



B | T | D The Balkan Trust for Democracy
A PROJECT OF THE GERMAN MARSHALL FUND

The project "Expert Elaboration of Unresolved Issues Among the Countries Signatories of the Dayton Agreement: Issues of Citizens' Property and Status"
is funded by the EU

EXPERT TEAM PRELIMINARY REPORT

on issues of citizens' status and
property resulted from disintegration of Yugoslavia
in countries signatory to the Dayton Agreement,
with recommended solutions enclosed

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The contents of this publication are the sole responsibility of the Igman Initiative and
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Expert Elaboration of the Remaining Unresolved
Issues among the Countries Signatories to the Dayton Agreement
Status and Property Issues of Citizens

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Expert team

PRELIMINARY REPORT

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In keeping with goals set within their mission, Igman Initiative's program contains a list of crucial important activities including this project which initiates permanent solution of issues related to citizens' status and property rights in countries signatory to the Dayton Agreement, which is to be financed by the European Union.

Igman Initiative sticks to the notion that only efficient solution of individual issues between Dayton Agreement countries can speed-up further normalization of their relations and EU integration processes.

After the beginning of the process of democratization in countries of Dayton Agreement, which began during the last decade, search for solutions to a whole range of problems that burden mutual relations between those countries was also initiated. In a number of fields, reconciliation of legislation and harmonization with European legislation was conducted, certain number of bilateral agreements was signed and a considerable part of the mass of issues was addressed. This was a contribution to the improvement of mutual relations and cooperation.

Beside that, certain number of open issues was left unresolved, including citizens' status and property issues. There is a number of reasons that created this situation. First comes from the fact that this issue is closely related to the problems of the return of refugees. On top of that, in certain countries there was a lack of political will to deal with those problems.

Upon the initiative of the European Commission, OSCE and UNHCR, representatives of countries in this region: Bosnia and Herzegovina, Croatia, Serbia and Montenegro adopted the Sarajevo Declaration in January 2005, which obligated signatories to facilitate the return of refugees and local integration in countries of former residence, and defined a list of joint activities with mutual cooperation. However, in spite of encouragement and initiatives offered by the international community, little progress was made in the process of implementation of Sarajevo Declaration whose goal was to complete the process of the return of refugees in the region by late 2006.

Urgency and necessity of solving the status and property issues in Dayton Agreement countries were also enhanced by the fact that this process should not have been reduced only to the population of refugees and displaced persons. It should have included all persons who acquired those rights under various circumstances during the existence of SFR Yugoslavia. Namely, a number of citizens of SFR Yugoslavia acquired those rights by birth, residence, property, labor, etc within the then shared State (within any of the Republics). Those citizens now remain deprived of their rights in spite of not being registered as refugees or displaced persons. Therefore, in spite of the fact that refugees and displaced persons make the majority of this target group, other citizens of ex - Yugoslavia should not be neglected and deprived of these rights.

In order to permanently solve this problem, it became clear that intensification of regional cooperation for the purpose of achieving just and all-inclusive solution for all disenfranchised citizens of the four countries is necessary. On top of that, this would be a significant contribution to the further improvement of neighborly relations and regional stability, as well as to the mutual support in the process of European integrations.

Overall goal of the project derived from strategic commitments and programs of Igman Initiative is to make a contribution to the normalization of relations between countries signatories to the Dayton Agreement by offering a permanent solution to the issues of status and property rights for citizens in all signatory countries.

Obvious advantage of Igman Initiative in accomplishment of such a goal is secured by their ability to engage key political leaders of the region in this process, together with experts from the government and non-governmental sector of these four countries.

Igman Initiative also has the capacity to initiate a broad media campaign in order to distribute results and present activities to a large number of media and to the public in all four countries signatories to the Dayton Agreement.

This project is concretely focused on obstacles and difficulties which citizens are facing in the process of solving their status and property issues as consequences of the break-up of former Yugoslavia.

Statistical framework

Refugees are in fact the largest group of people that suffers from problems of unresolved status and property issues. However, official data on numbers of refugees and displaced persons should not be considered as the only relevant source.

In **Bosnia and Herzegovina**, more than a half of population, i.e around 2,2 million persons were displaced or fled their homes during the war between 1992 and 1995. Out of this number, approximately 1,2 million people requested refugee protection in over a hundred of countries around the world, while approximately one million was displaced within Bosnia and Herzegovina. Official figures are showing that more than one million people returned to Bosnia and Herzegovina. Out of 1,048,498 registered returns, around 600,000 or 67% are returned displaced persons. Remaining 450,000 or 43% are refugees¹. 470,000 were registered as so called *minority returns*. Population of returnees, especially the so called minority returnees, is mostly consisted of elderly people. According to the estimates of the Ministry for Human Rights and Refugees, rate of the so called minority returns was recalculated on the basis of presupposed number of people who left their pre-war residences in relation to the number of returnees, 32% of returnees were settled within the Federation of Bosnia and Herzegovina (Serbian returnees), while in Republic of Srpska 30% of returnees were settled, 36,6% of Bosniacs and 9,6% of Croats in Republic of Srpska. Out of around 750,000 registered returns, FB&H's part is 71,5% in total returns to Bosnia and Herzegovina. In Republic of Srpska, around 275,000 returns or 26,2% were settled. Remaining approx 22,600 or 2,3% of total returns were settled on the territory of Brcko District in Bosnia and Herzegovina. In regard of ethnic structure, numbers show around 650,000 Bosniacs, 135,000 Croats and 256,000 Serbs, plus approx 8000 other nationalities. According to

¹ Information about the return of refugees and displaced persons in Bosnia and Herzegovina in the period between 1995 and 2000, issued by the Ministry for Human Rights and Refugees in Bosnia and Herzegovina (http://www.mhrr.gov.ba/PDF/Izbjeglice/INFORMACIJA_O_POVRATKU_DO_2010.pdf)

the results of the revision of status of displaced persons² in Bosnia and Herzegovina, 41,013 families are registered as displaced, which is in total 125,072 displaced persons, out of which 56,287 or 45% were displaced within the territory of the Federation of Bosnia and Herzegovina, 67,673 or 54,1% within the territory of the Republic of Srpska and 1,112 or 0,9% within the territory of Brcko District. Number of Serbs in the total number of displaced persons in Bosnia and Herzegovina was increased, i.e. percentage of their part in ethnic structure of displaced persons was increased. According to these records, 69,099 displaced persons (55,2%) are Serbian, 47,907 or 38,3% are Bosniac, 7,450 or 6% are Croatian, while remaining 616 (0,5%) are of other nationalities.³

In Bosnia and Herzegovina, there are 6,941 registered refugees from Croatia, majority of which reside on the territory of Republic of Srpska (between 1991 and 1995 Bosnia and Herzegovina received somewhere between 40,000 and 45,000 refugees from the Republic of Croatia, majority of which was formally integrated in Bosnia and Herzegovina).

Largest number of returns was accomplished during the first three years of peace, where more than a half of total returns took place in Bosnia and Herzegovina. Since 2003, trend of returns rapidly drops. However, it is difficult to tell how many refugees and displaced persons found a permanent solution upon their return, having in mind that beside the possible significant deviation of statistics from the reality, many of those whose return was noted actually returned back again to their temporary places of residence, immediately after repossession or reconstruction of their pre-war property. Having in mind that large number of municipalities lacks data about actually accomplished returns and skips keeping track of such statistics – actual figures on returns cannot be properly analyzed before a new census takes place.

According to the UNHCR estimates, 550,000 persons were displaced in the **Republic of Croatia**, during the period between 1991 and 1992. At the same time, country received around 400,000 refugees from Bosnia and Herzegovina, of which 120,000 refugees from Bosnia and Herzegovina (mostly ethnic Croats) acquired Croatian citizenship. On March 31st 2010, there were 809 refugees from Bosnia and Herzegovina in Croatia, according to UNHCR and 2,246 internally displaced persons. According to the data presented by the UNHCR Mission in Republic of Croatia in March 2010, 132,451 Serbs returned to Croatia (out of more than 400,000 Serbian refugees). 15,929 returnees from Serbia had unverifiable previous refugee status. Out of this number, 93,786 refugees returned from Serbia and Montenegro, while 15,434 returned from Bosnia and Herzegovina. 23,231 Serbian refugees returned to their homes from other parts of Croatia. According to the Feasibility Study on Return of Minorities to Croatia in 2007 commissioned by the UNHCR⁴, upper limit of these estimates of the number of returnees actually living on the territory of the Republic of Croatia is around 45% of the total number of registered returnees. Returnees are mostly elderly people with lesser formal education, generally returning to rural areas. Children with parents make only 15% of the population of returnees, only 8% employed or self-employed. One third is

² Collecting requests for the revision of the status throughout the whole territory of Bosnia and Herzegovina was concluded on March 3rd 2005.

³ REVISED STRATEGY OF BOSNIA AND HERZEGOVINA for enforcement of the Annex VII of the Dayton Peace Accord, Sarajevo Jun/July 2010 (<http://www.mhrr.gov.ba/PDF/Izbjeglice/Revidirana strategija Hrvatski.pdf>)

⁴ Sustainability of minority returns in Croatia, authors: Milan Mesić i Dragan Bagić, UNHCR magazine 2007.

older than 65 years of age, 11% is completely dependent on received aid, and 11% of returnees deceased upon return.

Data on continuous reduction of the number of returnees - from peaking 20,716 in 2000, and dropping to 11,867 in 2001, 11,048 in 2002, 1,147 in 2008 and 710 in 2009⁵ – shows that return as a permanent solution becomes more and more illusive among the population of refugees. Field research conducted jointly by the UNHCR and the Commissariat for Refugees of the Republic of Serbia in 2008 has shown that only 5% of refugees are still considering repatriation⁶ as an option.

In the **Republic of Serbia**, according to the data collected during the first registration of refugees in 1996, there were 537, 937 refugees (44% from Bosnia and Herzegovina, 54% from Croatia) and 79,791 persons whose rights were violated by war. Number of refugees from former Republics of Yugoslavia in the Republic of Serbia decreased over 80% in the period between 1996 and 2010. According to the data collected by the Commissariat for Refugees in the Republic of Serbia, on November 1st 2010, 86,155 were formally registered as refugees, out of which 72% were from Croatia and 28% from Bosnia and Herzegovina. Number of refugees requiring aid for local integration beside formal acknowledgement of the refugee status in Serbia is estimated to around 300,000. In 2008, UNHCR added Serbia to the list of five countries in the world which suffer from long-lasting refugee crisis which require joint action and cooperation of countries of the surrounding region, along with the support of international community. With its 86,155 internally displaced persons, Serbia is today the number one country in Europe in the field of forced migration. On top of that, according to data published in September 1st 2011, there are 42 collective centers in the Republic of Serbia where 3,158 refugees and internally displaced persons reside⁷. Out of the total number of collective centers on the territory of Serbia without Kosovo and Metohia, there are 29 collective centers with 2,993 persons and 13 collective centers with 525 persons in Kosovo and Metohia.

According to the data issued by the Government of **Montenegro** on June 30th 2011, there are 4,867 displaced persons living in Montenegro, out of which 1,221 are from Croatia and 3,646 from Bosnia and Herzegovina, and 10,472 internally displaced persons from Kosovo. At the same time, 677 displaced persons and 719 internally displaced persons enjoy the status of a foreign national with permanent residence in Montenegro. One person enjoys the status of a foreign national with temporary residence in Montenegro.⁸

In summary of all afore mentioned figures registered by government bodies and UNHCR, we may conclude that this project's activities will be indirectly focused on the target group consisted of nearly 350,000 persons among refugees and displaced persons as final beneficiaries of this project's results. Real number of final beneficiaries is much larger, having in mind that there is a significant number of citizens who are no longer registered as refugees, displaced or banished people or have never been registered as such. Those citizens still suffer from problems related to their status or realization of rights to pension, property, etc, as a result of the fact that they used to live and work in

⁵ http://www.unhcr.hr/images/stories/news/stats/docs/DSU90331_hr_new.pdf

⁶ REPUBLIC OF SERBIA, COMMISSARIATE FOR REFUGEES, CONDITIONS AND NEEDS OF REFUGEE POPULATION IN THE REPUBLIC OF SERBIA, DECEMBER 2008 www.kirs.gov.rs

⁷ <http://www.kirs.gov.rs/articles/centri.php?lang=SER>

⁸ Strategy for permanent solution of issues of internally displaced and displaced persons in Montenegro with a special emphasis on Konik area (Draft), Podgorica, July 2011

former Yugoslavia in any of its Republics, within which they acquired some property, and so on.

Concrete citizens' problems addressed by this project are:

I. Issues of citizens' status

In former SFR Yugoslavia, citizens had double citizenship (Republic and Federal), which meant that citizen of each Republic enjoyed equal rights and obligations also on the territory of other Republics, same as citizens of that other Republic. Therefore, internally and practically, citizenships of individual Republics were marginally important at that time. However, after proclamation of independence of former federal units of Yugoslavia, citizenships of individual Republics became crucial.

Problems resulted from the break-up of former Yugoslavia were above all characterized by the fact that many people throughout the territory of former SFR Yugoslavia acquired and exercised certain rights in other Republics without citizenship, simply on the basis of equal rights exercised within the same federation. Realization of those rights is now bound to the notion of citizenship of the Republic where he/she used to reside before the break-up of SFR Yugoslavia. In spite of being a citizen of other Republic in former SFR Yugoslavia, these persons were able to exercise certain rights within the Republic where they used to reside, mostly rights related to citizenship (right to real estate property – house, apartment, land, forests, right to residence, labor rights and liberties, right to social security and insurance, health plan, free primary school education, equal availability of secondary school, high school and university level education under equal conditions, right to enter into or leave the Republic at one's own will, possession of a passport issued by the Republic within which place of residence is located, active and passive voter's right, on the basis of which they voted during the first multi-party elections in the nineties, as well as during the Referendum on independence of the Republic within which they had their place of residence, etc). All these rights derived from citizenship or bound to it, citizens of former SFR Yugoslavia enjoyed those rights in the Republic within which they had their place of residence, independently from having or not having the citizenship of that given Republic or any other Republic of former SFR Yugoslavia.

Binding the possibility to fulfill basic human rights with the citizenship of the Republic within which their former place of residence was located before the break-up of SFR Yugoslavia had put the citizens in a very difficult legal and practical position, especially in case of those who became refugees or displaced persons. Many vested rights of citizens who used to reside in other Republics of former SFR Yugoslavia, which resulted from the change of different legal systems, were violated by the act of binding those rights to the certificate of citizenship issued by the Republic which was their former place of residence.

