serbs it is possible to review from, for example, official standing point of Croatian Parliament, that is that the owners of vacant houses and apartments (mostly ethnic Serbs), that were used as accommodation of numerous expellees and refugees (mostly ethnic Croats), who were robbed and expelled from occupied areas, left those houses and apartments

on their own free will in order to join the great Serbian aggressor.<sup>15</sup> This general view and attribution of collective guilt to a particular group of citizens has, without any doubt, reflected and it still reflects on minority return to the Republic of Croatia as well as to (non)recognition of acquired rights to former tenancy rights holders.

Attitude of the authorities of the Republic of Croatia towards return and (non)recognition of acquired rights to former tenancy rights holders also needs to be reviewed from the perspective of legal and political practices in other states formed in the process of disintegration of former SFRY, attitudes towards views of relevant international organizations and fulfilment of international contractual obligations in reference to human rights protection.

For example, in Bosnia and Herzegovina, where, before disintegration of former Yugoslavia, the tenancy rights institute and specific rights of beneficiaries were legally regulated in the identical way as it was the case in the Republic of Croatia, tenancy right holders were recognized the right to return to their pre-war homes that they have left after 30 April 1991<sup>16</sup>, and all administrative, judicial and other acts on termination of tenancy rights were legally proclaimed annulled. Tenancy rights in Bosnia and Herzegovina are defended as the property right in the sense of the Article 1 of Protocol 1 of the European Convention for Protection of Human Rights and Fundamental Freedoms. In almost 99,8% out of total number of temporary occupied housing units and other kinds of immovable, these properties were returned to their owners and tenancy rights holders.<sup>17</sup>

Republic of Croatia has, as to displaced former tenancy rights holders, turned a deaf ear to the Resolution 1120 of the United Nations Security Council from 14 July 1997 by which the right of all refugees and displaced persons originating from the Republic of Croatia to their original homes in the Republic of Croatia has been reinstated. For the curiosity even bigger, the Republic of Croatia became non-permanent member of the UN Security Council on 1 January 2008.

Authorities of the Republic of Croatia have also ignored some, although legally not binding, but relevant international standards of human rights protection included in, for example *Resolution 2004/2 on Housing and Property Restitution for Refugees and Displaced Persons of the*

*UN Sub-Commission for Promotion and Protection of Human Rights*<sup>18</sup>, and in *UN ECOSOC Principles on Housing and Property Restitution for Refugees and Displaced Persons* (also known as the Pinheiro's Principles) of June 2005<sup>19</sup>. The *Principles* are explicitly mentioning the need to insure the recognition of the apartment leasees, social apartments tenancy rights holders and other legal tenants within the program of restitution, that is the reinstatement of rights. The *Principles*, although having no legally binding contractual obligation, reflect widely accepted international human rights standards, refugee rights, humanitarian law and other generic standards, including those from international agreements<sup>20</sup> signed by the Republic of Croatia.

Despite the fact that displaced former tenancy rights holders are being denied the property character of their tenancy rights, the Republic of Croatia ratified and joined the *Agreement on Succession Issues* of former Yugoslavia where the tenancy rights of former SFRY citizens are considered within the Annex G of the Agreement "Private property and acquired rights". The Agreement came into power on 2 June 2004 and it is legally binding document for all successor states of former SFRY although its practical application, especially in sense of exercise of rights and obligations from the Annex G, remains problematic even today.

Some think that by termination of tenancy rights of most of former holders, considering the way and circumstances under which it has been conducted, the Republic of Croatia violated provisions of the European Convention for Protection of Human Rights and Fundamental Freedoms, such as those from the Article 1 of the Protocol 1 (right to peaceful enjoyment of one's property), Article 6 (right to fair trial), article 8 (right to home), Article 13 (effective remedy before a national authority), and Article 14 (the enjoyment of the rights and freedoms without discrimination at any ground).<sup>21</sup> In support of this opinion, it is stated as following:

*„In the process of tenancy rights termination, all of these rights have been violated since: a) verdicts were brought in absentia, in which way the fair trial was disabled; b) those deprived of their tenancy rights ex lege were left without efficient legal remedies; c) tenancy rights were cancelled to exclusively persons belonging to one national minority.“<sup>22</sup>*

In, so far, the only case of court termination

of tenancy rights for abandoning and not using the apartment for a period longer than 6 months that has been taken into consideration before the European Court for Human Rights, the Grand Chamber of the Court passed a decision on the Court not being in charge of the case since the final verdict on the tenancy rights termination was brought before the Convention came into power in the Republic of Croatia (the *rationae temporis* institute).<sup>23</sup> For that reason, it seems that the possibility for the tenancy rights termination cases to be considered before the European Court for Human Rights remains potentially actual for a very few former tenancy rights holders whose tenancy rights were terminated after the Convention came into power in the Republic of Croatia.

