

REGIONAL LEGAL ASSISTANCE PROGRAMME
Supporting the return of refugees and displaced persons by means of legal assistance

A N A L Y S I S
of the approach to housing care by refugees and displaced persons, former tenancy right holders, in the Republic of Croatia in 2007

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P R E C I S

INTRODUCTORY REMARKS

This analysis was carried out in the last phase of the Regional Legal Assistance Programme – ‘Supporting the return of refugees and displaced persons through legal aid’ the project that was implemented in the period October 2005-April 2008.

The last phase of RLAP, January-April 2008, was implemented by three non-governmental organizations, members of the regional network of RLAP: Humanitarian Centre for Integration and Tolerance from Novi Sad, Serbia; Center for Peace, Legal Advice and Psychosocial Assistance from Vukovar, Croatia; and a regional project *Movimiento por la Paz, el Desarme y la Libertad (MPDL)*, Spain, with offices in B&H, Serbia, and Croatia.

The primary aim of the last phase of RLAP was to monitor and prepare a detailed analysis of the existing programmes for housing care of refugees and displaced former tenancy right holders in the Republic of Croatia (RoC) and implementation of these programmes in 2007, in conformity with obligations expressed and accepted by the Government of the Republic of Croatia.

HOUSING CARE BENEFICIARIES

Former tenancy right holders and members of their families, the majority of whom are refugees outside the RoC and only few of them are displaced persons on the territory of the RoC, make up the largest group of potential (minority) returnees to the RoC, mainly to urban areas.

In this analysis former tenancy right holders are all persons who until 1991 had achieved the tenancy right to apartments that were socially-owned and who lived in these apartments alone or together with their family members, but due to various reasons had to leave the mentioned apartments during armed conflicts in the RoC 1991-1995 and therefore do not live in these apartments anymore and/or have no valid legal basis for occupying them.

These persons, mostly of Serbian nationality, were denied the tenancy right 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 the areas that were controlled by Croatian authorities; or
- by force of law, in the areas controlled by local Serbs until 1995, ASSC today, as they failed to return to the apartments they had lived in within 90 daysⁱ from the moment the *Law on Leasing Apartments on the Liberated Territory* came into forceⁱⁱ.

The total number of cases where tenancy rights were cancelled is estimated at **29,800**, out of which **23,800** on the territory outside ASSC and **6,000** inside ASSCⁱⁱⁱ. According to OSCE estimates, around **100,000**^{iv} people were affected by the cancellation of tenancy rights.

The tenancy right to socially-owned apartments does not exist anymore as a specific legal institution in the RoC.

The cancellation of tenancy rights and failure to recognize any rights on the basis of former tenancy rights influenced refugees and displaced persons, former tenancy right holders, in two different ways:

- their return to residential units and/or their places of residence prior to the war was hindered;
- they were not given, as was the case with other tenancy right holders in the RoC, the status of holders of property rights stemming from the institution of a tenancy right, e.g. the right to privatize apartments under privileged conditions.

This practice was contrary to the one applied to the same category of population in B&H^v and to the *Resolution 1120 of the UN Security Council of 1997*^{vi} which once again affirmed the right of all refugees and displaced persons originating from the Republic of

Croatia to return to their homes of origin in the Republic of Croatia. The authorities of the Republic of Croatia completely ignored some relevant international standards, legally not binding though, of human rights protection contained in the *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^{vii}, 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^{viii}.

LEGAL FRAMEWORK FOR HOUSING CARE AND NUMBER OF POTENTIAL BENEFICIARIES

Under international pressure, after many years of disregard for the issue of the return of former tenancy right holders, the RoC took certain measures to enable the housing and return of urban minority population of former tenancy right holders. Two models of housing care were adopted, inside and outside the Area of Special State Concern, for those former tenancy right holders who decided to return to the RoC.

The issue of potential financial or other compensation for refugees and displaced tenancy right holders remained one of the open questions within the implementation of the process initiated by the Sarajevo Ministerial Declaration on Regional Return of Refugees and Displaced Persons signed by the RoC, B&H, and Serbia and Montenegro on January 31, 2005.