However, in these matters international law is based on the principle of implementation of vested rights upon the day of succession, i.e. upon the day of transition of one State to another State, within the realm of responsibility for international relations in the given area. Purpose of this is to obligate the country-successor to avoid legal vacuum and uphold the security of legal and physical entities. It was the starting point for the Arbitration Committee of the Peace Conference about Yugoslavia, when Opinion No. 8 was issued on July 4th 1992: "*imperative norms of the general international law, especially respect for basic rights of individuals, peoples and minorities are obligatory for all parties of succession...*"

However, throughout the territory of former SFR Yugoslavia, especially in parts where armed conflict and forced relocation of population took place, legal vacuum was not avoided and therefore legal security of physical and legal entities was violated, above all in relation to issues of status, property, social and other vested rights. Countries-successors to the former SFR Yugoslavia failed to adequately identify new reality in mutual relations after the dissolution of former Yugoslavia. Regulation of citizenship was not conducted entirely within the boundaries determined by the international law. In actual practice, there was a lack of respect for main principles of international law in relation to their own citizens of different ethnic background (refugees and displaced persons). All matters of realization of citizens' rights were negatively affected by delayed issuing and stalled enforcement of the law, unequal treatment of actual and effective connection to the given country, absence of solution for protection of family entirety. Problems were gradually solved by legal novelties and administrative enactments of countries-successors. However, certain issues still remain unresolved, in the sense of principles of equality of rights and equal treatment by the law.

Countries-successors to the former SFR Yugoslavia should initiate procedures for conclusion of agreements that balance and reconcile legislative policies between those countries-successors in keeping with rules and principles of succession of citizenship. That would mitigate, at least to some extent, harmful consequences of succession on citizens' legal matters and individual vested rights.

Rules and principles of succession obligate the countries-successors to the former SFR Yugoslavia to proscribe mitigative circumstances for acquiring citizenship for citizens of other Republics of former SFR Yugoslavia.

For this purpose, with intention to promote principles of democracy, legal regulations and respect for human rights and liberties for each and every person, having in mind the importance of simplified determination of citizenship, as well as the need to reinforce the legislation and enforcement of laws focused on citizenship and return of refugees and displaced persons, following *Principles that are to support citizenship laws in countries-successors to the SFR Yugoslavia*⁹ were adopted at the meeting of experts on the subject of citizenship, both by government ministries of countries-successors and international experts. Meeting was held at the premises of the Council of Europe in Strasbourg, on October 31st 1996. One of the main principles guarantees that discrimination on the basis of gender, religion, race, color, national or ethnic background is forbidden. Beside that, main principle that obligates countries-successors to allow their citizens to enter, reside, leave and return to the same territory was also adopted. In regard of special principles, following are distinctly important:

-Actual and effective connection

Each country-successor will allow, in keeping with afore mentioned basic principles and modalities established by internal laws, acquiring citizenship to all citizens who maintain actual and effective connection with the given countries-successor.

- Mitigative circumstances for establishment of citizenship

Each country-successor should create favorable circumstances for establishment of citizenship for persons who were citizens of the former SFR Yugoslavia with a permanent residence on its territory in time of succession.

⁹ Meeting was organized by the Council of Europe in cooperation with UNHCR

- Documentary and other information about issues related to citizenship

If citizenship status for refugees and displaced persons remains unsolved, additional measures will be undertaken in order to facilitate the establishment of citizenship.

Article 18, *European Convention on Citizenship* from 1997, lists principles focused on the issue of government succession and citizenship. In the process of making a decision on granting or retaining citizenship in cases of succession, each country-successor in question is to consider the following list of conditions:

- a/ person's substantial and actual connection with the given country-successor;
- b/ actual residence in time of succession;
- c/ personal preference;
- d/ person's origin.

Afore mentioned principles provide a clear obligation for each country-successor to the former SFR Yugoslavia to facilitate acquiring citizenship for persons who were citizens of another former Republic of SFR Yugoslavia with a permanent residence on its territory in time of succession. Citizenship laws of all former Republics of SFR Yugoslavia proscribe, more or less (Serbia has the most liberal provisions), mitigating circumstances for establishment of citizenship for citizens from other Republics of former Yugoslavia, while Croatia maintains ethnically biased approach to this matter and provides favorable conditions only for ethnic Croats¹⁰.

Mitigating circumstances for establishment of Croatian citizenship for this category of citizens is questionable from the perspective of the provisions of the Article 5 of European Convention on Citizenship issued I 1997, which *forbid discrimination*. Namely, according to this Article, countries-successors should not specifically proscribe any kind of procedure that leads to discrimination on the basis of gender, religion, race, color of skin, national or ethnic background.

Persons who are not ethnic Croats and who are citizens of other Republics of former SFR Yugoslavia, holding residence in the Republic of Croatia on October 8th 1991 are not being granted the right of acknowledgement of mitigating circumstances. They are put through the procedures for regular naturalization of foreigners natoinals. Absence of such legal solution now puts this category of residents of the Republic of Croatia, who used to enjoy all rights related to citizenship in Croatia based on place of residence until the day of succession, in a very difficult legal and actual position. They became foreigners in Croatia, which created a legal vacuum and violated their rights, especially in regard of matters of status, property, social security, pension and other vested rights guaranteed by imperative norms of international law. Today, many of them are refugees or persons banished from Croatia, with permanent residences annulled by the Ministry of Interior of the Republic of Croatia. Today, many of them who wish to return to the Republic of Croatia no longer fulfill legal conditions for regulation of their status in Croatia. On top of that, actions of administrative bodies, above all actions taken by the Ministry of Interior of the Republic of Croatia, were not always in keeping with legal provisions that regulate these people's status. For example, non-governmental organizations gathered around Igman Initiative have a list of a large number of cases where persons citizens of other Republics of former SFR Yugoslavia who held residence in the Republic of Croatia on October 8th 1991 are now unable to exercise their right to residence or return to their place of residence because of their unresolved status in Croatia.

¹⁰ Article 30. paragraph 2. Law on Croatian Citizenship (National Gazette "Narodne novine", issue No . 53/91, (ispr.) 70/91, 28/92 i 113/93)

Proscribing mitigating circumstances for establishment of Croatian citizenship, similar to those that favorable for ethnic Croats, should be a reflection of guarantees given by the Croatian Government that returns will not be limited or conditioned. Rights of all other categories of people with returnee status should be equally treated.

Legislators in Montenegro were asked to reconsider their current policy on conditions for establishment of Montenegro citizenship for this category of persons – for citizens of former Republics of SFR Yugoslavia with registered residence in Montenegro prior to June 3rd 2006, who should be eligible for citizenship in Montenegro, only in case if those citizens have no other citizenship or in case if they renounced any other citizenship¹¹. This recommendation comes from the fact that there are no conditions of that kind in citizenship laws of other Republics of former SFR Yugoslavia (except in Croatia in case of ethnic Croats). National legislation in many countries introduced changes during the last decade for the purpose of simplified establishment of citizenship or double citizenship in a way which completely or at least partly cancels out the prerequisite of annulment of previous or any other citizenship. In countries-successors where this request still stands, exceptions are being treated more liberally. For example, annulment is not requested when country of primary citizenship legally or financially proscribes difficult procedures for annulment or renouncement. This principle was also adopted by the European Convention on Citizenship, which was also ratified by the Parliament of Montenegro: “Member country shall not request renunciation or annulment of other citizenship as a prerequisite for acquiring or retaining the given country's citizenship, if such annulment or renouncement is made impossible to accomplish or if cannot be realized in a reasonably simplified procedure.” (Article 16)

Other countries of the so called Dayton Quadrangle are also expected to reconsider once again their current legal regulations and take into consideration possibilities of prescribing additional mitigating circumstances for establishment of citizenship for citizens of other Republics of former SFR Yugoslavia who held residence in those countries on the day of succession. Above all, this can be done by cancellation of proscribed application deadlines for the request for citizenship.

All countries of the so called Dayton Quadrangle are called upon to ratify the European Convention on Citizenship issued in 1997.

Naturalization of refugees should be simplified

Countries – parties to the Convention on the Status of Refugees issued in 1951, which includes countries-successors to the former SFR Yugoslavia, are obligated by the Article 34 to facilitate “to the best possible degree, assimilation and naturalization of refugees. They shall be obligated to speed-up the process of naturalization and reduce procedural taxes and costs as much as possible.”

As of March 2001, Federal Republic of Yugoslavia and later on Republic of Serbia entirely fulfills the obligation to facilitate simplified and quicker naturalization of refugees, with reduced procedural taxes and costs.

Article 38 paragraphs 3 and 4 of the Citizenship Law in Bosnia and Herzegovina proscribes mitigating conditions for naturalization of refugees, without explicitly using the term refugee.

¹¹ Article 41, paragraph 1, item 1, Law on Citizenship in Montenegro (Official Gazette “Službeni list”, issue No. 13/08)

In Republic of Croatia, Citizenship Law lacks special provisions for best possible facilitation of naturalization for refugees. Provisions proscribing simplified conditions for establishment of Croatian citizenship for ethnic Croats makes this process easier only for refugees who are ethnic Croats.

In Montenegro, Article 13 of the Citizenship Law stipulates conditions for naturalization of persons with registered refugee status in Montenegro. Compared to the list of conditions for regular naturalization of foreigners, refugees in Montenegro are not required to have a place of residence and permanent source of income that guarantees financial and social security, nor they are required to possess the knowledge of Montenegrin language on basic communication level. However, annulment of other country's citizenship is still required, as well as the 10 year – long residence in Montenegro. These conditions are questionable from the perspective of principles determined by the European Convention on Citizenship, which means that those conditions are not contributive to the fulfillment of obligation to facilitate "to the best possible degree, assimilation and naturalization of refugees."

Countries of the so called Dayton Quadrangle are asked to reconsider their regulations and practices of establishing citizenship for refugees, in order to fulfill their obligation to facilitate best possible naturalization of refugees.

Acquiring double citizenship should be simplified

The institute of double citizenship may be an instrument which facilitates easier solving of citizenship issues for citizens of former SFR Yugoslavia. In the light of European perspectives of this region which include equal treatment of EU member countries' citizenship and EU citizenship (Article 9 of the EU Lisbon Contract), double citizenship represents a possible instrument of protection of vested rights and interests for citizens of former SFR Yugoslavia, based on the shared former federal citizenship and in keeping with obligations taken-up by countries-successors to former SFR Yugoslavia. It is a potential instrument for the solution of many issues that trouble these "new" foreigners throughout the territory of former unity in a shared federation. It is a contribution to the permanent solution of refugee issues and reestablishment of trust between the new states¹². Tolerance and legalization of double citizenship may simplify the solution to the mass problem of residence, movement, family and property matters for citizens of now independent Republics of former SFR Yugoslavia. Advantage of the institute of double citizenship lays in the fact that, apart from the opening of perspectives for integration of refugees in the new environment, permanently opens up the perspective of their return when favorable circumstances arise. This is contributive to the free movement of individuals and people, as well as to the revival of multiethnic, multi-confessional and multi-cultural society.

Advocation of double citizenship can be supported by the growing trend of introduction of double citizenship in modern legislation. According to the data issued by American institutions, several decades ago only 14 countries allowed double citizenship, while today it spreads over three quarters of the world, in over 150 countries. Liberalization of double citizenship is also a trend in EU. Double

¹² Vida Čok PhD points out that doble citizenship is "often an expression of the necessity to "bridge" the negative consequences that affect the residents of countries whose internal political and legal systems are being changed towards the formal tranformation in the sense of distribution, division and establishment of new governmental entities." (Vida Čok: Right to Citizenship "Pravo na državljanstvo", BCLJP, 1999, page. 89)

citizenship is also supported by the European Convention on Citizenship issued in 1997, which turned this “trend” into a general phenomenon. Among 27 members, only a few still require annulment of one citizenship as a prerequisite for establishment of another citizenship. Trend of liberalization of double citizenship represents, among other, an expression of the modern global integrative movement which supports increased free exchange of commodities and capital, as well as free movement of people. In such integrative international movements and relations, citizenship “loses” its former quality of a force that binds a person exclusively to only one country. It is a contribution to the gradual transition from the idea of obligatory exclusiveness of citizenship to the relative acceptability of the idea of double citizenship.

This trend did not circumvent the countries – successors to the former SFRY. In the *Republic of Serbia*, these amendments to the Law on Yugoslav Citizenship from March 2001 hinted the trend, whereas it got the full momentum by the Law on Citizenship of the Republic of Serbia, passed in December 2004. The law contains a great number of provisions facilitating the acquisition of Serbian citizenship, even within a dual citizenship possibility. The Law not only tolerates cases when its citizens voluntarily or by birth acquired a citizenship of another country beside the citizenship of the Republic of Serbia, which was provided for by the previous Yugoslav law as well, but it also provides for a number of provisions pursuant to which the citizenship of the Republic of Serbia may be granted even though the applicant already has a citizenship of other country.

The Croatian legislator also enabled in a number of provisions a dual citizenship, predominantly for ethnic Croats (Articles 16 and 30). The Croatian law favours emigrants and their descendants in acquiring the Croatian citizenship. The emigrant does not, for example, have to speak Croatian or be released from the citizenship of another country. It provides for granting a dual citizenship to a person born in the Republic of Croatia (Article 9), a foreigner married to a Croatian citizenship who has been granted permission to permanently reside on the territory of the Republic of Croatia (Article 10), a foreigner and his/her spouse whose obtaining a Croatian citizenship would be of interest for the Republic of Croatia (Article 12, paragraph 1).

The Law on Citizenship of Bosnia and Herzegovina provides for a possibility of a dual citizenship for foreign nationals who wish to be granted B-H citizenship in a great number of cases. However, when it is about a possibility for B-H nationals to acquire the citizenship of any other country (to have a dual citizenship), *the law is restrictive*. B-H citizenship is lost by voluntary acquisition of other country citizenship unless other than that is determined by a bilateral agreement concluded between B-H and the other country, ratified by the B-H Parliamentary Assembly (Article 17). Provided a B-H citizen voluntarily acquired other country citizenship prior to this law coming into force (before 1 January 1998), he/she loses the citizenship of B-H unless he/she renounces the other country citizenship within 15 days from the Law coming into force (Article 39). In paragraph 2 thereof an obligation of the B-H Council of Ministers is determined to propose to the B-H Presidium the conclusion of bilateral agreements with neighbouring countries within 6 months from this Law coming into force. These agreements have not been concluded, with the exception of Sweden and Serbia (the agreement with Croatia was signed, the Croatian Parliament ratified it on 13 October 2007, but the B-H Parliamentary Assembly did not). It is estimated that more than a half a million of citizens of Bosnia and Herzegovina might lose their B-H citizenship as of 1 January 2013, due to the mentioned provisions and a failure to conclude dual citizenship

agreements. However, this is not going to happen as the B-H Constitutional Court adopted an appeal by a member of the B-H Presidium, Bakir Izetbegović, in the matter No. U 9/11, and decided that Articles 17 and 39 of the Law on Citizenship of Bosnia and Herzegovina (B-H Official Journal No. 4/97, 13/99, 41/02, 6/03, 14/03, 82/05, 43/09 and 76/09) are contrary to Article I/7 b) and d) of B-H Constitution. The Constitutional Court of B-H ordered B-H Parliamentary Assembly to harmonise Articles 17 and 39, paragraph 1 of the Law on Citizenship of Bosnia and Herzegovina with the Constitution of B-H which prohibits any person to be "arbitrarily deprived of B-H citizenship" within six months from the decision being served upon.