## Approach to provision of housing care

Since this document aims to provide an overview of the minority return related issues, approach to acquired rights and provision of housing care to exiled and displaced former tenancy rights holders in 2008, the situation from the previous period necessary for understanding the subject matter will be only briefly described and will be used for comparison with the situation in 2008. We would like all those interested in more detailed review of a very complex provision of housing care to former tenancy rights holders issues up to 2007 to read an independent “Analysis of the access to housing care by refugees and displaced persons, former tenancy rights holders, in the Republic of Croatia in 2007”<sup>24</sup> that is the result of multiannual cooperation of several nongovernmental organizations from Croatia, Bosnia and Herzegovina, and Serbia.

Authorities of the Republic of Croatia have adopted, as a result of the international pressure, two models of provision of housing to former tenancy rights holders: in and outside Areas of Special State Concern (ASSC). What is characteristic for these models is that they are ordered in significantly different legal frameworks, that is acts of different legal nature.

## Model of provision of housing within ASSC

The model of provision of housing within

ASSC is established by the new *Law on Areas of Special State Concern*<sup>25</sup> from July 2008. With this Law coming into power, the provisions of the *1996 Law on Areas of Special State Concern* are no longer valid.<sup>26</sup> The new *2008 Law* established that the Government and the Ministry in charge shall, within 90 days as of the day the Law came into power, bring regulations (directive, decision, and rulebooks) for the implementation of particular provisions of the *Law*.<sup>27</sup> Regulations brought on the basis of the authorities from the old *Law on ASSC*<sup>28</sup> shall be applied until the regulations from the 2008 *Law* came into power. Since the new implementation acts did not come into power within the 2008 *Law* prescribed deadline, which was at the end of October 2008, the old regulations still apply.<sup>29</sup>

The model of Provision of housing provides a possibility to file an *application* for provision of housing care for several hundreds of citizens and it does not refer exclusively to former tenancy rights holders.<sup>30</sup>

The 2008 *Law on ASSC* established the right to housing care, which can be enjoyed by a person or members of their family:

- If they do not own or co-own a family house or an apartment on the territory of the Republic of Croatia, or if they have not sold it, given it as a present or in any other way disposed of it as of 8 October 1991, or if they have not been granted the legal position of protected lessee.
- If they do not own or co-own a family house or an apartment on the territory of the states formed in the process of SFRY disintegration, or if they have not sold it, given it as a present or in any other way disposed of it as of 8 October 1991, in other words, if they have not been granted the legal position of protected lessee.<sup>31</sup>

The right to provision of housing care can also be exercised by a beneficiary who co-owns family house or an apartment of the housing size smaller than the one established by the *Law on Reconstruction*<sup>32</sup> (35 m<sup>2</sup> for the first family member and 10<sup>2</sup> for every other family member).<sup>33</sup>

The 2008 *Law on ASSC* establishes that the right to housing care in ASSC is gained in one of the

following ways:

- By leasing a state-owned family house or an apartment;
- By leasing a damaged state-owned family house and by the allocation of construction material;
- By the allocation of state-owned building land and construction material for the construction of a family house, or
- By the allocation of construction material for reparation, renovation or reconstruction of a family house or an apartment, that is construction of family house at building land owned by the applicant;
- By the allocation of state-owned building land and construction material for the construction of an apartment block with more than one residential unit;
- By donation of state-owned family house or apartment.<sup>34</sup>

The 2008 *Law on ASSC* removed certain deficiencies and gaps from the legal framework that has been in power before it came into power. For example:

- *The earlier Law on ASSC did not set out precise terms for obtaining the right to housing care, which affects citizens' legal security, and sets too broadly the internal field of margin of appreciation belonging to the competent bodies' when deciding about the right to housing care, which enables arbitrariness in operation of the competent bodies. The bodies which are competent to make decisions based on applications for housing care determine the right to housing care by interpreting and applying the legal provision stating that a person or his family members can exercise the right if they do not own or co-own a family house or an apartment on the territory of the Republic of Croatia or on the territory of the states formed in the disintegration process of the former SFRY, or if they have not sold it, given it away as a present, or disposed of it in any other way as of 8 October 1991, at the same time disregarding whether the house or an apartment owned or co-owned by the applicant is fit for living.*<sup>35</sup>

The 2008 *Law on ASSC* established that the right

to housing can be exercised by a person and members of his/her family if they do not own or co-own other vacant house or apartment.

- *In the previous period, the Ministry in charge was deciding on applications for provision of housing care within the ASSC. It was impossible to appeal against the first instance decision of the Ministry in charge since the earlier Law on ASSC did not foresee a possibility to appeal and as there was no body to decide on the appeal.*<sup>36</sup>

The 2008 *Law on ASSC* established that regional units of the Ministry of Regional Development, Forestry and Water Management – regional offices – are to decide on the right to provision of housing on the basis of the application, and that one can appeal against their decision to the Ministry within 8 days as of the day he/she received the decision.

Nevertheless, the 2008 *Law on ASSC* established more restrictive conditions for exercise of the right to housing care in ASSC in comparison to the earlier legal framework. While the previous *Law on ASSC* established the right to housing care, which can be enjoyed by a person or members of their family if they do not own or co-own a family house or an apartment on the territory of the Republic of Croatia or on the territory of the states formed in the process of SFRY disintegration, if they have not sold it, given it as a present or in any other way disposed of it as of 8 October 1991, in other words, if they have not been granted the legal position of protected lessee, the new 2008 *Law on ASSC* has expanded the ownership and co-ownership over a house or an apartment limitation to territories of also other states where potential beneficiaries currently live. It is necessary to review this new limitation for the fact that provisions of the 2008 *Law on ASSC* apply to procedures that have just been initiated while the provisions of the previous *Law on ASSC* apply to the pending procedures. Namely, for the longlasting of the housing provision decision-making procedures (the procedure can take up to several years), different priorities given to specific groups of applicants or individuals, the new legal limitations presume that the persons fulfilling conditions for exercise of right to provision of housing care in accordance with at the time valid provisions of the previous *Law on ASSC* who

have filled an application for provision of housing care paralelly or prior to an applicant whose application was positively decided in the meantime, shall not exercise the right to housing under the same conditions as a person who became the beneficiary of the same right before the 2008 *Law on ASSC* came to power.

The provision<sup>37</sup> of the 2008 *Law on ASSC*, which prescribes that the beneficiary who has gained his/her right to housing care on the basis of the *Law on Lease of Apartments in the Liberated territory*<sup>38</sup>, under the condition that he/she uses it and lives in it continuously for at least 10 years as of the day the decision was brought, and under the condition that he/she does not own other housing unit in the territory of the Republic of Croatia, can exercise the right to provision of housing care in the way that he/she is donated state-owned family house or apartment, can be review in the sense of establishment of direct and indirect discrimination from the perspective of the provisions of the *Law on Elimination of Discrimination*<sup>39</sup>, adopted in July 2008, for at least two reasons:

- *The Law* established that the right to provision of housing care by donation of a state-owned apartment can be exercised by only above-mentioned beneficiaries, while the same is not established for the other housing beneficiaries, in which way they are, in the sense of discrimination, put or could be put in less favourable position compared to persons facing comparable situation. Such a criterion or practice can not be objectively justified by the legitimate goal and the means for their achievement can not be considered adequate and necessary. Possible discrimination can be best seen from the perspective of former tenancy rights holders in Vukovar who became protected lessees of the apartments over which they had tenancy rights based on the 1996 *Law on the Lease of Apartments*. They are not entitled to exercise legally established right to donation of the apartment in subject, but to purchase or use those apartments on the basis of the lease agreement.
- Aforementioned beneficiaries can

exercise the right to donation of a state-owned apartment if they do not own another housing unit in the territory of the Republic of Croatia, while the provision applied to other beneficiaries of potential beneficiaries establishes that they can exercise the same right if they do not own or co-own a family house or an apartment on the territory of the Republic of Croatia, on the territory of the states formed in the process of SFRY disintegration, or in another country of their current residence, if they have not sold it, given it as a present or in any other way disposed of it as of 8 October 1991, in other words, if they have not been granted the legal position of protected lessee.

