



Centar za mir, pravne savjete i  
psihosocijalnu pomoć – Vukovar



## **REGIONAL LEGAL ASSISTANCE PROGRAM " Support to refugee/IDP return through legal aid "**

### **Regional panel discussion on resolution of the outstanding legal issues pertaining to refugees/returnees from/to the Republic of Croatia:**

*Meeting between NGOs and representative of the Ombudsperson's Office Croatia*

## **BRIEFING PAPER**

### **Introduction**

On 20 September 2006, the Center for Peace, Legal Advice and Psychosocial Assistance – Vukovar and the OSCE Mission to Serbia co-organized a regional panel discussion on the resolution of the outstanding legal issues pertaining to refugees/returnees from/to the Republic of Croatia. The Panel Discussion was held in Vukovar, Croatia, and was organized as one of the activities within the project "Support to refugee/IDP return through legal aid"<sup>1</sup>.

The event was attended by the Deputy Ombudsman of the Republic of Croatia; representatives of the OSCE Missions to Croatia, Bosnia and Herzegovina and Serbia; and representatives of twelve Regional Legal Assistance Program (RLAP) network member organizations<sup>2</sup> from BiH, Croatia and Serbia.

The purpose of the discussion was to exchange information about existing good practice in resolution of legal cases through intervention of the Ombudsperson's Office in Croatia; cooperation of the Office with the civil society in the region and the possibility to expand and strengthen that cooperation in future. Additionally, the discussion was aimed at presentation of the preliminary findings of the NGO network in regard to ability of refugees/IDPs to fully exercise specific group of rights, those which were selected for monitoring by the NGO network.

### **Discussion**

The event was co-chaired by Mrs. Ruzica Banda, OSCE Serbia, and Mr. Ljubomir Mikic, Center for Peace Vukovar. Following the opening remarks, Ms. Hannelore Valier, OSCE Serbia, and the Croatia Deputy Ombudsman, Mr. Dejan Palic, addressed the audience.

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<sup>1</sup> RLAP is an initiative of the OSCE Mission to Serbia. Implementation of RLAP in 2006 is financially supported through a voluntary contribution by the U.S. Government.

<sup>2</sup> Humanitarian Center For Integration and Tolerance, Novi Sad; Serbian Democratic Forum, Belgrade; Balkan Center for Migration and Humanitarian Activities, Belgrade; Praxis, Belgrade and Kraljevo offices; Group 484, Belgrade; International Lex, Banja Luka; Serbian Democratic Forum, Zagreb; Association Gorica, Korenica; Civil Rights Project, Sisak; Civil Rights Project, Vukovar; regional MPDL (Movimiento por la Paz, el Desarme y la Libertad) project; and Center for Peace, Legal Advice and Psychosocial Assistance, Vukovar

Mr. Palic provided a brief overview on jurisdiction, tasks and functioning of the Ombudsperson's Office in the Republic of Croatia. He stressed that the Office has legal competences to consider and intervene in the administrative proceedings only, while complaints received in relation to the work and performance of the judiciary are just being registered. This situation limits the ability of Ombudsman to monitor the status of administrative cases that are submitted to the Administrative Court of the Republic of Croatia. According to Mr. Palic, a certain number of claims is submitted to the Ombudsman without precise definition of the issue in question or supporting documentation and material evidence is missing. Thus, Mr. Palic suggested that non-governmental organizations could play a key role in increasing the efficiency of the Ombudsman's Office by providing assistance to the clients in defining the subject matter of their claim and in preparing petitions which would be submitted to the Ombudsman. According to the Deputy Ombudsman the lack of a legal aid system is one of the key impediments preventing citizens to enjoy equality in access to justice. Namely, vulnerable categories of citizens have limited access to free legal aid. The Law on Free Legal Aid is not adopted yet, while other existing mechanisms (Croatian Bar Association, NGOs), according to the Deputy Ombudsman, are assessed to be incapable to provide an adequate response to all identified needs.

The Ombudsman's experience shows the existence of numerous legal problems affecting refugees, IDPs, and returnees in accessing their acquired or associated rights. The most frequent refugee/IDP complaints refer to inability to access reconstruction assistance; problems related to state compensation for extended usage of temporary occupied residential properties; and issues related to the provision of housing care to former occupancy/tenancy rights holders.