The Law on Montenegrin Citizenship, containing quite restrictive requirements for the acquisition of the Montenegrin citizenship by refugees and nationals of other republics of the former SFRY with residence in Montenegro, provides for a possibility of granting a dual citizenship on the basis of international treaties and agreements under the condition of reciprocity.

This brief review of provisions on citizenship in the laws of the countries of the former SFRY shows not only that it is not possible to avoid cases of dual citizenship, but that it is often the most convenient instrument of legal protection of vested rights and interests of a great number of persons. This particularly refers to refugees and expelled persons, implying a duality of settlement from the aspect of real interests (property, retirement benefit etc.), legal interests (claims and vested rights), as well as from the aspect of the right to selection of the place of living (a possibility of return or integration in the place of current residence). Due to that, international agreements should contain elements and relations of the so called positive discrimination of the citizens of other republics of the SFRY, the relations in which they would not, due to their earlier legal status and vested rights, be treated as "ordinary" foreigners.

Taking also as a starting point the fact that laws of the countries of the so called Dayton quadrangle provide for possibilities of establishing a dual citizenship on the basis of international treaties and agreements under the condition of reciprocity, the Igman Initiative invites the governments of these countries to conclude dual-citizenship bilateral agreements within the shortest possible period, as to enable dual citizenship and thus resolve the issues of the so called conflict of citizenships (e.g. issues of military service, voting right, double taxation etc.) in accordance with the principles determined in the European Convention on Nationality and with other standards of international law.

Problems Relating to Obtaining Documents

A great number of refugees, displaced persons and other citizens of the countries of the Dayton quadrangle face problems in obtaining documents from other former SFRY republics from which they come from. According to the research conducted by the Republic of Serbia Commissioner's Office for Refugees, 44.25% of refugees in Serbia miss some documents from their country of origin. Due to that, those persons encounter problems at employment, receiving medical treatment, residence registration and in education. It is estimated that it is necessary to provide legal aid in obtaining approx. 32.000 different documents from the countries of origin. A great number of citizens of Serbia also need documents from other former SFRY republics, and they are those who came to Serbia in settlement waves after the World War Two, as well as many others who came to live there in the post-war period. These problems have been particularly pronounced lately due to the introduction of new, biometric documents.

Documents from the countries of origin may be obtained if persons who need them personally travel to the country of origin or if they authorise other person to do it for them, as the mechanism of obtaining documents by means of inter-governmental assistance has not been implemented yet in practice, primarily due to its extreme sluggishness. The problem occurs when those persons are not able to travel to the respective country of origin due to socio-economic reasons, or due to a fear of detention, or because they do not have travel documents and there is no other person they might authorise to obtain the necessary documents for them. As a rule, these persons need assistance in obtaining documents from the country of origin, without which they are not able to institute, e.g. the naturalisation procedure and exercise rights in the process of their integration. Such assistance is mainly given by NGOs, through a free legal aid assistance to refugees and displaced persons, but they are about to cease their activities due to a significant reduction of funds allocated to them.

In order to resolve the problems of obtaining documents, the Igman Initiative proposes the following:

- to simplify the procedure of obtaining documents and to that end it supports an agreement reached at the meeting of the Regional Technical Group for Simplification of Procedure of Obtaining Documentation in Podgorica on 7 September 2011, among the representatives of the Ministries of the Interior of B-H, Montenegro, Croatia and Serbia and the UNHCR-a¹³, as well as to undertake all necessary steps to implement it in practice;
- to support activities of NGOs carried out through cross-border projects of obtaining documents and whose activities require symbolic funds.

II. Property issues

The fact is that when the issue of the return of property, recognition of the right to property and protection of property are concerned, a process of the restitution of property of displaced persons and other citizens who used to have property in some of the Yugoslav republics has been for years underway, and that it has not been over yet. Countries in the region have different approaches and practice in providing access to property and home.

In favour of a uniform approach in resolving property issues

A great impediment to permanent resolving of the problems of refugees, particularly to their return, is an uneven regional approach to resolving some key legal issues, such as the issue of the return of property and tenancy rights, participation in privatisation etc., thus creating double standards in resolving identical problems in the region due to which there are differences in the status of refugees. As an illustration, some refugees (B-H) are restituted their flats which used to be socially-owned and they are enabled to purchase them, whereas some of them are not only denied their flats (they are being denied the right to return to their original homes in the Republic of Croatia, i.e. homes

¹³ One of the items of the agreement reached reads: “We particularly point out the issue of the valid civilian documentation and we agree enable in the cases when civilian documentation is an obstacle for effective enjoyment of rights of refugees, returnees and internally displaced persons, the introduction and acceptance by all countries of a facilitated procedure in the issuance of the needed documentation and/or certificates and that documents already possessed by them will be treated with special care as evidence in these procedures..”

in which they used to live before they became refugees, although it is requested by the UN Security Council 1120 Resolution dated 14 July 1997), but they are, as a humanitarian programme, an act of state mercy, and not as a programme of the restitution of the rights they were deprived of, offered housing against extremely strict conditions which can be met only by a very small number of refugees. Some refugees are entitled to participate in privatisation on the basis of their past service (B-H), and others are denied that right (Croatia). Refugees from Croatia who live in B-H are evicted from housing units they exchanged with the refugees from B-H living in the Republic of Croatia on the grounds of enforceable court awards made in Bosnia and Herzegovina, i.e. Republika Srpska on the annulment of agreements on the exchange of property, whereas in Croatia foreign court decisions are not recognised, and refugees from B-H living in Croatia thus acquired property in both countries, whereas refugees from Croatia living in B-H lost their property in both countries.

Annex G of the Succession Agreement is to be implemented

The **Agreement on Succession** signed on 29 June 2009 in Vienna by the representatives of the countries – successors to the SFRY is of great significance for resolving property issues of refugees, displaced persons and other citizens of the countries of the Dayton quadrangle. Annex G to the Agreement provides for the protection of private property and vested rights of citizens and legal persons from the SFRY. In Article 2, par. G (1) (a) thereof it is stipulated that rights to movable and immovable property in a successor country to which citizens or legal persons from the SFRY were entitled as of 31 December 1990 shall be recognised and that it will be protected and returned by the respective country in accordance with the defined standards and norms of international law regardless of nationality or citizenship, place of residence or domicile of those persons. Persons who cannot exercise those rights are entitled to compensation in accordance with the norms of civil and international law. In subparagraph (b) thereof it is stipulated that any alleged transfer of rights to movable and immovable property made after 31 December 1990 and under duress or contrary to sub-paragraph (a) thereof shall be null and void. Article 6 of Annex G to the Agreement provides for local legislature of each of the successor countries relating to the "tenancy right" to be implemented equally on all persons who were citizens of the SFRY and who used to have that right indiscriminately of whatever grounds, such as sex, race, colour, language, denomination, political or other position, national or social background, national-minority background, financial standing, birth or any other status.

In practice, however, all internal legal and other preconditions enabling a comprehensive implementation of Annex G have not been created yet. Representatives of the four countries did not discuss the implementation of Annex G to the Succession Agreement in the previous period, but mainly dealt with the distribution of diplomatic-consular offices, archives, other state-owned property etc.

The Igman Initiative proposes to clearly define at the forthcoming conference of ministers of foreign affairs of the countries of the Dayton quadrangle the obligations of these countries to commence, within the shortest possible period, a dialogue and reach an agreement on the implementation of Annex G of the Vienna Succession Agreement, as a preparation for organising a donor conference for resolving housing problems of refugees .

The Succession Agreement was made against the assistance and under various pressures by the European and international community after more than a decade of negotiations.

It can be hardly expected that it will be implemented without the same role of the European and international community, particularly those parts relating to human rights, that is the rights of refugees, displaced persons and other citizens. In any case, every new step of the SFRY successor states towards the European integration is encouraging, as each such step necessarily requires from the national authorities to act in accordance with the European legal and democratic standards.

The implementation of the Succession Agreement should also comprise the issue of outstanding liabilities arising from the *old foreign-currency saving*, which affects a great number of persons. The obligation to pay out the old foreign-currency deposits kept with the banks based out of the territory of the country in which the citizen had his/her savings account rests, according the Succession Agreement, on the country, the SFRY successor on the territory of which the respective bank had its head office.

Problems of the return of property, damage compensation and of reconstruction are particularly pronounced in the countries of the Dayton quadrangle which were spots of direct armed conflicts (B-H, Croatia)

Return of property, damage compensation and reconstruction in B-H

The return of property and of tenancy rights are some of the essential conditions in the Dayton Agreement for exercising the right to return of displaced persons and refugees. Therefore, the obligation of all parties to return property to its pre-war owners is stipulated as a priority with no alternative. However, not before long, that proved to be a too complex task for national authorities, i.e. that there was no internal political will to meet this obligation and the international community, through the High Representative for Bosnia and Herzegovina (OHR), had to assume a leading role in the area of the rule of law and legislature which would enable restitution and return.

The High Representative for Bosnia and Herzegovina was forced, following numerous obstructions of entity authorities and difficult negotiations, to pass a set of regulations in 1998 which enabled the commencement of the process of establishing concrete legal mechanisms for the restitution of houses and homes in B-H. All administrative, court and other deeds depriving tenants of their tenancy rights were declared null and void, by which their original tenants were enabled to take possession of those flats and to purchase them under favourable conditions. The principle that the right of an owner supersedes the right of a provisional user was accepted in order to speed up provisional users to vacate the flats. Thus, when the reinstatement of property rights is concerned, the best results were made in Bosnia and Herzegovina, as over 99 % of property was returned to their legal owners irrespective of the facts whether they were in B-H or elsewhere as refugees.

The only case in which the right to return of immovable property was contested was the issue of the so called "military flats", i.e. of the flats from the housing fund of the Yugoslav Peoples' Army (JNA). The issue of military flats has a different treatment in B-H entities. Republika Srpska returned flats to all former JNA officers, no matter where they moved after the war broke out – to Slovenia, Croatia, Serbia, Macedonia, Montenegro, or to the B-H Federation. Laws on this issue in the B-H Federation initially entirely denied the right to return the property, but gradually the conditions were softened and included more and more persons who were granted the right to be returned "military flats". Then there was a stalemate, even a regression and the laws were changed, which put claimants to those flats in an unfavourable position in relation to the conditions that existed before the laws were changed. As legislative amendments

were mainly interventions of the UN High Representative for B-H who was entitled to pass decrees on law amendments, it can be concluded that the upward trend in returning "military flats" in the B-H Federation ceased when the High Representative lost his interest in this area. The circumstances did not change until May this year, when the European Court of Human Rights in Strasbourg decided in the Branimir Đokić vs. B-H case. The appellant in this case, according to the B-H Federation was not entitled to be restituted his flat, although he purchased it, because he, after the war in B-H, was a member of military forces outside B-H (Army of FR Yugoslavia). The Court in Strasbourg determined the breach of the right to enjoyment of property and ordered Bosnia and Herzegovina to pay damages in the amount of the flat market value (EUR 60,000). This award is the most direct proof that federal legislature is not in accordance with Annex 7 to the Dayton Agreement. The key provision of Article 1 of this annex reads: "All refugees and displaced persons are entitled to freely return to their homes. They shall be entitled to the return of property they were deprived of during animosities that began in 1991, as well as to a compensation for the property that cannot be returned to them." It can be expected that after this award, in spite of dissatisfaction with it and announcements by the political structures of the B-H Federation that it will not be enforced, there will be an equitable outcome of the only outstanding issue in the area of the reinstatement of property rights in B-H.

In addition to the right to a free return and the return of property, Annex 7 to the Dayton Peace Agreement warrants *the right of all refugees and displaced persons to a compensation for property that cannot be returned to them*. At the same time, a mechanism of exercising the right to compensation is provided for. A great number of refugees and displaced persons submitted claims for compensation to the Commission for Displaced persons and Refugees, whereas others instituted court actions for the same purpose. So far, no compensation has been given in practice. 15 years after signing the Dayton Peace Agreement, there is still reluctance to the introduction of a formal compensation mechanism in Bosnia and Herzegovina. Reasons of that are numerous and versatile, including big costs and encumbrances that each form of the compensation scheme would impose on state budgets. An explanation of the OHR on the meaning of this stipulation from Annex 7 to the Dayton Peace Agreement is generally accepted, which is that it is only about a compensation for a housing unit or a home. Accordingly, the compensation is not an attempt of obtaining an overall compensation for all losses sustained by people in the war. In other words, the compensation within the meaning of Annex 7 is at this moment a way to help persons who are not able to return to find a permanent solution by exercising the right to home. Therefore, the amount of compensation should be limited to the amount adequate for ensuring minimum housing conditions in accordance with the applicable regulations.

In Bosnia and Herzegovina, out of approximately 1.1 million of housing units recorded by the latest population census in 1991, approx. 453,000 were destroyed or damaged, which makes approx 42% of the pre-war housing units. The destruction of housing units continued after signing the Dayton Agreement and following 1995, almost 14,000 housing units were damaged, most of them (over 80%) on the territory of the present B-H Federation.¹⁴ So far, approximately 317,000 housing units were *reconstructed* and the reconstruction rate is approx. 68%. It is estimated that almost two thirds, i.e. approx. 200,000 housing units were reconstructed through various forms of international and local donations, whereas the remaining third, mainly less damaged buildings, were

¹⁴ REVISED STRATEGY OF BOSNIA AND HERZEGOVINA for the implementation of Annex 7 to the Dayton Peace Agreement, Sarajevo, October 2008

repaired by private funds of the owners and tenancy right holders. On the basis of the data collated from the competent municipal offices, there are approx. 150,000 devastated housing units in B-H, i.e. 32% of the total damaged and destroyed housing units. According to the indicators defined, on the basis of return claims made until 2008, at least 45,000 housing units need to be urgently reconstructed, whereas the value of construction works is estimated to approx. EUR 300 million. In addition to that, it is necessary to reconstruct approx 450 condominiums with approx. 2,500 flats or approx. 1% of this type of the 1991 housing units. Earmarked budget funds are insufficient for a dynamic reconstruction and there is no reconstruction framework and programme. In addition to that, there is no legal framework by which state would guarantee refugees and internally displaced persons in B-H whose housing units were damaged or destroyed, the right to reconstruction under conditions equal for all. A significant number of reconstructed buildings in not used or is only occasionally used, due to the fact that necessary conditions for a sustainable return, from building infrastructure to employment opportunities, were not created simultaneously.