It is necessary to mention that a number of beneficiaries who were provided with state-owned apartments to use them on the basis of the *Law on Lease of Apartments in the Liberated territory*<sup>40</sup> are former refugees from Bosnia and Herzegovina who became Croatian citizens in the meantime. Having in mind the fact that property restitution in Bosnia and Herzegovina, including private houses and apartments over which the beneficiaries held tenancy rights, has been completed in 99,8% of cases, these persons were enabled to exercise the right to provision of housing care by donating them state-owned apartments despite the fact that at least some of them owns or co-owns other vacant family house or apartment on the territory of the states formed in the process of SFRY disintegration, in this case Bosnia and Herzegovina.

### **Model of provision of housing outside ASSC**

Unlike provision of housing within ASSC, the legal framework of the provision of housing care outside ASSC is not regulated by the Law. Provision of housing care outside ASSC model established the possibility for the beneficiaries to apply for housing exclusively if they were former tenancy rights holders who used to live in socially owned apartments outside ASSC.

Before 2 June 2008, the legal frame for provision

of housing care outside ASSC model consisted of the following legal acts:

- *The 2003 Conclusion of the Government of the Republic of Croatia on the way of Provision of Housing care to Returnees who do not own a House or an Apartment and who Used to live in Socially owned Apartments (former tenancy rights holders) in the territory of the Republic of Croatia outside ASSC;*<sup>42</sup>
- *The 2006 Conclusion of the government of the Republic of Croatia on the Implementation of Housing Programme for Returnees – former tenancy rights holders over the apartments outside ASSC; this Conclusion was followed by the Provision of Housing Care Programme*<sup>43</sup>
- *Implementation Plan of Provision of Housing Care for Returnees who did not own an Apartment or a House and who used to live in Socially owned Apartments in Territory of the Republic of Croatia Outside Areas of Special State Concern*<sup>44</sup>
- *Instructions on how to Deal with the Applications on Provision of Housing Care Outside Areas of Special State Concern*<sup>45</sup>

The Government's Decision on the Implementation of the Provision of Housing Care for Returnees - Former Tenancy Rights Holders over Apartments outside ASSC from 29 May 2008 came to power on 2 June 2008.<sup>46</sup> The Decision established the way of provision of housing care to returnees who do not own or co-own a family house or an apartment and have not sold it, given it away as a present, or in any other way disposed of it, in other words, if they have not been granted the legal position of protected lessee, but who used to live in socially owned apartments (former tenancy rights holders) in the territory of the Republic of Croatia outside ASSC.<sup>47</sup> With the Decision coming into power, the 2006 Conclusion of the government of the Republic of Croatia on the Implementation of Housing Programme for Returnees – former tenancy rights holders over the apartments outside ASSC was no longer valid.

According to the Conclusion from 2003, which is still in power, the Government of the Republic of Croatia concludes that displaced former tenancy rights holders who used to live in socially owned apartments outside ASSC will be provided housing care on a condition that:

- they do not own or co-own a family house or an apartment on the territory of the Republic of Croatia or on the territory of other states formed in the wake of the former SFRY disintegration, or
- they have not sold it, given it away as a present, or in any other way disposed of the facility as of 8 October 1991, i.e. they did not get the legal status of protected lessee.

According to the Conclusion from 2003, housing care will be carried out in one of the following ways, of returnees' choosing

- Leasing the state-owned apartment\*, or
- Purchasing one's own apartment in accordance with the Law on Socially Stimulated Apartment Building, with the possibility of long-term instalment-based payment under favourable conditions.

\* By *the 2008 Decision*, the Government of the Republic of Croatia established that the apartments for provision of housing care shall be insured in following ways:

- By organised construction of apartments;
- By purchasing apartments from the market;
- By moving into state-owned apartments;
- By construction of apartments through public-private partnership model, that is through the long-term agreements on lease of apartments (25 to 30 years).<sup>48</sup>

By their *2008 Decision*, the Government obliged the Ministry of Regional Development, Forestry and Water Management to conclude Protected Rent Lease Agreements with the beneficiaries of the apartments (returnees), according to the approval on provision of housing care. The Government, however, failed to oblige the Ministry to conclude contracts on purchase of apartments with those beneficiaries who have decided in favour of such provision of housing care. Issues regarding the way and obligations of the ministry in charge relating to the conclusion of the purchase contracts remains, as in the previous period, unresolved.