The majority of the complaints received by the Ombudsman's Office mostly relates to the length of the procedures in various administrative fields. Deadlines for bringing up a decision in the administrative procedures are stipulated by law. 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 years. Citizens are neither informed about the reasons for such delays nor on the time when a decision is to be brought. An additional problem is the fact that the Administration does not keep precise records on the number of cases, specific problems, outcomes of the procedure, etc. Such practice has negative effect on the overall functioning of the Administration and consequently makes an effective control almost impossible. Therefore an efficient monitoring system is lacking, one which would facilitate proper evaluation of the conduct of the administrative procedures. This makes the control or supervision of performance of the administrative apparatus, as it was foreseen by the law, almost impossible in practice.

The Deputy Ombudsman expressed readiness and interest for further cooperation with non-governmental organizations and, in this sense, invited NGOs to submit relevant cases for his consideration.

After Deputy Ombudsman's presentation members of the RLAP Legal Analysis Team addressed the audience. Their thematic presentations elaborated legal issues that were identified by RLAP member organizations during the implementation of the programme.

The first presentation on reconstruction assistance related issues was given by Mr. Ratko Bubalo from the Humanitarian Center for Integration and Tolerance, Novi Sad, Serbia. Based on official figures presented in the report of the Croatian Ombudsman for 2005, which are based on the official statistics of the Croatian Administration for Reconstruction of Family

Houses<sup>3</sup>, Mr. Bubalo estimated that the number of unresolved reconstruction cases is 17 000, meaning that these cases are pending awaiting resolution either in the first or second instance procedures. The RLAP network has no knowledge about one example--not one single case--where in the first instance procedure the decision has been brought within the deadline as stipulated by the Law on Reconstruction (30 days since the application is received by a competent first instance body – County Office for Reconstruction). The first instance procedures usually last for more than a year - in some cases even more than three or four years. Unreasonable delays are identified also in relation to conduct of the second instance procedures which also last for several years at average.

Further on, Mr. Bubalo emphasized numerous irregularities recorded in relation to the assessment of the category of damage of the family houses. Another difficulty the applicants are facing is related to proving the fact of permanent residence at the address of the respective house back in 1991, as this is one of the criteria for granting the reconstruction assistance. In number of cases applicants were requested to obtain various evidences by themselves, although the County Offices for Reconstruction are obliged to do it ex officio, and more strict or excessive criteria, not stipulated by law, are used to determine the eligibility of the applicant.

Throughout his presentation Mr. Bubalo referred to numerous problems identified in relation to incorrect application of the Law on General Administrative Procedures and its general principles and rules, which in particular relates to: principle of legality; principle of efficiency (efficiency in ensuring that rights are obtained and effectiveness in securing interests of legal entities and natural persons); rules on hearing of clients; principle of economy (cost-cutting duty); obligation to assist lay clients; obligation to respect deadlines for issuing a decision; and obligation to inform the client on reasons for not issuing a decision within prescribed deadlines.

The second presentation was given by Mr. Darko Marjanovic from the regional *Movimento por la Paz, el Desarme y la Libertad (MPDL)* Balkan's project. Mr. Marjanovic elaborated access to social rights and issues related to declaring contracts and other legal transactions concluded under duress null and void / termination of contracts (contracts on purchase and exchange of property concluded during the conflict).

Main focus was given to access to some pension related rights. Different treatment of Croatian Pension Fund beneficiaries in Bosnia and Herzegovina regarding implementation of the 1998 Constitutional Court of Croatia decision<sup>4</sup> on adjustment of pension payments for the period from 1993 to 1998 was mentioned. In accordance with this decision and the subsequent decision of the Government of the Republic of Croatia the Pension Fund of the Republic of Croatia was obliged to inform all beneficiaries about their entitlements in regard to the adjustment of the pension payments for the period from 1993 to 1998. Beneficiaries of the Croatian Pension Fund in one of the BiH entities - the Republic of Srpska, have not been officially notified on the adjustment payments, while the beneficiaries of the Croatian Pension Fund in the Federation of Bosnia and Herzegovina entity have received official notifications. Further on, Mr. Marjanovic presented a problem of declaring contracts and other legal transactions concluded under duress null and void, particularly referring to different court practices in Bosnia and Herzegovina and Croatia. That refers to cases of cancellation of contracts on purchase of the real estates concluded between refugees originating from two different successor states, or contracts on exchange of the real estates located on the territories