The legal framework for housing care of former tenancy right holders in the RC is defined by particular legal acts. The RC is divided into two geographical areas where housing care takes place, and acts of varying legal nature are being applied to these two areas:

- within ASSC, there are regulations (*Law on Areas of Special State Concern*, and by-laws – directives and the *Rulebook*) which are part of the legal system of the RoC;
- outside ASSC, no regulations are applied but other legal acts (*Conclusion, Implementation Plan, Guidelines*) which do not produce legal effect and thus cannot serve as a basis for establishment of a certain right, but rather serve the purpose of provision of the humanitarian housing care for displaced former tenancy right holders, who are mainly of Serbian nationality. This housing care model is not clear enough and is not based on and in harmony with the legislative-legal framework of the RoC.

The procedure for achieving housing care is initiated by the submission of requests/applications for housing care to the competent Ministry – Office for Displaced Persons, Returnees and Refugees (ODPR).

Until January 2008 the total number of **8,541** requests had been submitted for housing care in ASSC^{ix}, the majority of which are requests submitted by former tenancy right holders. Official information on the number of requests for housing care submitted by former tenancy right holders categorized by their nationality, current status of displaced persons or some other status, citizenship, the

state of current residence etc., have not been published. The deadline for the submission of requests for housing care in ASSC is not set and there is no deadline for submission of requests.

The deadline for the submission of requests for housing care outside ASSC expired on September 30, 2005. Until the deadline expiry, the total of **4,425^x** requests were submitted, **2,196** of which refer to housing care on the basis of apartment lease contracts, and **2,229** requests refer to housing care by means of apartment purchase.

MATERIAL CONTENTS OF THE LEGAL FRAMEWORK FOR HOUSING CARE

INSIDE ASSC

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.

The *Law on ASSC* does 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 above mentioned legal provision, at the same time disregarding whether the house or an apartment owned or co-owned by the applicant is fit for living. The legislator failed to phase the mentioned point with precision thus denying applicants the possibility of weighing with certainty the real consequences of this point being applied in their case, and creating grounds for arbitrariness in operation of the competent bodies.

OUTSIDE ASSC

The *Conclusion on the way of providing housing care for returnees who do not own a house or an apartment, but used to live in social-owned apartments (former tenancy right holders) on the territory of the RoC, outside ASSC* from 2003 does not determine the returnees' right to housing care, but

rather the position of the Government of the RoC to provide housing care to returnees who want to come back and have permanent residence in the RoC 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 installment-based payment under favourable conditions.

Under the *Conclusion on the implementation of programmes of housing care of returnees – former tenancy right holders to apartments outside ASSC* from 2006, the competent Ministry is obliged to 'perform the procedure and create appropriate solutions regarding the acknowledgement of the right to housing care based on the applications of returnees'.^{xi}

In the *Conclusion from 2006*, the Government of the RoC failed to oblige the competent Ministry to contract sales agreements for the purchase of apartments with the returnees who, as part of housing care programme, decided to purchase their own apartment. As a result of this failure the way of signing sales agreements on purchasing your own apartment is still questionable, as well as the commitment of the competent Ministry to conclude these agreements.

Neither under *the Conclusion from 2003*, nor under the *Law on ASSC* are conditions for obtaining the right to housing care regulated precisely enough, which renders the internal field of margin of appreciation belonging to the competent bodies when reaching decisions too broad and thus has negative effect on the legal security of the applicant. If the legislator intended to empower the competent body with the discretionary decision-making power, the scope of the discretionary power should have been stated as well.

(NON)-COMPLIANCE WITH THE PRINCIPLE OF EQUALITY OF CITIZENS BEFORE THE LAW

Introduction of unequal legal regimes for beneficiaries of the housing care within and outside ASSC undermines the constitutional principle of equality of citizens before the law and legal certainty, particularly with respect to availability of effective legal remedies and possibility of a court protection.^{xii} Namely, *the principle of equality of citizens before the law* requires that juridical relations, i.e. a legal

regime for persons that are in the same legal position must be regulated by law in a way that provides equity for all.^{xiii} It is apparent that all housing care beneficiaries, former tenancy right holders whose right has been cancelled, are in the same legal situation. However, for this group the housing care issue is regulated in a different (unequal) manner in the areas within ASSC and outside ASSC. As a consequence of this the existing rights vary in substance and scope, but also this creates discrepancies in terms of availability of legal remedies.