The right to provision of housing care is decided

on the basis of *Approvals* rather than *Decisions* that, unlike the *Approvals*, represent an administrative act.

Prior to mid 2008, housing applicants had no legal remedies available in reference to the *negative letters* on the right to provision of housing care. In that sense, the positive step forward in 2008 refers to the fact that regional offices of the Ministry of Regional Development, Forestry and Water Management in case of negative decisions started passing the first instance *decisions* containing instructions on available legal remedies.

Nevertheless, it is not possible to file an appeal against the “positive” *approval* establishing the right to housing care as these approvals do not have a character of an administrative act. If the right to provision of housing care was to be decided in the form of a *Decision*, that is an administrative act, such a possibility would exist since a *decision* must contain an instruction on available legal remedy.

### **Beneficiaries, dynamics, and characteristics of the procedure on provision of housing care**

According to the data by the Ministry of Regional Development, Forestry and Water Management, by June 2008, former tenancy rights holders submitted 13.137 applications for provision of housing care within ASSC and 3.965 applications for housing outside ASSC (4.559 applications in total, out of which 594 applications were unsolicited).<sup>49</sup>

Deadline for submission of applications for provision of housing care outside ASSC expired on 30 September 2005, while submission of requests for provision of housing care within ASSC has not been established and it is still possible to submit such requests. Final deadline for submission of requests for provision of housing care within ASSC shall be regulated by a decision brought by the Government of the Republic of Croatia.<sup>50</sup>

Since the beginning of the housing program to the end of 2007, housing has been provided for 4.312 former tenancy rights holders, in most cases, in apartments in Vukovar.<sup>51</sup> It is necessary to stress out that most of resolved cases in Vukovar refer to former tenancy rights holders who previously held an expellee status, mostly ethnic Croats, and persons who, during the war,

did not leave their apartments or were internally displaced in Vukovar area, mostly ethnic Serbs. These persons have acquired a status of protected leasees in the apartments over which they held tenancy rights on the basis of the *Law on Lease of Apartments* from 1996, regardless of the fact that they were not offered a possibility to conclude lease agreements. Number of former tenancy rights holders who were provided housing care within ASSC and who held a refugee status outside Republic of Croatia or were displaced outside original places of former residence, have not been separately presented within Ministry data.

Key commitments of the Government of the Republic of Croatia related to implementation of the housing care programme in 2007 are:

- to house 1,400 former tenancy right holders and members of their families, of which 1,000 within ASSC and 400 outside ASSC by the end of 2007, and
- by the end of 2007, to finalize all administrative procedures linked to requests for housing care within and outside ASSC, after which a precise number of beneficiaries that will have been housed by the end of 2009 is to be determined.

The Government of the Republic of Croatia, referring to the fulfilment of their obligations in 2007 says:

*„In 2007, the Government of the Republic of Croatia conducted activities in reference to accelerated process of housing care provision for former tenancy rights holders who wish to return to areas within and outside of areas of special state concern. The Government obliged and managed to resolve 1.400 FTRH cases. 1.418 cases were resolved: 408 outside ASSC and 1.010 within ASSC in which cases the addresses were already provided. Around 78% - 1.097 of beneficiaries have already moved in to the assigned apartments (physically resolved cases with adequate apartments or other satisfactory housing objects allocated). Apartments for additional 104 beneficiaries are provided and beneficiaries moving in depend exclusively on them. Remaining 217 apartments will be available to beneficiaries by the end of September 2008.”<sup>52</sup>*

However, according to the UNHCR data from 1<sup>st</sup> January 2008, the number of housing beneficiaries in 2007 is lower than the one

presented in the official Government data: 739 housing units have been assigned to beneficiaries in the areas of special state concern, while there are only 155 housing units outside the areas of special state concern provided to the beneficiaries.<sup>53</sup>