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<sup>3</sup> This body is part of the Ministry of Maritime Affairs, Tourism, Traffic and Development, signatory of the Sarajevo Declaration on behalf of the Republic of Croatia

<sup>4</sup> Constitutional Court's decision of 12 May 1998. File No. U-I/283/1997

of two different ex-SFRY Republics, if such contracts had been entered under pressure or contrary to the provisions of the domestic Civil Code and/or international law. Such contracts are annulled in Bosnia and Herzegovina in almost all cases<sup>5</sup> where the lawsuit is instigated, while this is not the case in the Republic of Croatia. In such cases, the problem arises from the fact that the court decisions issued in one State Party is not recognized by the judicial institutions of another State Party. This problem remains unresolved, although the legal framework for resolution of such issues exists in the form of the treaty ratified by all ex-SFRY Republics<sup>6</sup>.

Mr. Ninko Miric from the Civil Rights Project – Sisak made a presentation on private property repossession and other property related issues, and issues related to housing of former occupancy/tenancy rights holders.

The Government's effort to close the process of repossession of the temporarily occupied private property is near its successful end. However, although the official state statistics specify that the number of still non-repossessed properties is 18, not being calculated in that number are private properties if the return of it have not been explicitly requested by the owner and all the cases of repossession claims that are filed with Croatian courts and are still pending decision.

Participants of the discussion noted problems related to repossession of business premises and agricultural land, and immovable properties temporarily placed under state administration as something which is often ignored by authorities, and no action is taken to remedy the current situation.

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 interprets<sup>7</sup> that Rulebook does not give precedence to any of 3 priority groups of beneficiaries, the Regional ODPR<sup>8</sup> 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, Mr. Miric possess data about approximately 30 cases in which beneficiaries are provided with the housing care assistance more than once – this mainly relates to ethnic Croat families settled from Bosnia and Herzegovina and Kosovo.

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 (hereinafter 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), the Croatian Government adopted the Conclusion and Implementation Plan for the Housing of Former OTR Holders in 2003. In September 2006 implementation of

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<sup>5</sup> 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

<sup>6</sup> e.g. Agreement on Succession Issues

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

<sup>8</sup> Governmental Office for Displaced Persons and Refugees

this housing scheme was still in its initial phase, with just few beneficiaries registered to date. However, the lawyers participating in the discussion emphasized issues related to the new Conclusion on the Implementation of the Housing Care Program, which is targeting former OTR holders outside ASSC and the Housing Care Program scheme for the same target group adopted by the Government on 25 August 2006. Some lawyers stand at the point that we cannot talk about rights 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.

Mrs. Nena Zigic, representative of the Association GORICA from Korenica, put the emphasis in her presentation on 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 1991-1995 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. Those applicants whose cases are still pending 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.

Any working period that is registered as service in the para-military forces is not subject to Convalidation. However, those who spent some time in para-military as conscripts, who were mobilized for a certain period, etc are often rejected with their requests for convalidation of the entire working period including the working period which is not related to the service in para- military forces.

### **General conclusions**

The event provided a forum for discussion on specific legal issues affecting refugees from and returnees to Croatia. The ultimate goal of the Panel Discussion to strengthen communications between non-governmental organizations and the Ombudsperson's Office in Croatia has been reached. The awareness raising on the work and responsibilities of the Croatian Ombudsman and the assistance that his Office can provide in resolving legal problems of refugees and returnees were the topics of particular interest for NGOs from Bosnia and Herzegovina and Serbia. We expect that the goal of the meeting would be reached and that cooperation between Ombudsman's Office in the Republic of Croatia and the NGO network in the region would increase and maintain strong cross-border component.

In Vukovar, 26 September 2006

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