Restitution, Damage Compensation, Reconstruction in Croatia

Introduction if restitution mechanisms in the Republic of Croatia was significantly different from the same process in B-H in terms of its dynamics and its creators and in terms of its lack of comprehensiveness and equity. The process of introduction of restitution mechanisms was very slow, against significant political resistance and impediments and it has not been completed until now in a manner as to help persons who are not able to return to find a permanent solution by exercising their right to home, which is as a minimum of restitution standards accepted in B-H by the international community. The leading role in the creation and implementation of the property restitution mechanism in B-H was that of the international community, primarily through the Office of High Representative. In Croatia, the lead designer of the property restitution and its implementation were state institutions, whereas the role of the international community was mainly limited to monitoring the process and occasional pressures aimed at speeding up the process and make it more efficient. That resulted in visible differences in possibilities of access of refugees and displaced persons to their property rights in B-H and in Croatia. They are also visible statistically. Greater possibilities of access to property rights in B-H than in Croatia are also shown by the change in the structure of origin of refugees in Serbia: the percentage of refugees from Bosnia and Herzegovina was reduced from 43.3% according to the 1996 census to 26.42% in 2005, whereas the percentage of refugees from Croatia increased from 54.0% in 1996 to 73.43% in 2005. These data tell that refugees from Serbia have been returning to B-H with less impediments than to the Republic of Croatia, which is important primarily for accelerated and efficient implementation of property laws in terms of the restitution of housing units to their pre-war owners and tenancy right holders.

A sustainable return of refugees to the Republic of Croatia also depends a lot on the possibilities of their access to property and other vested rights. As it is known, the International Crime Tribunal for the Former Yugoslavia in the Hague, in its first-degree decision against the Croatian generals¹⁵, qualifies the restrictive and discriminating measures towards housing units and property of Krajina Serbs contained in legal

¹⁵ Judgment Summary in the case of the Prosecutor versus Ante Gotovina, Ivan Čermak and Mladen Markač, (Den Haag, 15 April 2011)

instruments passed following the "Oluja" as an act of expulsion. The aim of these measures was to, on the one hand, prevent a mass return of the expelled Serbs and Serbian refugees to Croatia, and, on the other hand, to encourage and increase the settlement of the Croats to the area of the Republic of Serbian under the administration, i.e. protection of the UN in the period 1991-1995. Accordingly, special regulations were passed, significantly restricting the proprietary right of Serbian refugees and expelled Serbs. By these regulations, owners of immovable property were temporarily prevented from possessing them, i.e. they were prevented to live in their houses or flats. The principle that the right to return and repossession of one's home and property was individual and unconditional and that it did not depend on whether someone else's right was respected or not, was not accepted in Croatia, whereas that was the case in Bosnia and Herzegovina. *The principle that the right of a provisional possessor superseded the right of an owner was applied in Croatia*, therefore in the case the owner returned to Croatia, he/she could not get in the possession of his/her home until he/she provided alternative accommodation to the provisional possessor. This principle was successfully contested before the European Court of Human Rights, which in the case *Radanović, Seka versus Croatia* decided that Croatia violated the European Convention on Human Rights due to an unreasonable procedure duration (Article 6), excessive burden put on an individual social group and due to a failure to establish a fair balance between the growing need for housing space and housing rights of individuals (Article 1 of the ECHR Protocol). As a consequence, the claimant had to bear an excessive individual burden – she was forced to bear the cost of providing an accommodation to the provisional user, which was to be at the cost of the state, however, the claimant had to bear the costs for more than six years – therefore the interference in her property right cannot be deemed commensurate with the legitimate aim that was intended to be attained, which was the breach of Article 1 of Protocol 1.

According to the data of Croatian authorities, there were in total 19,280 cases of granting the provisional use of privately owned housing units to other persons on the basis of decisions made by state bodies. An insignificant percentage of housing unit repossession claims remained unresolved. Nevertheless, this statistical data does not comprise cases of arbitrary taking into possession of housing units, without state body decisions, whose repossession has been claimed and for which the procedures are pending, as well as the cases of property for which no repossession claims have been made.

Resolving the issue of deprived tenancy rights is of an exceptional importance and it is unavoidable when the return of Croatian urban population comprised of Serbian refugees and expelled Serbs is concerned. It is about to 100,000 persons. In Croatia, 23,700 families lost their tenancy rights in court actions *in absentia*, whereas 6,300 families lost that right by the operation of law. The issue of a possible pecuniary or other compensation for displaced tenancy right holders remained one of open issues within the process initiated by signing the Sarajevo Declaration. The legal framework and mechanisms of resolving this issue have not been established in the Republic of Croatia.

In Croatia, unlike Bosnia and Herzegovina, deeds depriving the expelled Serbs and Serbian refugees of their tenancy rights were not declared null void, and they were not allowed to repossess the flats of which they used to be tenancy right holders nor to purchase them under the same favourable conditions as it was enabled to other citizens of Croatia. This is an obligation provided for by the UN Security Council Resolution No. 1120 dated 14 July 1997, reconfirming the right of all refugees and displaced

persons originating from the Republic of Croatia to return to their original homes in the Republic of Croatia, i.e. to the homes they lived in prior to becoming refugees.

While international documents and decisions place the issue of denied tenancy rights within the framework of human rights, the Croatian government treats it exclusively as a humanitarian issue. Its current policy of resolving the issue of deprived tenancy rights is therefore based on the reduction of human rights to a humanitarian issue, that is not on a legal but a non-legal starting point, through a programme of provision of housing as a humanitarian programme, and not through a programme of compensation (in-kind or pecuniary) of arbitrarily denied tenancy rights. The programme of provision of housing as a state-sponsored mercy to returnees, introduces lower standards of provision of housing, thereby discriminating users of such housing against the great majority of citizens of Croatia who privatised (purchased) their flats. The established legal framework is incomplete, partial and creates unjustified differences (different legal position) among certain groups of the users of the provided housing, thereby questioning a constitutional principle of equality before the law and the legal security of citizens.

A great majority of the former tenancy right holders, who were deprived of it by court decisions *in absentia* or by the operation of law are not able to meet requirements for the provision of housing. Data relating to March 2011 state that there are more negative than accepted applications (54.1% of negative responses to 45.9% of accepted applications) and that 25.3% applications (one quarter) out of the total number of applications made are not being considered due to their incompleteness, as a rule, because the applicants do not meet requirements for housing. This is an indicator of the restrictive nature of current requirements for the provision of housing.¹⁶ Due to that, the Housing Programme will provide housing for a very limited number of tenancy right holders who were denied that right (only approx. 5% - 10% of the current housing problems of refugees deprived of their tenancy rights).¹⁷

Although it is stipulated in Article 2 of Annex G to the Succession Agreement that the *rights to movable property* to which the citizens were entitled as of 31 December 1990 shall be recognised, protected and returned in their original condition by the state, Croatia in this case, in accordance with the defined standards and norms of international law, this obligation is still only declaratory, in other words, almost nothing has been done in practice to protect movable property of Serbian refugees from the Republic of Croatia. It is also a legal obligation of state housing commissions to draw up, on giving the property to others, a protocol on its condition and of giving it into possession of other persons. Those who take possession over such property and who are allowed to use it are obliged to use it with a due care, and when protecting it from third persons they have all the entitlements as their owners do, and income generated by that property may be used for their own needs. According to that Law, a title over such movable property given into possession of other persons and given to other persons for use may not be acquired by its occupation. Persons possessing or using that property contrary to the provisions of this Law shall be deprived of it by the Commission decision. There are no data that at least single decision on dispossession of property has been made for the

¹⁶ Due to the proportion of housing applications with positive and negative decisions and the number of applications still not decided upon, it is realistic to expect that fewer than 2.000 applications will be positively decided upon, which is less than 8% of the former tenancy right holders.

¹⁷ According to the data of the Croatian authorities, until 1 September 2009, 13,655 housing applications were received, out of which 4,576 are out of and 9.119 in the war-affected areas.

above reasons. Movable property of Serbian refugees was in the majority of cases taken away.

Having in mind the gravity of the problem, its continuous negative consequences to approximately 100,000 refugees who were denied the return to their homes, usually in urban communities, and exercising their elementary human rights, as well as a complete fiasco of negotiations conducted so far and of alternative measures aimed at meeting the needs of the aggrieved, it is necessary to finally resolve this issue in a comprehensive, equitable and sustainable manner, in accordance with international standards on human rights and international legal obligations of the Republic of Croatia.

The most notable progress in exercising returnee rights in Croatia has been made in reconstruction of houses owned by Serbian returnees. So far, approximately 147,000 houses have been reconstructed, out which two thirds relate to Croatian owners. In practice, procedures to act upon applications took several years. Besides, inconsistent and uneven practice in the implementation of the Law on General Administrative Procedure, particularly in first-degree procedure, as well as numerous mistakes in damage assessment procedures prolonged deciding upon reconstruction requests and in some cases took a few years. There are cases in which the reconstruction has not commenced although three and more years have passed since the conclusion of the reconstruction agreement. Due to that, defining deadlines within which reconstruction works would be completed, without any conditioning and additional requests whatsoever, is one of main conditions of the return of refugees.

Reconstruction of houses is not accompanied with the appropriate investing in the development of predominantly rural areas, economically depressed and devastated. The mere reconstruction, without an economic programme of support to the integration by creating new jobs, including reconstruction and building necessary infrastructure, cannot ensure the sustainability of return. Due to non-existence of existential conditions for a sustainable return, a great number of owners of renovated houses do not reside permanently in them. By reference to non-permanent residing in renovated houses, the competent state attorney in the Republic of Croatia institutes actions against refugees – owners of reconstructed buildings for the compensation of funds used for the reconstruction with the legal interest charged on them and under the threat of forfeiture, i.e. the loss of the housing unit, which put refugees into an impasse.

III Pension and Disability Insurance

Entitlements to pension and disability insurance are among the most important vested rights, both due to their scope and to the fact that they are practically the only means of life of elderly persons. A long-standing vacuum in establishing relations in the area of social insurance among the countries signatories to the Dayton Agreement additionally increased existential problems of a great number of citizens, particularly of refugees and displaced persons. Many of the citizens with entitlements to retirement benefits acquired in some of the republics of the former Yugoslavia receive them in a significantly lower amount than that they are entitled to. The reasons are mainly a difficulty to produce evidence on their past service and insurance period as they do not have appropriate documentation (employment booklets, M-4 forms) or their non-acceptance as sufficient evidence in procedures of exercising pension benefits.

Citizens of the countries of the Dayton quadrangle who with pension and disability insurance period or a part of it in other country, most frequently encounter the following problems when exercising pension and disability insurance rights:

- The majority of entitlement holders have problems in obtaining documents necessary for exercising their retirement rights, as many of them were destroyed or lost during the conflicts. Besides, there is a widespread practice of competent bodies to require from the citizens documents on facts on which these or other bodies or services keep official records and by law and ex-officio are obliged to obtain them.
- A cross-border procedure of deciding upon a request relating to retirement and disability rights take too long. The cooperation of liaison bodies is not always on the level which enables efficient implementation of the concluded agreements on social insurance.
- Although the competent bodies are obliged by law to ensure assistance to the parties in the procedure and the law provides for specific deadlines for the accomplishment of actions within the procedure, in practice this is frequently not the case and legal deadlines are not complied with, but significantly exceeded.

The problem of the disbursement of retirements to those that became entitled to them before the war and to those who were not disbursed until the Agreement on Social Insurance between B-H and Serbia (FR Yugoslavia) was concluded in 2004,¹⁸ is still the matter in court actions in B-H. It has to be pointed out that the majority of retired persons received their retirement benefits during the war and after the war from the Serbian Retirement and Disability Fund, the amount of which varied from period to period, being in certain periods lower, higher or equal to retirement benefits they would have received from the fund in which they became eligible to those benefits. In May this year, an injustice of settling debts between retirement and disability funds of the two countries at the expense of retired persons, i.e. by reducing their retirement benefits was rectified.

The most frequent problems encountered in practice by refugees from Croatia and by citizens who acquired a part of their retirement entitlement in Croatia when this area is concerned are as follows:

- Problems of determining and proving the period of the insurance:

There is a widespread problem of the lack of records on retirement insurance period in the Croatian Retirement Insurance office as well as a number of problems and obstacles in proving it. The records do not comprise longer periods (even 1/3 and longer) of the employment-retirement-entitlement period due to which the insured – retirement benefit applicant becomes the aggrieved party, as that period is not included in the retirement entitlement period, although it is a period before 1991, when, in accordance with positive regulations, it was not possible to receive a salary without prior contribution withholding, including the retirement insurance contribution. This particularly refers to persons covered by the Croatian Regional Retirement Office in Gospić, where almost every person has a part of unrecorded pension insurance period.

When such problems occur, they are easily detected by obtaining certificates on retirement insurance from Regional offices or the Central Croatian Office, and what follows after that is a long process of proving and determining the entitlement period the outcome of which is uncertain. The burden of proof is on the retirement benefit

¹⁸ SCG Official Journal – International Treaties, No. 10/2004

recognition applicants and not on the bodies in charge of keeping records on retirement insurance periods.

- The problem of due and undisbursed retirement benefits:

In the 90's, approximately 50,000 retirement benefit beneficiaries who remained on the territories under the UN administration or became refugees, lost their retirement benefits, as disbursements due were suspended by a unilateral act of the Republic of Croatia Retirement Fund due to cessation of payment transactions as a consequence of the war circumstances between the Republic of Croatia and the areas in the Republic of Croatia under administration or protection of the UN. In Croatia, when disbursement of retirement benefits due and un paid is concerned, the official position changed – from the recognition of the right to disbursement of all due and unpaid retirement benefits to the denial of that right following the passage of the Law on Convalidation by the end of 1997. Although administrative and judiciary bodies in Croatia confirm that the cessation of payment transactions and a halt in retirement benefit disbursement was a consequence of the war, in practice, when disbursement of retirement benefits due and unpaid is concerned, a provision on the prescription of due and unpaid retirement benefits provided it was a consequence of a circumstance provoked by the beneficiary, is applied. Pursuant to the Law on Retirement Insurance, the prescription of a due and unpaid retirement benefit is possible only in the case the beneficiary caused circumstances due to which there was a halt in payment. However, due to the fact that those halts in payments were a consequence of the war and not of circumstances caused by beneficiary, the statutory limitation could not have occurred. Retirement benefit is a vested and unalienable right. As there are no valid legal conditions for the limitation of the due and unpaid retirement benefits, nor for the application of the provision that a beneficiary may have only one retirement benefit, at his/her own choice, it is necessary to ensure that those retired persons have an equal legal position in relation to other Croatian retired persons through the introduction of a mechanism for disbursement of retirement benefits that became due and have not been paid.