An independent *Analysis of the access to housing care by refugees and displaced persons, former tenancy rights holders, in the Republic of Croatia in 2007* showed that, according to the project team data, no beneficiary of housing care outside ASSC signed a lease agreement, which means that they were not provided housing care in accordance with the provisions of the Implementation Plan of Provision of Housing Care to Returnees who were not owners of a house or an apartment and who used to live in socially owned apartments in the territory of the Republic of Croatia outside ASSC.<sup>54</sup>

Analysing the results on fulfilment of obligations taken by the Governments of the Republic of Croatia in 2007 in reference to the number of housing beneficiaries within ASSC, independent authors of the Analysis pointed at the transparency issues regarding the work of the ministry in charge saying that:

*„...data on the number of former tenancy right holders – housing care beneficiaries is not available. In addition, neither data on ethnicity of beneficiaries nor data on their previous status, states where they had resided before they realized housing care, etc. are available, which is why it is impossible to assess to what extent implementation of the programme of housing care within ASSC contributes to the return of refugees from the Republic of Croatia. For the same reason it is very hard or even impossible to carry out assessment of housing care performances in terms of implementation of the Sarajevo Ministerial Declaration on Regional Return of Refugees and Displaced Persons.(...) Unavailable are also the data on the number of persons whose requests were positively settled and to whom accommodation was allocated in housing units in which they had previously been living or which they had never left in the first place.(...) Therefore, for this reason it is impossible to assess to what extent implementation of the programme of housing care within ASSC contributes to return of displaced persons. It is also questionable how many housing care beneficiaries, who became owners of and moved into housing units designed for housing care, exercised their right to housing care through signing a lease contract, pursuant to the Law on ASSC. There were cases of housing care (a signed contract on the lease of a state-owned apartment) in inadequate housing units or those units that do not match*

*the square area that, depending on the number of family members, needs to be ensured in line with the Law on Reconstruction – 35 m<sup>2</sup> for the first member and 10 m<sup>2</sup> for each remaining family member.(...) And on the territory outside ASSC there were registered cases that applicants and their family members are allocated an apartment for usage the total resident area of which is smaller than the area set out by virtue of the Law on Reconstruction...*

" 55

Positive steps forward in 2008 can be seen having in mind the fact that the Government adopted the *Action Plan for Accelerated Implementation of the Program of Housing Care Provision in and Outside Areas of Special State Concern for Refugees – former tenancy rights holders who wish to return to the Republic of Croatia* in mid 2008, which refers to the criteria for opening negotiations between the Republic of Croatia and the European Commission under Chapter 23 The Reform of Judiciary and Fundamental Human Rights. The Plan established on measures, bodies responsible for the production and implementation of those measures, deadlines for each measure to be applied and financial requirements needed. Assessment of results on measures that the Government of the Republic of Croatia took in 2008 in reference to the provision of housing care to exiled and displaced former tenancy rights holders is impossible to produce in this moment for the short timeline.

Key problems in reference to the monitoring and assessment of the results accomplished in 2008, however, are the remaining lack of transparency of the work of the ministry in charge and their regional offices, and lack of availability of relevant information. Despite the Ministry of Regional Development, Forestry and Water Management has produced the Catalogue of Information containing content, purpose, the way to secure and timeframe for the exercise of the right to access to information at different organisational units of the Ministry, the exercise of the right to access to relevant information via, for example, the website of the Ministry or via claims based on the *Law on Access to Information* remain very limited or impossible.

Some of the key characteristics of the decision-making process on applications for provision of housing care within and outside ASSC in 2007, the *Analysis* authors described in the following way:

„... Non-transparency and arbitrary, illicit, volatile, and unprofessional acting of competent bodies of public administration; not abiding by valid national legislation; the absence and the impossibility of enforcing adequate legal remedies, lack of control, etc. are some of the key characteristics of implementation of existing housing care models in the Republic of Croatia, for which reason legal security of citizens and observation of principles of the rule of law are severely undermined.(...) Deadlines for finalization of the housing care process are frequently altered, but commitments that the Government of the Republic of Croatia declaratory assumed are not fulfilled within stated deadlines, which is what makes the final deadline for completion of the housing care process uncertain.(...) Non-transparency of actions and too broadly defined an internal field of margin of appreciation are contrary to basic principles of ECHR and enable

total arbitrariness of actions undertaken by the competent authorities and officials. Such actions are often subject to criticism and complaints of potential housing care beneficiaries that at the same time, as stated in the Report of the Ombudsman for 2007, 'express their doubts about reasons for such actions (favoritism, corruption, arbitrariness, nationality)'.<sup>56</sup>

It will be necessary to conduct continuous and detailed independent monitoring of the bodies in charge actions in order to analyze the success in eliminating up to date characteristics of decision-making on provision of housing care applications, and impact that the changes within legal framework of the provision of housing care model in 2008 may have or shall have in that sense.