It is unquestionable that legislation may provide advantages to vulnerable social groups. Having said that, in order to achieve the so-called *positive discrimination*, rational or unbiased justification for differential treatment is needed as well as a compelling, plausible, or highly serious reasons for such an approach, which again must be regulated by law. For differential legal treatment of persons who are in a similar position there must be 'reasonable and unbiased justification'. Otherwise what we will have is a discriminatory approach, i.e. a part of one group is given preferential treatment that is not being justified by or based on law – those are former holders of tenancy rights that are beneficiaries of the housing care within ASSC that are accorded preferential position in relation to former tenancy rights holders that are beneficiaries of the housing care outside ASSC.

CHARACTERISTICS OF THE PROCESS OF DECIDING ON HOUSING CARE REQUESTS

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 RoC, 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 RoC 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)'.

RESULTS OF IMPLEMENTATION OF THE HOUSING CARE PROGRAMME WITHIN AND OUTSIDE ASSC IN 2007

For the monitoring and analyzing of implementation results of the programme of housing care within and outside ASSC in 2007, the project team fixed indicators that are in keeping with commitments of the Government of the RoC and with what it presented as its commitments before the international community:^{xiv}

- by the end of 2007 to house 1,400 former tenancy right holders and members of their families, of which 1,000 within ASSC and 400 outside ASSC, 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 quality monitoring and analyzing have, to a large extent, been hindered due to lack of transparency of the housing care process, in the sense of inexistent and/or undisclosed detailed information on beneficiaries, but also because of contradictory available data that had been released by various sources.

INSIDE ASSC

According to data released by the UNHCR in January 2008^{xv}, out of 8,541 submitted requests for the housing care within ASSC, there were 7,095 positive decisions (83.07%), 1,150 requests were rejected (13.46%), while there were still 296 requests (3.47%) in the decision-making process.

Until January 2008, by one of the ways of housing care, housing care beneficiaries were allocated the total off 4,312 housing units, while allocation of housing units by 2,783 requests was under way.

In 2007 beneficiaries of the housing care within ASSC were allocated the total of 739 housing units. However, 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 RoC. 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.

OUTSIDE ASSC

According to the data released by the UNHCR in January 2008^{xvi}, of 4,548^{xvii} submitted requests for housing care outside ASSC, by December 2007 there were 1,263 (27.77%) positive recommendations, 825 (18.14%) negative recommendations (?), and 2,460 (54.09%) requests in the process of consideration.

In 2007 the state bought 408 apartments intended for housing care outside ASSC, of which ODP RR took over 243. In the same period housing care beneficiaries were allocated the total of 155 housing units, which became the property of beneficiaries. In addition, on the basis of knowledge of the project team, in the Republic of Croatia in 2007 not one person signed a contract on the lease of an apartment outside ASSC, which means that, formally, they were not housed in accordance with provisions of the *Implementation plan for providing housing care for returnees who do not own an apartment or a house, but used to live in social-owned apartments on the territory of the Republic of Croatia which is outside ASSC*.^{xviii}

GENERAL CONCLUSIONS

Housing care of refugees and displaced persons, former tenancy right holders in the Republic of Croatia, is not regulated in a uniform manner but rather by means of regulations and acts of different legal force, which makes the whole structure complicated, incomplete, and fragmented. Consequently, much obscurity, confusion, vagueness, and contradiction occurs both in regulations and acts, but also in actions of competent administration bodies that handle housing care within and outside ASSC.

Commitments that the Republic of Croatia in 2007 assumed as to the housing care of former tenancy right holders have not been fulfilled, and that to a large extent. Declaratory campaigning for solving of the problem of housing care for former tenancy right holders is inadequately supported by practical deeds.