- Convalidation of pensionable service

The issue of convalidation of pensionable service relating to the employment on the territory of the Republic of Croatia under the protection or administration of the United Nations in the period 1991/1995 has not been resolved for a great number of refugees. The offered legal framework for resolving this issue is not adequate due to its complexity, particularly due to complex requirements relating to proving the pensionable service prescribed by the Croatian laws (*Law on Retirement Insurance and Law on General Administrative Procedure*). With regard to that, it is good to remind on the statement given by a State Secretary of the Ministry of Employment and Social Security of the Republic of Croatia, Vera Babić, in the *Jutarnji list* daily on 24 July 2002: "All those who were employed in the so called RSK, the Republic of Croatia will recognise pensionable service and all entitlements attached thereto, as the documentation of retirement and healthcare funds are well kept and there will be no problem regarding pensionable service recognition." There are, however, great problems in practice, when the recognition of pensionable service is concerned, as the competent bodies most frequently claim that the documentation is missing, requiring the applicants to produce relevant material evidence. In addition to that, there are frequently new requirements made relating to obtaining evidence, and service certificates, original school certificates or valid health care booklets are not admitted and additional written evidence is required. The obligation to produce a great number of documents, i.e. the

imposition of unnecessary burden of proof is not in accordance with the standards of international humanitarian law, which, due to the causes and the nature of refugee status, requires the states to simplify procedures and facilitate access of refugees to their rights, among other things, by defining an obligation of the submission of minimum necessary documents, i.e. evidence. Besides, the Law on Retirement Insurance, Article 99, paragraph 2, prescribes that the capacity of the insured and a pensionable service may be proved by statements of witnesses if it is not possible to obtain data on that due to circumstances caused by the war in Croatia (Domovinski rat).¹⁹ The Law on General Administrative Procedure, Article 70, also prescribes that if there is no other evidence to determine certain facts, a statement given by the relevant party may be admitted as evidence.²⁰ Due to that, all citizens who used to be employed in the war-affected areas should be enabled to exercise their right in a bureaucratically simplified procedure and convalidate their pensionable service, which would enable them to exercise their rights stemming from labour and retirement relations the way other citizens do.

Other Reccommendations

- *Human rights of refugees and of all other persons are a universal value and a condition for cooperation of all countries, therefore they cannot be the subject of a compromise, nor may they be used in international political bargaining. Politics may not be above human rights. Human rights respect is one of the fundamental principles of the EU. Therefore, human rights of refugees and of all other persons may not be reduced to or dealt with as a humanitarian issue, as an act of mercy. Humanitarian assistance in resolving problems of refugees is not the same as obligations of respecting their human rights.*
- *It is necessary to intensify inter-governmental cooperation in the region with an aim of reaching an equitable, comprehensive and permanent solution to problems of refugees. In addition to that, mechanisms of monitoring, mediation, conditioning and assistance of the international community are still needed to speed up resolving of open issues of refugees and to close the chapter on refugee issues through the promotion of the rule of law and strengthening the state of law in the region.*
- *In order to eliminate discriminatory and legal barriers to exercising and protection of human rights of refugees and human rights in general and to create assumptions for the state of law and application of international legal standards, NGOs should proceed with exerting both the internal pressure through acts in the institutions of the legal and political system, by conducting joint lobbying activities, advocating, launching campaigns on specific issues and the external pressure on European and international institutions, through permanently insisting on a more active role of the international community. To that end, it is necessary to foster regional cooperation of NGOs.*

¹⁹ In accordance with that, it is expressly stipulated in the Law on Retirement Insurance, Article 110, paragraph 4 that for determining facts on pensionable service, salary, insurance basis and other facts affecting the entitlement to and determining rights to retirement benefits, statements of witnesses may not be used as the only evidence except in the case mentioned in Article 99, paragraphs 2 and 3 thereof.

²⁰ Official Gazette, No. 47/09



B | T | D The Balkan Trust for Democracy
A PROJECT OF THE GERMAN MARSHALL FUND

Projekat "Ekspertska elaboracija o nerešenim pitanjima između država potpisnica dejtonskog sporazuma - imovinski i statusni problemi građana expert" je podržan od strane Evropske.

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Ekspertska elaboracija preostalih otvorenih
pitanja izmedju zemalja Dejtonskog sporazuma
Statusna i imovinska pitanja gradjana

Priredio
Ekspertski tim Igmanske inicijative

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Štampa:
OZTR Reclamare, Novi Sad

Tiraž:
200 primeraka

Novi Sad, oktobar 2011.

IGMANSKA INICIJATIVA

Ekspertska grupa

PRELIMINARNI IZVEŠTAJ

o statusnim i imovinskim pitanjima građana nastalim kao rezultat dezintegracije Jugoslavije u zemljama potpisnicama Dejtonskog sporazuma, s preporukama za njihovo rešavanje

U okviru ciljeva utvrđenih u svojoj misiji, Igmanska inicijativa u svom programu za naredni period, sadrži niz ključnih aktivnosti u koje se uklapa i projekat koji inicira trajno rešavanje problema imovinskih i statusnih prava građana u državama potpisnicama Dejtonskog sporazuma.

Igmanska inicijativa stoji na stanovištu da se jedino efikasnim rešavanjem pojedinih otvorenih pitanja između zemalja Dejtonskog sporazuma može ubrzati dalja normalizacija njihovih odnosa i proces EU integracije.

Nakon početka procesa demokratizacije zemalja Dejtonskog sporazuma do kojeg je došlo početkom prošle decenije, počelo je i rešavanje niza problema koji su opterećivali međusobne odnose. U mnogim oblastima došlo je do međusobnog usaglašavanja zakonodavstva i njegove harmonizacije sa evropskim zakonodavstvom, potписан je niz bilateralnih odnosa i dobar deo pitanja počeo da se rešava u praksi. To je doprinelo i popravljanju međusobnih odnosa i unapređivanju međusobne saradnje.

I pored toga, ostao je nerešen jedan broj otvorenih pitanja, među kojima su i statusni i imovinski problemi građana. Postoji više razloga za ovakvu situaciju. Prvi leži u činjenici da je ovo pitanje tesno vezano za rešavanje problema povratka izbeglica, za šta u pojedinim zemljama nije postojalo dovoljno političke volje.

Na inicijativu Evropske komisije, OEBS-a i UNHCR-a, predstavnici država u regionu: Bosna i Hercegovina, Hrvatska, Srbija i Crna Gora usvojile su Sarajevsku deklaraciju u januaru 2005. kojom su se obavezali da će omogućiti proces povratka ili lokalne integracije u njihovim zemljama te dogovorili zajedničke aktivnosti i uzajamnu saradnju. Međutim, usprkos dodatnim podsticajima i inicijativama od strane međunarodne zajednice, malo je napretka ostvareno u procesu sprovođenja Sarajevske deklaracije, koji je imao za cilj da okonča proces povratka izbeglica u regionu do kraja 2006. godine.

Hitnosti i neophodnosti rešavanja statusnih i imovinskih pitanja u zemljama Dejtonskog sporazuma doprinosi i činjenica da se rešavanje ovog problema nikako ne sme svesti samo na izbegla i raseljena lica, već i na lica koja su raznim okolnostima tokom postojanja SFRJ sticala ova prava. Naime, jedan broj građana SFRJ je sticao ova prava rođenjem, boravkom, imovinom, radom i dr. u tada zajedničkoj državi (u nekoj od republika), a ta prava ne uživaju iako nemaju status izbeglih i raseljenih lica. Dakle, iako su izbegla i raseljena lica najbrojnija u ovoj ciljnoj grupi nikako se ne smeju zaobići i ostali građani bivše Jugoslavije koji su takođe lišeni ovih prava.

Kako bi se ovaj problem trajno rešio, postalo je jasno da je neophodno intenzivirati regionalnu saradnju u cilju postizanja pravičnog i sveobuhvatnog rešenja za sve

ugrožene građane četiri zemlje, uz napomenu da bi to itekako doprinelo daljem unapređenju dobrosusedskih odnosa i stabilnosti regiona, kao i uzajamnoj podršci u procesu evropskih integracija.

Opšti cilj projekta koji proizilazi iz strateških opredeljenja i programa Igmanske inicijative je doprinos normalizaciji odnosa između zemalja potpisnica Dejtonskog sporazuma kroz trajno rešavanje statusnih i imovinskih prava građana svih država potpisnica.

Očigledna prednost Igmanske inicijative u ostvarivanju ovakvog cilja je svakako sposobnost da u njegovu realizaciju uključi ključne političke lidere u regionu i okupi eksperte iz vladinog i nevladinog sektora iz sve četiri zemlje.

Igmanska inicijativa takođe ima kapacitete za pokretanje široke medijske kampanje kako bi se rezultati i rad na projektu distribuirali velikom broju medija i javnosti u sve četiri zemlje potpisnice Dejtonskog sporazuma.

Konkretan problem na čije će rešavanje biti usmerene projektne aktivnosti jesu prepreke i teškoće građana u rešavanju statusnih i imovinskih pitanja do kojih je došlo raspadom nekadašnje Jugoslavije.

Statistički okvir

Izbeglice jesu, zapravo, najbrojnija kategorija ljudi koji imaju problema sa rešavanjem svojih statusnih i imovinskih problema ali se problem svakako ne bi smeо svesti samo na zvanične podatke o broju izbeglih i raseljenih lica.

U Bosni i Hercegovini je više od polovine stanovnika, odnosno oko 2,2 miliona osoba, raseljeno ili je izbeglo iz svojih domova tokom rata od 1992. do 1995. godine. Od tog broja, oko 1,2 miliona osoba, potražilo je izbegličku zaštitu u preko 100 zemalja širom sveta, a oko milion ih je raseljeno unutar BiH. U zvaničnim statistikama registrovano je preko milion povratak u BiH. Od ukupno 1.048.498 evidentiranih povratak, oko 600.000 ili 67% odnosi se na povratak raseljenih osoba, a preostalih oko 450.000 ili 43% na povratak izbeglica.¹ U BiH je evidentirano oko 470.000 tzv. *manjinskih povratak*. Povratničku populaciju, naročito onu tzv. manjinskih povratnika, uglavnom čine stare osobe. Prema proceni Ministarstva za ljudska prava i izbeglice, stopa tzv. manjinskih povratak preračunata na osnovu prepostavljenog broja osoba koje su napustile svoja predratna prebivališta u odnosu na broj povratnika, u FBiH je 32% (povratnici srpske nacionalnosti), a u RS je 30%, pri čemu je stopa povratak Bošnjaka u RS 36,6%, a Hrvata 9,6%. Sa oko 750.000 evidentiranih povratak učesće FBiH je 71,5% u ukupnom povratku u BiH, oko 275.000 povratak ili 26,2% ostvareno je području RS, dok je preostalih oko 22.600 ili 2,3% od ukupnih povratak realizovano na području Brčko distrikta BiH. Prema nacionalnoj strukturi, vratilo se oko 650.000 Bošnjaka, 135.000 Hrvata, 256.000 Srba i oko 8.000 ostalih nacionalnosti. Prema rezultatima revizije statusa raseljenih osoba² u Bosni i Hercegovini u statusu raseljenih je 41.013 porodica, ukupno 125.072 raseljene osobe, od kojih 56.287 ili 45% raseljeno

¹ Informacija o povratku izbjeglica i raseljenih osoba u BiH za period 1995 – 2010. godine, Ministarstvo za ljudska prava i izbjeglice BiH

(http://www.mhrr.gov.ba/PDF/Izbjeglice/INFORMACIJA_O_POVRATKU_DO_2010.pdf)

² Prikupljanje zahtjeva za reviziju statusa na teritoriji cele BiH zaključeno je sa 31.03.2005. godine.

je na području FBiH, 67.673 ili 54,1% na području RS i 1.112 ili 0,9% na području Brčko distrikta BiH. Došlo je do povećanja broja Srba u ukupnom broju raseljenih osoba u BiH, odnosno do procentualnog povećanja njihovog učešća u nacionalnoj strukturi raseljenih osoba, prema kojoj je 69.099 raseljenih osoba (55,2%) pripadnika srpske nacionalnosti, 47.907 ili 38,3% bošnjačke, 7.450 ili 6% hrvatske, a preostalih 616 (0,5%) su pripadnici ostalih nacionalnosti.³

U Bosni i Hercegovini boravi 6.941 registrovanih izbeglica iz Hrvatske, od kojih većina na teritoriji Republike Srpske (u periodu 1991-1995. godine, BiH je primila između 40.000 i 45.000 izbeglica iz Republike Hrvatske, od kojih se većina formalno integrisala u BiH).

Najveći broj povrata ostvaren je u prve tri godine po uspostavljanju mira, u kojima je ostvareno više od polovine ukupnih povrata u BiH. Od 2003. godine trend povrata naglo opada. Teško je, međutim, reći koliko je izbeglica i raseljenih osoba pronašlo trajna rešenja kroz povratak, jer pored mogućeg značajnijeg odstupanja statističkih pokazatelja od stvarnog realizovanog povratka, prisutna je pojava da mnogi nakon ulaska ili uvođenja u posed ili nakon rekonstrukcije svoje predratne imovine, a što se evidentiralo kao povratak, ponovo privremeno ili trajno napuštaju svoja predratna prebivališta. Budući da veliki broj opština ne raspolaže podacima o stvarno realizovanim povratcima, niti vodi takve statistike, stvarni rezultati povratka će se moći analizirati tek kada bude obavljen popis stanovništva.

U Republici Hrvatskoj, prema procenama UNHCR-a, između 1991. i 1992. godine bilo je raseljeno oko 550.000 osoba. U isto vreme, zemlja je primila oko 400.000 izbeglica iz Bosne i Hercegovine, a od toga je oko 120.000 izbeglica iz Bosne i Hercegovine (uglavnom hrvatskog porekla) steklo hrvatsko državljanstvo. Na dan 31.03.2010. u Hrvatskoj je, prema podacima UNHCR-a, bilo 809 izbeglica iz BiH i 2.246 interna raseljenih lica. Prema podacima UNHCR misije u Republici Hrvatskoj iz marta 2010. godine u Hrvatsku se vratilo 132.451 lice srpske nacionalnosti (od ukupno preko 400.000 izbeglih Srba), pri čemu se za 15.929 povratnika iz Srbije nije mogao proveriti raniji izbeglički status. Od tog broja, iz Srbije i Crne Gore vratilo se 93.786 izbeglica, a iz BiH njih 15.434. Vratila se i 23.231 izbeglica srpske nacionalnosti iz drugih delova Hrvatske. Prema Studiji o održivosti povratka manjina u Hrvatskoj iz 2007. godine, koju je naručio UNHCR⁴, gornja granica procene broja povratnika koji stvarno žive na području Hrvatske je oko 45% od ukupnog broja registrovanih povratnika. Povratnici su uglavnom starije osobe, nižeg stepena obrazovanja, koje se vraćaju u ruralna mjesta. Deca sa roditeljima čine svega 15% povratničke populacije, a samo je 8% povratnika zaposleno ili samozaposleno. Jedna trećina je starija od 65 godina, 11% potpuno zavisi od pomoći koju dobija, a od ukupnog broja povratnika preminulo je 11%. Da je opcija povratka kao trajnog rešenja sve manje prisutna u izbegličkoj populaciji pokazuju podaci o stalnom smanjenju godišnje brojke povratnika – od 20.716 u 2000. godini, kada je godišnja brojka povratnika dostigla vrhunac, 11.867 povratnika 2001., 11.048 povratnika 2002., 1.147 povratnika 2008. a 2009. 710 povratnika.⁵ Istraživanje na terenu koje su zajednički sproveli UNHCR i Komesarijat za

³ REVIDIRANA STRATEGIJA BOSNE I HERCEGOVINE za provedbu Aneksa VII Dejtonskog mirovnog sporazuma, Sarajevo, jun/lipanj 2010. Godine

(<http://www.mhrr.gov.ba/PDF/Izbjeglice/Revidirana strategija Hrvatski.pdf>)

⁴ Održivost manjinskog povratka u Hrvatskoj, autori: Milan Mesić i Dragan Bagić, nakladnik UNHCR 2007.

izbeglice Republike Srbije 2008. godine pokazalo je da tek 5% izbeglica još uvijek razmatra mogućnost repatrijacije.⁶

U Republici Srbiji, prema podacima sa prvog popisa izbeglica 1996. godine, boravilo je 537.937 izbeglica (44% iz Bosne i Hercegovine, 54% iz Hrvatske) i 79.791 ratom ugroženo lice. Broj izbeglica iz republika bivše SFRJ u Republici Srbiji smanjio se za više od 80% u periodu između 1996. i 2010. godine. Prema podacima Komesarijata za izbeglice Republike Srbije 1. novembra 2010. godine u formalnom statusu izbeglica bilo je 86.155 lica, od toga je 72% iz Hrvatske, a ostalih 28% iz Bosne i Hercegovine. Broj izbeglih osoba kojima je, bez obzira na službeno priznanje statusa izbeglice u Srbiji, potrebna pomoć za lokalnu integraciju ili repatrijaciju procenjuje se na oko 300.000. UNHCR je 2008. godine uvrstio Srbiju među pet zemalja u svetu sa dugotrajnom izbegličkom krizom čije rešavanje zahteva zajedničku akciju i saradnju zemalja u regionu, uz podršku međunarodne zajednice. Sa 86.155 izbeglih i 210.148 internu raseljenih, Srbija je i danas prva zemlja u Evropi po obimu prisilnih migracija. Takođe, prema podacima od 1. septembra 2011. godini, u Republici Srbiji postoji još 42 kolektivna centra u kojima boravi 3.158 izbeglih i internu raseljenih lica.⁷ Od ukupnog broja kolektivnih centara na teritoriji Srbije van Kosova i Metohije nalazi se 29 kolektivnih centara sa 2.993 lica, dok je na teritoriji Kosova i Metohije 13 kolektivnih centara sa 525 smeštenih lica.