## Endnotes

**1** Copenhagen political criteria adopted by the European Council in 1993 request for "stability of institutions guaranteeing democracy, rule of law, human rights and respect for the rights and protection of minorities".

**2** In this document the term "former tenancy rights holders" refers to all persons who exercised tenancy rights over socially owned apartments in 1991, who lived in those apartments independently or together with members of their families, and who had to leave those apartments for various reasons during the war in the Republic of Croatia in period 1991-1995, who no longer live in those apartments and/or have no valid reason to use those apartments

**3** Commission of European Communities(CEC), Opinion of the European Commission on the Request of the Republic of Croatia for the Membership of the European Union, 20<sup>th</sup> April 2004, COM(2004)257, final text, page27.

**4** The Government of the Republic of Croatia: Report on the Implementation of the Constitutional Law on the Rights of National Minorities and the expenditure of resources provided within the State Budget of the Republic of Croatia for 2007 for the needs of National Minorities; July 2008, page 148.

**5** Ibid

**6** OSCE Mission to Croatia: Review 2006 – Progress Report on Fulfilment of International Obligations of the Republic of Croatia, 9<sup>th</sup> June 2006, page13.

**7** UNHCR: Sustainability of Minority Return in Croatia, 2007, page 30

**8** Agency PULS, "Motivation and Emotional Factors of Refugee Return to the Homeland and the Acceptance of Returnees by the Local Population", empirical research, 2004, page15

**9** Ministry of Maritime, Tourism, Transportation and Development: Return of Expellees and Refugees to Croatia, 7 September 2006

**10** "Official Gazette", no.91/96

**11** "Official Gazette", no.51/85

**12** "Official Gazette", no.73/95

**13** Data by the Ministry of Justice of the Republic of Croatia, taken from the UNHCR Representation in the Republic of Croatia – Summary Statistics on Refugee / Return and Reintegration, 1 January 2008

**14** OSCE Mission to Croatia, Report: Options of Provision of Housing Care for Former Tenancy Rights Holders, April 2005

**15** Authentic interpretation of the Article 14 of the Law on Status of Expellees and Refugees ("Official Gazette", no.96/93 and 39/95) by the House of Representatives of the Parliament of the Republic of Croatia from 12<sup>th</sup> March 1999

**16** According to the Article 1 of the Annex VII of the General Framework Agreement for Peace in Bosnia and Herzegovina, persons who left their apartments between 30<sup>th</sup> April 1991 and 4 April 1998 are considered refugees and as such have the right to

return to their homes, in other words they can reposes the apartments over which they hold tenancy rights.

**17** Quoted from the speech by the Assistant Minister for Human Rights and Refugees from Bosnia and Herzegovina, Mr. Mario Nenadic, at regional Conference "Resolution of Refugee Problems and the way to European Union", Belgrade, 27<sup>th</sup> October 2008

**18** E/CN.4/2005/2; E/CN.4/Sub.2/2004/48, UN Sub-commission for Promotion and Protection of Human Rights in Preamble of the Resolution no.2004/2 "Restitution of housing space and property" repeats that all refugees and displaced persons have the right to return to their countries and to be given back their housing space and properties they were deprived off during the period of their displacement, or that they should be compensated for the properties they cannot be repossessed by them.

**19** E/CN.4/Sub.2/2005/17, point 16 of the Principle speaks of the rights of leasees and other non-owners, and establishes that the states must provide recognition of the rights of leasees, tenancy rights holders of socially owned apartments, and other legal tenants within the program of restitution, that is, restoration of rights. The States need to, in the widest possible sense, ensure return, repossession and use of their housing premises, land and property, in the way similar to the one applied at formal owners.

**20** International Covenant on Economic, Social and Cultural Rights; International Covenant on Civil and Political Rights; Convention on Elimination of all Forms of Discrimination Against Women; International Convention on Elimination of all Forms of Racial Discrimination; Convention on the Rights of the Child; Convention on Refugees...