Existing housing care models obviously do not represent adequate mechanisms which would enable that the issue of former tenancy right holders is resolved permanently and within reasonable time frame, pursuant to principles of the Sarajevo Ministerial Declaration on Regional Return of Refugees and Displaced Persons.

ⁱ It was generally well known, to the Croatian legislator too when enacting this law, that there were no conditions for displaced Serbs to return to their apartments within the shortened deadline of 90 days from the moment this law came into force and that they would lose their tenancy rights to these apartments.

ⁱⁱ 'Official Gazette', No 73/95

ⁱⁱⁱ According to data from the Ministry of Justice of the Republic of Croatia, taken from UNHCR Representation in the Republic of Croatia – Summary Statistics on Refugee / Return and Reintegration, January 1, 2008

^{iv} OSCE Mission to the Republic of Croatia, Report: Options for the housing care of former tenancy right holders, April 2005

^v According to Article 1 of the Annex VII of General Framework Agreement for Peace in Bosnia and Herzegovina, persons who left their apartments between April 30, 1991 and April 4, 1998 are considered refugees and displaced persons and have the right to return to their homes, i.e. become owners of the apartments they have tenancy rights to. All administrative, legal, and other acts that cancelled the tenancy rights of former holders were officially revoked.

^{vi} „...3. Reaffirms the right of all refugees and displaced persons originating from the Republic of Croatia to return to their homes of origin throughout the Republic of Croatia;...” (RESOLUTION 1120 (1997) Adopted by the Security Council at its 3800th meeting, on 14 July 1997)

^{vii} E/CN.4/2005/2; E/CN.4/Sub.2/2004/48, In the preamble of the Resolution 2004/2 'Housing and Property Restitution', UN Sub-Commission on the Promotion and Protection of Human Rights repeats that it is the right of all refugees and displaced persons to return freely to their countries and that their residential units and property taken away from them must be returned to them or they must be compensated for the property that cannot be returned.

^{viii} E/CN.4/Sub.2/2005/17, Point 16 Principles – refers to the rights of apartment tenants and other non-owners and states that countries must ensure the recognition of rights of apartment tenants, tenancy right holders to apartments owned by the state and other legal tenants within the restitution programme. Countries should, in the widest possible scope, ensure the restitution, ownership and occupancy of their residential units, land and property in a way similar to the one applied with formal owners.

^{ix} UNHCR Representation in the Republic of Croatia – Summary Statistics on Refugee / Return and Reintegration, January 2008

^x Data from the Ministry of the Sea, Tourism, Transport and Development

^{xi} Point 5 of the Conclusion

^{xii} 'By virtue of article 14, paragraph 2 of the Constitution equality before the law is guaranteed to everyone. The stated constitutional guarantee provides protection from arbitrary decisions of courts, i.e. other state bodies and bodies with public powers, the protection being based, among other things, on the principle that competent bodies should in identical cases decide equally, i.e. that enforcement of the same valid legislation to fundamentally the same factual and legal matter cannot have fundamentally different legal outcome relative to rights and duties of subjects in the same legal position.' Decision of the Constitutional Court of the Republic of Croatia, number: U-III-4675/2005 of October 25 2006.

^{xiii} Decision of the Constitutional Court of the Republic of Croatia, number: U-I-534/2002 of July 9 2003

^{xiv} Republic of Croatia, Right to Reply of 27 September 2007 at OSCE Annual HDIM (HDIM.DEL/217/07)

^{xv} UNHCR Representation in the Republic of Croatia – Summary Statistics on Refugee / Return and Reintegration, January 1 2008

^{xvi} Identical as the previous

^{xvii} Identical as the previous; this data for the first time appears in January 2008 – by then the total number of requests had been 4,425

^{xviii} Point 21, sub-point 8 of the Implementation Plan for Providing Housing Care for Returnees states: 'Housing care is formally settled through signing a contract on the lease of an apartment or a contract on the contract of sale of an apartment.'



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