Prema podacima Vlade Crne Gore, na dan 30. juna 2011. godine, u **Crnoj Gori** boravi 4.867 raseljenih lica (RL), i to 1.221 iz Hrvatske i 3.646 iz Bosne i Hercegovine, te 10.472 internu raseljenih lica (IRL) sa Kosova. Istovremeno, 677 RL i 719 IRL je ostvarilo status stranca sa stalnim boravištem dok je jedno IRL steklo status stranca sa privremenim boravkom.⁸

Sumirajući navedene zvanične podatke evidentirane od strane državnih organa i UNHCR-a možemo zaključiti da će projektne aktivnosti indirektno biti usmerene prema ciljnoj grupi koja samo među izbeglim i raseljenim licima broji približno 350.000 lica kao krajnjih korisnika rezultata ovog projekta. Stvarna brojka krajnjih korisnika je mnogo veća s obzirom na to da postoji značajan broj građana, koji više nisu u statusu izbeglih, raseljenih ili prognanih lica ili nikad nisu bili u tom statusu, a koji imaju statusne probleme ili, pak, probleme u vezi s ostvarivanjem prava na penziju, imovinu i sl. jer su u određenom periodu u bivšoj Jugoslaviji živeli i radili u nekoj od drugih republika, stekli imovinu u njima i dr.

⁵ http://www.unhcr.hr/images/stories/news/stats/docs/DSU90331_hr_new.pdf

⁶ REPUBLIKA SRBIJA, KOMESARIJAT ZA IZBEGLICE, STANJE I POTREBE IZBEGLIČKE POPULACIJE U REPUBLICI SRBIJI, DECEMBAR 2008., Komesarijat za izbeglice www.kirs.gov.rs

⁷ <http://www.kirs.gov.rs/articles/centri.php?lang=SER>

⁸ Strategija za trajno rješavanje pitanja raseljenih i internu raseljenih lica u Crnoj Gori sa posebnim osvrtom na oblast Konik (Nacrt), Podgorica, jul 2011

Konkretni problemi građana na koje će rezultati projekta delovati su:

I. Statusni problemi građana

U bivšoj SFRJ su njeni državljanini imali dvostruko državljanstvo (republičko i savezno). Njegova suština je u tome da je državljanin jedne republike imao na teritoriji drugih republika ista prava i dužnosti kao i državljanini tih republika. Stoga je na unutrašnjem planu i u faktičnom životu republičko državljanstvo imalo marginalan značaj, da bi nakon državnog osamostaljenja jugoslovenskih federalnih jedinica ono postalo odlučujuće.

Problemi nastali raspadom SFRJ su, pre svega, u tome što su mnoga lica na osnovu jednakopravnog položaja na cijeloj teritoriji bivše SFRJ stekli odnosno ostvarivali određena prava u drugim republikama kojih nisu državljanini, a čije ostvarivanje se sada vezuje za posedovanje državljanstva republike u kojoj je živeo (imao prebivalište) pre raspada SFRJ. Iako su bili državljanini drugih republika bivše SFRJ, ove osobe su ostvarivale određena prava u republici u kojoj su imali prebivalište a koja se najčešće u vezi s državljanstvom (pravo vlasništva na nekretninama – kući, stanu, zemljištu, šumi, pravo na stan, pravo na rad i slobodu rada, pravo na socijalnu sigurnost i socijalno osiguranje, pravo na zdravstvenu zaštitu, pravo na besplatno osnovno školovanje, te dostupnost svakome, pod jednakim uslovima, srednjoškolskog i visokoškolskog obrazovanja, pravo ulaska i izlaska iz te republike, odnosno posedovanje pasosa izdatog u toj republici u mjestu prebivališta osobe, aktivno i pasivno biračko pravo, pa su na temelju tog prava i glasali na prvim višestranackim izborima devedesetih godina i na referendumu o samostalnosti i nezavisnosti republike u kojoj su prebivali i dr.). Sva ova prava koja proizilaze ili su vezana za pravo državljanstva državljanini bivše SFRJ ostvarivali su se u republici u kojoj su imali prebivalište, nezavisno od toga da li imaju i državljanstvo te ili neke druge republike bivše SFRJ.

Vezivanjem mogućnosti ostvarivanja nekih temeljnih ljudskih prava uz posedovanje državljanstva republike u kojoj je imao prebivalište prije raspada SFRJ, deo građana došao je u izuzetno težak pravni i životni položaj, a posebno oni koji su u statusu izbeglica i raseljenih lica. Mnoga stečena prava građana koji su imali prebivalište u drugim republikama bivše SFRJ, a koja su nastala kao posledica smene različitih pravnih sistema, ugrožena su vezivanjem njihovog ostvarivanja posedovanjem uverenja o državljanstvu republike u kojoj su imali prebivalište.

Međunarodno pravo, međutim, polazi od načela poštovanja stečenih prava na dan sukcesije, tj. na dan zamene jedne države drugom u odgovornosti za međunarodne odnose nekoga područja. Svrha je toga, a što na određeni način veže državu-sukcesora da se izbegne pravni vakuum i održi pravna sigurnost pravnih i fizičkih osoba. Od te činjenice pošla je i Arbitražna komisija Mirovne konferencije o Jugoslaviji, koja je u svom Mišljenju broj 8. od 4.7.1992. zaključila da su "imperativne norme opšteg međunarodnog prava, a naročito poštovanje temeljnih prava pojedinaca i prava naroda i manjina obvezujuće (su) za sve stranke sukcesije...".

U praksi, međutim, na području bivše SFRJ, a naročito u onim delovima koji su bili poprišta oružanih sukoba i masovnog prinudnog premeštanja stanovništva, nije izbegnut pravni vakuum te je bila ugrožena pravna sigurnost pravnih i fizičkih osoba, pre svega u statusnim te imovinskim, socijalnim, penzijskim i drugim stečenim pravima. Države

sukcesorke SFRJ nisu u dovoljnoj mjeri uočile novu realnost u odnosima nastalim nakon dissolucije bivše Jugoslavije. Regulisanje državljanstva nije se u svim slučajevima kretalo u okviru granica koje utvrđuje međunarodno pravo. U praksi, osnovni principi i načela nisu poštovana u odnosu na vlastite državljane različitog etničkog porijekla (izbeglice i raseljena lica). Kašnjenje u donošenju i primeni zakona, nejednak način tretiranja efektivne veze, odsustvo rješenja za zaštitu porodičnog jedinstva, negativno se odrazilo na pitanja vezana za ostvarivanje prava građana. Problemi su postupno prevaziđeni zakonskim novelama i administrativnim aktima država sukcesorki, ali posebno s aspekata ravnopravnosti i jednakosti pred zakonom, određena pitanja ostala su još uvek nerešena.

Države sukcesorke SFR Jugoslavije trebale bi da iniciraju postupke za zaključenje sporazuma kojim bi se zakonodavne politike država sukcesorki međusobno uravnotežile i harmonizovale u skladu sa pravilima i principima o sukcesiji državljanstva. Time bi se, barem delom, ublažile štetne posledice sukcesije na građanskopravne odnose i stečena prava pojedinaca.

Pravila i principi o sukcesiji država nalažu državama – naslednicama bivše SFRJ da propišu olakšavajuće okolnosti za sticanje državljanstva za državljane drugih republika bivše SFRJ.

U tom cilju i u želji da promoviše principe demokratije, zakonska pravila i uživanje ljudskih prava i osnovnih sloboda od strane svake osobe, imajući na umu važnost olakšavanja utvrđivanja državljanstva, te svesni potrebe da se osigura da zakonodavstvo o državljanstvu i praksa ne ugroze povratak izbeglica i raseljenih lica, na sastanku eksperata o državljanstvu iz ministarstava država - naslednica bivše SFRJ i međunarodnih eksperata, održanom u centrali Saveta Evrope u Strazburu 31. oktobra 1996. godine, usvojeni su *Principi na kojima bi se trebali temeljiti zakoni o državljanstvu država na području bivše SFRJ*.⁹ Jedan od osnovnih principa jeste da nikakve razlike napravljene zbog diskriminacije na osnovu pola, religije, rase, boje, nacionalnog ili etničkog porijekla, neće biti dozvoljene. Takođe, osnovni je princip da će države dozvoliti svojim državljanima da uđu, borave, napuste i vrate se na njenu teritoriju. Od posebnih principa i pravila bitni su posebno sledeći:

- Stvarna i efektivna veza

Svaka država će dozvoliti, u skladu s gore navedenim osnovnim principima i modalitetima ustanovljenim putem svojih internih zakona, sticanje svog državljanstva državljanima bivše SFRJ koji imaju stvarnu i efektivnu vezu s tom državom.

- Olakšice u sticanju državljanstva

Svaka država treba da olakša sticanje svog državljanstva za osobe koje su bile državljeni bivše SFRJ i koje su imale stalni boravak na njenoj teritoriji u vreme državne sukcesije.

- Dokumentarne i druge informacije o pitanjima koja se odnose na državljanstvo

Ukoliko status državljanstva izbeglica i raseljenih lica ostane nerešeno, predužeće se dodatne mere da se olakša utvrđivanje njihovog državljanstva.

⁹ Sastanak je organizovao Savet Evrope u saradnji s UNHCR-om.

Evropska konvencija o državljanstvu iz 1997. godine u članu 18. utvrđuje principe u vezi s pitanjem državne sukcesije i državljanstva. U donošenju odluke o davanju ili zadržavanju državljanstva u slučajevima državne sukcesije, svaka država-članica koje se to tiče, posebno će uzeti u obzir sledeće:

- a/ suštinsku i stvarnu vezu neke osobe sa tom državom;
- b/ stvarno prebivanje osobe u vreme državne sukcesije;
- c/ želju osobe o kojoj je reč;
- d/ sa koje teritorije osoba potiče".

Iz napred navedenih principa proizilazi jasna obaveza svake države – naslednice bivše SFRJ da olakša sticanje svog državljanstva za osobe koje su bile državljeni druge republike bivše SFRJ i koje su imale stalni boravak na njenoj teritoriji u vrijeme državne sukcesije. Sve republike bivše SFRJ su u svojim zakonima o državljanstvu propisale, u većoj (Srbija ima najliberalnije odredbe) ili manjoj mjeri, olakšavajuće okolnosti za sticanje državljanstva državljenih drugih republika koji su njima imali prebivalište na dan sukcesije, dok je Hrvatska to učinila na etnički selektivnoj osnovi, samo za osobe hrvatske nacionalnosti.¹⁰ Propisivanje olakšavajućih okolnosti za sticanje hrvatskog državljanstva ovoj kategoriji osoba na etnički selektivnoj osnovi upitno je s aspekta odredbe člana 5. Evropske konvencije o državljanstvu iz 1997. godine *o zabrani diskriminacije*. Naime, po tom članu propisi o državljanstvu države-članice ne treba da sadrže posebne odredbe niti da uključuju bilo kakvu praksu koja bi vodila diskriminaciju na osnovu pola, religije, rasne pripadnosti, boje kože, odnosno nacionalne ili etničke pripadnosti.

Osobe koje nisu hrvatske nacionalnosti, a državljeni su drugih republika bivše SFRJ i koje su imale prebivalište u RH na dan 8.10.1991., nemaju pogodnosti koje su date osobama hrvatske nacionalnosti, već moraju da ispunе uslove propisane za redovnu naturalizaciju stranaca. Odsustvom takvog zakonskog rešenja ova kategorija stanovnika RH, koji su do sukcesije konzumirali sva prava vezana za državljanstvo u Hrvatskoj jer su u njoj prebivali, dovedena je u veoma tešku pravnu i životnu poziciju. Oni su postali stranci u Hrvatskoj, što je uzrokovalo pravni vakuum te ugrozilo pravnu sigurnost tih osoba, posebno u statusnim, imovinskim, socijalnim, penzijskim i drugim stečenim pravima, čije poštovanje nalažu imperativne norme opšteg međunarodnog prava. Mnogi od njih su danas u položaju izbeglica ili prognanika iz Hrvatske, kojima je MUP RH, kao državljenima drugih republika bivše SFRJ, u međuvremenu rešenjem poništio trajno nastanjenje, tj. prebivalište u RH. Praksa pokazuje, s jedne strane, da mnoge izbeglice koje žele da se vrate u RH ne ispunjavaju zakonske uslove za regulisanje svog statusa u Hrvatskoj, te, s druge strane, da postupanje upravnih tela, pre svega MUP-a, nije uvek u skladu sa zakonskim odredbama koja uređuju status ovih osoba. Na primer, nevladine organizacije okupljene oko Igmanske inicijative raspolažu većim brojem slučajeva da osobe koje su državljeni drugih republika bivše SFRJ, a koje su imale prebivalište u RH na dan 8.10.1991. godine, ne mogu da ostvare pravo na stambeno zbrinjavanje a time ni pravo na povratak jer nisu rešili svoj status odnosno boravak u RH.