**21** Ankica Gorkic: "Tenancy Rights as property Rights", Serbian Democratic Forum, Belgrade, 2001, Beograd, 2001, page 22

**22** Ibid

**23** Case *Blečić vs. Croatia*, Decision by the Grand Chamber from 8 March 2006

**24** Available at

(<http://www.center4peace.org/Various%20document%20for%20web/Web%20materijali%20septembar%202006/RLAP%20FINAL%20version/RLAP%20Analysis%20final%20May%202008.pdf>)

**25** "Official Gazette", no.44/96, 57/96, 124/97, 73/00, 87/00, 69/01, 94/01, 88/02, 26/03 (consolidated text), 42/05 and 90/05

**26** "Official Gazette", no.86/08

**27** Article 32 paragraph 1 and 2 of the Law on Areas of Special State Concern

**28** Article 32 paragraph 3 of the Law on Areas of Special State Concern

**29** Following are the implementation acts that were in power before those established by new Law on ASSC: The Decree on terms and standards for provision of housing care in Areas of special state concern ("Official Gazette", no.10/01), The Rulebook on the priority list in provision of housing care in ASSC ("Official Gazette",



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no.116/02), The Decree on conditions for purchase of state owned family house or apartment in areas of special state concern ("Official Gazette", no.48/03 and 68/07), The Decree on donation of apartments and houses owed by the Republic of Croatia in areas of special state concern to Croatian defenders and families of deceased, imprisoned or missing Croatian defenders from the Homeland War („Official Gazette", no.142/06).

**30** Article 7 of the Law on Areas of Special State Concern "The Republic of Croatia will encourage return and stay of the population that have resided in areas of special state concern before the Homeland war and settlement of citizens of the Republic of Croatia of all professional occupations, especially those who can through their work contribute to economic and social development of areas of special state concern"

**31** Article 10 paragraph 1 of the Law on Areas of Special State Concern

**32** "Official Gazette", no.24/96, 54/96, 87/96 and 57/00

**33** Article 10. paragraph 3. of the Law on Areas of Special State Concern

**34** Article 8 paragraph 1 of the Law on Areas of Special State Concern

**35** See Regional Legal Assistance Programme: Analysis of the access to housing care by refugees and displaced persons, former tenancy rights holders, in the Republic of Croatia in 2007, April 2008, page 14

**36** Ibid, page 21 and 22

**37** Article 10 paragraph 2 point 3 of the Law on Areas of Special State Concern

**38** "Official Gazette", no.73/95

**39** "Official Gazette", no.85/08

**40** "Official Gazette", no. 91/96

**41** See Regional Legal Assistance Programme: Analysis of the access to housing care by refugees and displaced persons, former tenancy rights holders, in the Republic of Croatia in 2007, April 2008, page 8

**42** "Official Gazette", no. 100/03, 179/04 and 79/05

**43** "Official Gazette", no. 96/06

**44** Class:019-01/03-01/24; Reg.no.: 516-01-03-2 from 24 October 2003

**45** Class: 019-06/06-08/46; Reg.no.: 530-19-06-4 from 17 November 2006

**46** "Official Gazette", no.63/08

**47** Point I of the Decision

**48** Point II of the Decision

**49** Ministry of Regional Development, Forestry and Water Management: Proposed Action Plan for Accelerated Implementation of the Program of Housing Care Provision in and Outside Areas of Special State Concern for Refugees – former tenancy rights holders who wish to return to the Republic of Croatia, 23 June 2008

**50** Article 12 paragraph 4 of the Law on Areas of Special State Concern

**51** Proposed Action Plan for Accelerated Implementation of the Program of Housing Care Provision..., 23 June 2008

**52** Ibid

**53** UNHCR Representation in the Republic of Croatia – Summary Statistics on Refugee / Return and Reintegration, 1. January 2008.

**54** See Regional Legal Assistance Programme: Analysis of the access to housing care by refugees and displaced persons, former tenancy rights holders, in the Republic of Croatia in 2007, April 2008, page 35 and 36

**55** Ibid, page 34 and 35

**56** Ibid, page 37

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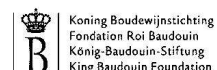
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