Propisivanjem olakšavajućih okolnosti za sticanje hrvatskog državljanstva, poput onih za osobe hrvatske nacionalnosti, ispoštovale bi se garancije hrvatske vlade da se njihov

¹⁰ Član 30. stav 2. Zakona o hrvatskom državljanstvu ("Narodne novine", br. 53/91, (ispr.) 70/91, 28/92 i 113/93)

povratak neće ograničavati i uslovjavati i da će biti do kraja izjednačeni s drugim kategorijama lica u pravima koja proizilaze iz statusa povratnika.

Crnogorskom zakonodavcu se preporučuje da preispita sadašnji zakonski uslov za sticanje crnogorskog državljanstva za ovu kategoriju osoba - da državljanin republika bivše SFRJ koji ima prijavljeno prebivalište u Crnoj Gori pre 3. juna 2006. godine može steći crnogorsko državljanstvo prijemom, ako nema državljanstvo druge države ili ako ima otpust iz državljanstva druge države¹¹. Ova preporuka polazi od toga da ovaj uslov, s jedne strane, nisu u svojim zakonima o državljanstvu za ovu kategoriju osoba propisale druge republike bivše SFRJ (Hrvatska samo za osobe koje nisu hrvatske nacionalnosti), a, s druge strane, da su u nacionalnom zakonodavstvu mnogih država u toku poslednje decenije izvršene promene koje omogućavaju lakše sticanje ili zadržavanje dvojnog državljanstva na način da je ublažen ili potpuno ukinut zahtev da lice koje stiče državljanstvo naturalizacijom mora prethodno dobiti otpust iz svog prethodnog državljanstva ili ga se odreći. U onim zemljama u kojima ovaj zahtev i dalje postoji, liberalnije se primenjuju izuzeci te se, na primer, otpust ne traži kada država prvobitnog državljanstva pravno ili finansijski znatno otežava otpust i odricanje. Ovaj princip usvojen je i u Evropskoj konvenciji o državljanstvu, a koju je ratifikovao i crnogorski parlament: „Država članica ne sme da traži odricanje ili gubitak drugog državljanstva kao uslov za sticanje ili zadržavanje sopstvenog, ako su takvo odricanje ili gubitak nemogući ili se ne mogu razumno zahtevati.“ (član 16).

Pozivaju se i ostale države tzv. Dejtonskog četvorougla da još jednom preispitaju postojeća zakonska rešenja, te da sagledaju mogućnosti propisivanja dodatnih olakšavajućih okolnosti za sticanje njihovog državljanstva za državljane drugih republika bivše SFRJ koji su u njima imali prebivalište na dan sukcesije, pre svega, brisanjem roka u kojem mogu podneti zahtev za prijem u državljanstvo.

Pozivaju se države tzv. Dejtonskog četvorougla, koje to još nisu učinile, da ratifikuju Evropsku konvenciju o državljanstvu iz 1997. godine.

Olkšati naturalizaciju izbeglica

Države ugovornice *Konvencije o statusu izbeglica* iz 1951. godine, među kojima su i države sukcesori bivše SFRJ, obavezale su se članom 34. da će omogućiti, „u najvećoj mogućoj meri, asimilaciju i naturalizaciju izbeglica. One će naročito nastojati da ubrzaju postupak naturalizacije i da smanje, u najvećoj mogućoj meri, takse i troškove tog postupka.“

Na zakonodavnom planu tek od marta 2001. godine Savezna Republika Jugoslavija, a potom i Republika Srbija su u celosti ispoštovale obavezu da omoguće olakšanu i ubrzanu naturalizaciju izbeglica uz smanjene takse i troškove tog postupka.

Zakon o državljanstvu Bosne i Hercegovine u članu 38. stavu 3. i 4. propisao je olakšavajuće uslove za naturalizaciju izbeglica, iako se eksplicitno ne navodi reč izbeglica.

Republika Hrvatska u svom zakonu o državljanstvu nema posebnih odredbi koje bi se, u najvećoj mogućoj meri, odnosile na omogućavanje naturalizacije izbeglica. Na temelju

¹¹ Član 41.stav.1.tačka 1. Zakona o crnogorskom državljanstvu (“Službeni list”, br. 13/08)

odredbi o olakšanim uslovima za prijem u hrvatsko državljanstvo osobama hrvatske nacionalnosti olakšano je sticanje hrvatskog državljanstva ali samo za izbeglice hrvatske nacionalnosti.

Zakon o crnogorskom državljanstvu iz 2008. godine ne uključuje odredbe kojima se olakšava lokalna integracija lica raseljenih iz Hrvatske i Bosne i Hercegovine, kao i sa Kosova i Metohije, putem naturalizacije. Zakon je u članu 13. propisao uslove za naturalizaciju lica kojima je priznat status izbeglice u Crnoj Gori. U odnosu na uslove za redovnu naturalizaciju stranaca, izbeglica u CG za prijem u CG državljanstvo ne mora imati obezbeđen smeštaj i stalni izvor prihoda u iznosu koji mu omogućava materijalnu i socijalnu sigurnost niti imati znanje crnogorskog jezika u meri koja omogućava osnovnu komunikaciju. Međutim, ono mora imati otpust iz državljanstva druge države te mora u Crnoj Gori zakonito i neprekidno da boravi 10 godina prije podnošenja zahtjeva za prijem u crnogorsko državljanstvo. Ovakvi uslovi upitni su posebno s aspekta principa utvrđenih u Evropskoj konvenciji o državljanstvu i ne doprinose ispunjavanju obaveze da se omogući, „u najvećoj mogućoj meri, asimilacija i naturalizacija izbeglica“.

Preporučuje se državama tzv. Dejtonskog četvorougla da preispitaju svoje propise i praksu prema u državljanstvo izbeglica kako bi što potpunije ispunile svoju obavezu omogućavanja, u najvećoj mogućoj meri, naturalizacije izbeglica.

Olakšati sticanje dvojnog državljanstva

Institut dvojnog državljanstva bi mogao da posluži da se danas lakše rešavaju mnogi problemi državljanstva bivše SFRJ. U svetu evropske perspektive ovih prostora, a bitna crta tog procesa jeste da su državljeni članica Evropske unije ujedno i građani Unije i da Unija u svim svojim aktivnostima mora poštovati načelo jednakosti svojih građana (član 9. Lisabonskog ugovora o Evropskoj uniji), dvojno državljanstvo se javlja i kao moguće sredstvo zaštite stečenih prava i interesa državljanstva bivše SFRJ ostvarenih na osnovama nekadašnjeg jedinstvenog državljanstva SFRJ, te ispunjavanja obaveza koje imaju države – naslednice bivše SFRJ s tim u vezi. Ono je moguće sredstvo rešavanja mnogih životnih problema "novih" stranaca na prostorima nekadašnje zajedničke države, pridonoseći posebno trajnom rješavanju izbegličkih problema i uspostavljanju poverenja između osamostaljenih država.¹² Tolerisanjem i legalizovanjem dvojnog državljanstva olakšalo bi se rešavanje masovnih problema nastanjuvanja, kretanja, porodičnih i vlasničkih odnosa državljanstva osamostaljenih republika bivše SFRJ. Prednost institucije dvojnog državljanstva je što ne stvara samo mogućnost integracije izbeglica u novu sredinu, već ostavlja trajno otvorenim i mogućnost njihovog povratka kad se steknu za njih povoljne okolnosti, pospešujući tako kretanje ljudi i naroda i oživljavanje na području bivše SFRJ zamrlog multietničkog, višekonfesionalnog i multikulturalnog društva.

Zagovaranje olakšavanja dvojnog državljanstva ima svoje uporište i u tome što je u savremenom zakonodavstvu uočljiva tendencija da sve veći broj država priznaje dvojno državljanstvo. Prema podacima američkih institucija, pre nekoliko decenija samo je 14

¹² Dr Vida Čok ističe da je dvojno državljanstvo "često izraz nužnosti da se 'premoste' negativne posledice koje pogadaju stanovnike država čiji se unutrašnji politički i pravni poredak menja, sve do formalnog državnog preuređenja u smislu podele, razdvajanja ili stvaranja novih državnih tvorevina". (Vida Čok: Pravo na državljanstvo, BCLJP, 1999, str. 89)

država dopušтало dvojno državljanstvo, dok ga danas omogуćava tri četvrtine svijeta – preko 150 država. Trend je i u EU liberalizacija dvojnog državljanstva. Dvojno državljanstvo podržava i Evropska konvencija o državljanstvu iz 1997. godine, zbog čega je taj „trend“ (prema zaključku više studija) postao opšta pojava. Od 27 članica svega nekoliko još uvek traže da građanin izgubi njihovo državljanstvo, ako traži i dobije drugo. Trend liberalizacije dvojnog državljanstva je, pored ostalog i izraz savremenih globalnih integracionih kretanja, koja uključuju i sve veće kretanje ljudi, robe i kapitala. Državljanstvo u takvim integracionim međunarodnim kretanjima i odnosima "gubi" svoja nekadašnja isključiva svojstva veze čoveka s jednom, jedinom državom. To je doprinelo da se ranija shvatanja o obaveznom ekskluzivitetu državljanstva, postepeno zamene idejom o relativnoj prihvatljivosti dvojne državne pripadnosti.

Ovaj trend nije zaobišao ni države - naslednice bivše SFRJ.¹³ U *Republici Srbiji* su već izmene Zakona o jugoslovenskom državljanstvu iz marta 2001. godine nagovestile ovaj trend, da bi puni zamah on dobio donošenjem Zakona o državljanstvu Republike Srbije decembra 2004. godine. Taj Zakon sadrži brojne odredbe koje olakšavaju sticanje srpskog državljanstva, pa i kao dvojnog. Zakon ne samo da toleriše slučajevе kada domaći državljanin dobrovoljno ili rođenjem stekne državljanstvo strane države pored državljanstva Republike Srbije, što je, uostalom, i prethodni jugoslovenski zakon činio, već predviđa niz odredaba na osnovu kojih se državljanstvo Republike Srbije može steći iako podnosič zahteva već ima drugo državljanstvo.

Hrvatski zakonodavac je, takođe, omogućio u više odredaba dvojno državljanstvo i to, pre svega, za osobe hrvatske nacionalnosti (čl. 16. i 30.). Hrvatski zakonodavac pogoduje i iseljenicima i njihovim potomcima u sticanju hrvatskog državljanstva. Iseljenik ne mora, na primer, poznavati hrvatski jezik ili imati optust iz stranog državljanstva. Hrvatski zakonodavac omogućio je dvojno državljanstvo i osobi koja je rođena u Republici Hrvatskoj (član 9), strancu koji je u braku s hrvatskim državljaninom i kojem je odobreno trajno nastanjenje na području Republike Hrvatske (član 10), strancu i njegovom bračnom drugu čije bi primanje u hrvatsko državljanstvo predstavljalo interes za Republiku Hrvatsku (član 12. stav 1).

Zakon o državljanstvu Bosne i Hercegovine dopušta mogućnost dvojnog državljanstva u brojnim slučajevima kada strani državlјani stiču državljanstvo BiH. Međutim, kada se radi o mogućnosti da državlјani BiH steknu i državljanstvo druge države (da imaju dvojno državljanstvo), *Zakon je restriktivan*. Državljanstvo BiH gubi se dobrovoljnim sticanjem drugog državljanstva, ukoliko se ne određuje drugačije bilateralnim sporazumom zaključenim između BiH i te države koji je odobrila Parlamentarana skupština BiH (član 17.) Ukoliko je državljanin BiH dobrovoljno stekao drugo državljanstvo pre stupanja na snagu ovog zakona (prije 1.1.1998. godine), izgubiće državljanstvo BiH, ako se u roku od 15 godina od dana stupanja na snagu ovog zakona ne odrekne drugog državljanstva (član 39). U stavu 2. ovog člana utvrđena je obaveza Veća ministara BiH da predloži Predsedništvu BiH sklapanje bilateralnih sporazuma o dvojnom državljanstvu sa susednim zemljama u roku šest meseci nakon stupanja na

¹³ Dvojno državljanstvo, primerice, je postalo već realnost u Hrvatskoj za osobe hrvatske nacionalnosti koje nemaju prebivalište na teritoriji Hrvatske, u Srbiji za izbeglice, za pripadnike srpskog naroda koji nemaju prebivalište na teritoriji Republike Srbije te za pripadnike drugog naroda ili etničke zajednice sa teritorije Republike Srbije, kao i za državlјane Hrvatske i Srbije koji imaju prebivalište u Hrvatskoj odnosno Srbiji, jer im zakoni o državljanstvu ne sprečavaju da imaju i drugo državljanstvo.

snagu ovog zakona. Ti sporazumi nisu zaključeni, osim sa Švedskom i Srbijom (s Hrvatskom je potписан, Hrvatski sabor ga je ratifikovao 3.10.2007. godine, ali ne i Parlamentarna skupština BiH). Procenjuje se da bi više od pola miliona građana Bosne i Hercegovine moglo izgubiti državljanstvo BiH od 1. januara 2013., zbog navedenih zakonskih odredbi i nezaključenih sporazuma o dvojnom državljanstvu. Ovo se ipak neće desiti jer je Ustavni sud BiH u septembru 2011. godine u predmetu broj U 9/11 usvojio zahtev člana Predsedništva BiH Bakira Izetbegovića, te odlučio da čl. 17. i 39. Zakona o državljanstvu Bosne i Hercegovine („Službeni glasnik Bosne i Hercegovine“ br. 4/97, 13/99, 41/02, 6/03, 14/03, 82/05, 43/09 i 76/09) nisu u skladu sa članom I/7.b) i d) Ustava BiH. Ustavni sud BiH je naložio Parlamentarnoj skupštini BiH da najkasnije u roku od šest meseci od dana dostavljanja ove odluke uskladi član 17. i član 39. stav 1. Zakona o državljanstvu BiH sa Ustavom BiH koji zabranjuje da bilo koja osoba može biti "arbitrarno lišena državljanstva BiH".

Zakon o crnogorskom državljanstvu, koji ima dosta restriktivne uslove za sticanje crnogorskog državljanstva za izbeglice i za državljane drugih republika bivše SFRJ koji su u CG imali prebivalište, predviđa je mogućnost da se međunarodnim ugovorima i sporazumima može se ustanoviti dvojno državljanstvo, pod uslovom uzajamnosti.

Ovaj letimičan pregled zakonskih odredbi o državljanstvu država bivše SFRJ pokazuje da ne samo da nije moguće izbeći slučajeve dvojnog državljanstva, već je ono za mnoge ljude često i najpogodniji instrument pravne zaštite njihovih stečenih prava i interesa. Ovo se posebno odnosi na izbeglice i prognanike koje karakteriše dvojstvo bivstvovanja s gledišta materijalnih interesa (imovine, mirovine ...), pravnih interesa (raznih potraživanja i stečenih prava), kao i prava na izbor mesta daljeg življenja (mogućnosti povratka ili integracije u sredini sadašnjeg boravka). Stoga i u međudržavnom sporazumevanju treba razvijati elemente i odnose tzv. pozitivne diskriminacije državljana drugih republika bivše SFRJ, odnose u kojima oni, zbog svog ranijeg pravnog položaja i stečenih prava na osnovu njega, neće biti tretirani kao "klasični" stranci.

Polazeći i od toga da su u zakonima država tzv. Dejtonskog četvorougla predviđene mogućnosti da se međunarodnim ugovorima i sporazumima može ustanoviti dvojno državljanstvo, pod uslovom uzajamnosti, Igmanska inicijativa poziva vlade ovih država da što pre zaključe bilateralne sporazume o dvojnom državljanstvu kojima bi omogućili dvojno državljanstvo te rešili pitanja tzv. sukoba državljanstva (npr. pitanja vojne obaveze, biračkog prava, dvostrukog oporezivanja, itd.) u skladu s principima utvrđenim u Evropskoj konvenciji o državljanstvu i drugim standardima međunarodnog prava.

Problemi pribavljanja dokumenata

Mnoge izbeglice, raseljena lica i drugi građani zemalja tzv. Dejtonskog četvorougla imaju probleme u pribavljanju dokumenata iz drugih republika bivše SFRJ iz kojih potiču. Prema istraživanju Komesarijata za izbeglice Republike Srbije 44,25% izbeglica u Srbiji je u situaciji da im nedostaje neki od dokumenata iz zemlje porekla. Usled nedostatka dokumenata ta lica najčešće imaju probleme pri zapošljavanju, lečenju, prijavi boravišta i školovanju. Procenjuje se da je potrebno obezbediti pravnu pomoć za pribavljanje oko 32.000 različitih dokumenata iz zemalja porijekla. Potrebe za dokumentima iz drugih republika bivše SFRJ ima i veliki broj građana Srbije koji su u

Srbiju došli u kolonističkim talasima nakon Drugog svetskog rata te brojni drugi koji su poslijeratnih godina se naselili u njoj, a koje su posebno naglašene u poslednje vrieme zbog uvođenja novih biometrijskih dokumenta.

Dokumenta iz zemalja porekla mogu pribaviti tako da lično otpisuju u zemlju porekla ili da opunomoće drugu osobu da im pribave, jer u praksi još uvek nije zaživeo mehanizam pribavljanja dokumenata putem međudržavne pomoći, pre svega, zbog njegove izuzetne sporosti. Problem nastaje onda kada ta lica nisu u stanju da lično otpisuju u zemlju porekla zbog socijalno-ekonomskih razloga ili zbog straha od pritvaranja ili zbog toga što nema putnih isprava, a nema niti drugu osobu koju bi mogli opunomoćiti da umesto njih pribavi neophodne dokumente. Ovim licima, u pravilu, je neophodna pomoć u pribavljanju dokumenata iz zemlje porekla, bez koje nisu u mogućnosti da pokrenu npr. postupak naturalizacije i ostvare pristup pravima u procesu njihove integracije. Tu pomoć uglavnom im pružaju nevladine organizacije kroz projekte besplatne pravne pomoći za izbeglice i raseljena lica, a koji su na izdisaju jer su bitno umanjena donatorska sredstva za njih.

U cilju rješavanja problema pribavljanja dokumenata Igmanska inicijativa predlaže da se:

- pojednostavi procedura pribavljanja dokumentacije te u tom smislu podržava dogovor postignut na sastanku u Podgorici Regionalne tehničke grupe za pojednostavljenje procedure pribavljanja dokumentacije od 7.09.2011. godine, sastavljene od predstavnika MUP-a BiH, Crne Gore, Hrvatske i Srbije te UNHCR-a¹⁴, kao i da se preduzmu sve neophodne mere da on što pre saživi u praksi;
- podrži aktivnost nevladinih organizacija kroz prekogranične projekte pribavljanja dokumenata, a čija aktivnost zahteva simbolična sredstva.

II. Imovinski problemi

Pitanje povraćaja imovine, priznanja prava na imovinu i zaštite imovine karakteriše činjenica da već godinama traje proces povraćaja imovine raseljenih lica i drugih građana koji su imali imovinu u nekoj od država nekadašnje Jugoslavije i da on nije do kraja dovršen. U državama regiona je primetan različit pristup i praksa u osiguravanju pristupa pravu na imovinu i dom.

Za ujednačen regionalni pristup rešavanju imovinskih problema

Trajnom rešavanju izbegličkih problema, posebno povratku, veliku smetnju čini neujednačen regionalni pristup rešavanju nekih ključnih pravnih problema, kao što su pitanja vraćanja imovine i stanarskih prava, učešća u privatizaciji i dr., što stvara dvojne standarde za ista pitanja i iste probleme u regionu i zbog čega postoje i razlike u položaju jednih i drugih izbeglica. Na primer, jednim se izbeglicama u zemlji porekla

¹⁴ Jedna od tačaka postignutog dogovora glasi: "Mi posebno naglašavamo pitanje važeće civilne dokumentacije i slažemo se da obezbedimo da u slučajevima kada građanska dokumentacija predstavlja prepreku za efektivno uživanje prava izbeglica, povratnika i interna raseljenih lica, da treba da bude ustanovljena i podržana od svih zemalja olakšana procedura za izdavanje potrebne dokumentacije i/ili uvjerenja, i da će se dokumenta, koja su već u njihovom posedu, sa posebnom pažnjom ceniti kao dokazi u ovim postupcima."

(BiH) vraćaju u posed stanovi u nekadašnjem društvenom vlasništvu te omogućava otkup, a drugim izbeglicama ne samo da se ne vraćaju stanovi (uskraćuje im se pravo da se vrate u njihove izvorne domove u Republici Hrvatskoj odnosno domove u kojima su stanovali pre izbeglištva, što zahteva Rezolucija 1120 Veća sigurnosti UN od 14. jula 1997. godine), nego im se, kao humanitarni program, kao akt državnog milosrđa, a ne kao program restitucije njihovih oduzetih prava, nudi stambeno zbrinjavanje uz veoma restriktivne uslove koje može ispuniti samo mali broj izbeglica. Jedne izbeglice imaju pravo učešća u privatizaciji po osnovi minulog rada (u BiH), drugima se to pravo uskraćuje (u Hrvatskoj). Izbeglice iz Hrvatske koje žive u BiH se, na temelju pravosnažnih sudskih presuda u Bosni i Hercegovini odnosno u Republici Srpskoj o poništenju ugovora o zameni stambene imovine, deložiraju iz stambenih objekata koje su zamenili s izbeglicama iz BiH koje žive u Republici Hrvatskoj, dok se u Hrvatskoj ne primenjuje institucija priznanja stranih sudskih presuda, pa su tako izbeglice iz BiH koje žive u Hrvatskoj stekle imovinu u obe države, dok su izbeglice iz Hrvatske koje žive u BiH izgubile imovinu u obe države, itd.

Implementirati Aneks G Sporazuma o sukcesiji

Za rešavanje imovinskih problema izbeglica, raseljenih lica i ostalih građana zemalja Dejtonskog četvorougla veliki značaj ima i **Ugovor o pitanjima sukcesije**, koji su 29. juna 2001. godine u Beču potpisali predstavnici država – sukcesora bivše SFRJ. Aneksom G ovog sporazuma štite se privatna svojina i stečena prava građana ili drugih pravnih lica SFRJ. U Aneksu G članu 2. odeljku (1) pododeljku (a) određeno je da će se priznati prava na pokretnu i nepokretnu imovinu koja se nalazi u nekoj državi naslednici na koju su građani ili druge pravne osobe SFRJ imali pravo na dan 31. decembra 1990., te će biti zaštićena i vraćena od te države u skladu s utvrđenim standardima i normama međunarodnog prava bez obzira na nacionalnost, državljanstvo, mesto boravka ili prebivalište tih osoba. Osobe koje ne mogu ostvariti ova prava imaju pravo na naknadu u skladu s normama građanskog i međunarodnog prava. (b) Bilo kakav navodni prenos prava na pokretnu i nepokretnu imovinu učinjen nakon 31. decembra 1990. i zaključen pod prisilom ili protivno pododeljku (a) ovoga člana, biće ništavan. Član 6 Aneksa G Sporazuma predviđa da će se domaće zakonodavstvo svake od država sukcesora koje se odnosi na „stanarsko pravo” primjenjivati jednako na lica koja su bila državljeni SFRJ i koja su imala takva prava bez diskriminacije po bilo kom osnovu, kao što su pol, rasa, boja, jezik, religija, političko ili drugo mišljenje, nacionalno ili društveno poreklo, pripadnost nacionalnim manjinama, imovinsko stanje, rođenje ili drugi status.

U praksi, međutim, još uvek nisu stvorene sve unutrašnje zakonske i druge prepostavke da se odredbe Aneksa G sveobuhvatno primene. U proteklom periodu predstavnici četiri države nisu razgovarali o sprovođenju Aneksa G Ugovor o sukcesiji, već su se uglavnom bavili podelom diplomatsko-konzularnih predstavništava, arhivske građe i druge državne imovine i sl.

Igmanska inicijativa predlaže da se na predstojećoj konferenciji ministara spoljnih poslova zemalja Dejtonskog četvorougla u funkciji pripreme za sazivanje donatorske konferencije za stambeno zbrinjavanje izbeglica, jasno definiše obaveza ovih zemalja da u što kraćem vremenskom roku započnu dijalog i postignu dogovor o sprovođenju Aneksa G Bečkog sporazuma o sukcesiji.

Kao što je do Ugovora o sukcesiji došlo uz asistenciju i raznovrsne pritiske evropske i međunarodne zajednice, i to nakon više od decenije pregovaranja, bez nastavka takve uloge evropske i međunarodne zajednice teško se može očekivati da će on u praksi značajnije zaživeti, posebno ne u onim delovima koji se odnose na ljudska prava, posebno prava izbeglica, raseljenih lica i drugih građana. U svakom slučaju za brže trajno rešavanje izbegličkih problema ohrabrujuć je svaki novi korak u približavanju i uključivanju država – sukcesora bivše SFRJ u evropske integracijske strukture, jer svaki taj novi korak nužno zahteva i više ponašanja nacionalnih vlasti u skladu s evropskim pravnim i demokratskim standardima.

Implementacija Sporazuma o sukcesiji trebala bi obuhvatiti i pitanje neizmirenih obaveza po osnovu računa *stare devizne štednje*, a što pogađa veliki broj građana. Obaveza vraćanja duga s deviznih računa i deviznih štednih uloga zaključenih s bankama čije je sedište bilo van teritorije države u kojoj je građanin imao staru deviznu štednju, prema Sporazumu o sukcesiji, obaveza je države, naslednice bivše SFRJ, na čijoj teritoriji se nalazilo sedište te banke.

U zemljama Dejtonskog četvorougla koje su neposredno bila poprišta oružanih sukoba (BiH, Hrvatska) posebno su naglašeni problemi povraćaja imovine, naknade štete i obnove.

Povraćaj imovine, naknada štete, obnova u BiH

Dejtonskim sporazumom je *povraćaj imovine i stanarskih prava* označen kao jedan od osnovnih uslova za ostvarivanje prava na povratak raseljenih osoba i izbeglica. Stoga je na vrlo jasan način propisana obaveza svih strana da je povraćaj imovine predratnim vlasnicima prioriteten zadatak koji nema alternativu. No, ubrzo se pokazalo da je to previelik zadatak za nacionalne vlasti odnosno da nema dovoljno unutrašnje političke volje da se on ostvari, pa je međunarodna zajednica preko Visokog predstavnika za Bosnu i Hercegovinu (OHR) morala preuzeti vodeću ulogu na polju vladavine prava i donošenja zakona, koja će omogućiti i restituciju i povratak.

Visoki predstavnik za BiH bio je primoran da, nakon brojnih opstrukcija entitetskih vlasti i teških pregovora, tokom 1998. godine doneše paket propisa kojima je započeo proces uspostavljanja konkretnih zakonskih mehanizama za stambenu i imovinsku restituciju u BiH. Proglašeni su ništavnim svi upravni, sudski i drugi akti kojima je nosiocu stanarskog prava prestalo stanarsko pravo, te omogućilo da predratni nosioci stanarskog prava uđu u posed tih stanova i da ih otkupe pod povoljnim uslovima. Prihvaćen je i princip da je pravo vlasnika ispred prava poseda privremenog korisnika, a u cilju ubrzanja oslobođanja stanova od strane privremnih korisnika. Zbog toga je u pogledu ostvarivanja odnosno povraćaja imovinskih prava u Bosni i Hercegovini postignut najznačajniji rezultat, jer je više od 99% imovine vraćeno legalnim vlasnicima, bez obzira da li se nalaze u BiH ili u izbeglištvu.

Jedino pitanje gde se osporavalo pravo na povraćaj nepokretne imovine je *pitanje tzv. „vojnih stanova“* odnosno stanova iz stambenog fonda bivše JNA. Pitanju vojnih stanova različito se pristupa u entitetima BiH. Republika Srpska je vratila svim bivšim oficirima JNA stanove, bez obzira na to da li su se posle izbijanja rata odselili u Sloveniju, Hrvatsku, Srbiju, Makedoniju, Crnu Goru ili su otišli u Federaciju BiH. U Federaciji BiH se legislativa u ovoj oblasti kretala od potpunog negiranja prava na povraćaj, da bi postepeno olakšavala uslove i proširavala krug lica koje pravo na

povraćaj „vojnih stanova“ imaju, do zastoja koji je nastupio i čak određenog nazadovanja i promena zakona koje su podnosioce zahteva za povraćaj u posed ovih stanova dovele u nepovoljniji položaj u odnosu na stanje pre promena zakona. Kako su se promene zakonodavstva uglavnom sastojale u intervencijama Visokog predstavnika Ujedinjenih nacija za BiH koji je imao pravo da donosi ukaze o promjeni zakona, može se zaključiti da je progres u pitanju povrata „vojnih stanova“ u Federaciji BiH prestao kada je Visoki predstavnik izgubio interesovanje za ovu oblast. Takvo stanje je trajalo sve do maja ove godine kada je Evropski Sud za ljudska prava u Strazburu donio odluku u slučaju Branimir Đokić protiv BiH. Apelant u ovom slučaju nije, prema propisima Federacije BiH ispunjavao uslov za povraćaj stana u posed, iako je taj stan otkupio, jer je nakon završetka rata u BiH, bio pripadnik oružanih snaga izvan BiH (Vojska SR Jugoslavije). Sud u Strazburu je utvrdio povredu prava na mirno uživanje imovine i obavezao Bosnu i Hercegovinu da mu isplati nadoknadu u visini tržišne vrednosti stana (60.000 eura). Ova presuda najdirektnije potvrđuje da federalno zakonodavstvo u ovoj oblasti nije u skladu sa Aneksom 7 Dejtonskog sporazuma. Ključna odredba prvog člana ovog aneksa glasi: „Sve izbeglice i raseljena lica imaju pravo da se slobodno vrate svojim kućama. Oni će imati pravo na povraćaj imovine, koje su lišeni tokom neprijateljstava počev od 1991. i na naknadu za imovinu koja im se ne može vratiti.“ Realno je očekivati da se nakon ove presude i pored negodovanja i najave neporovođenja presude od strane političkih struktura F BiH, dode do pravednog rešenja jedinog nerešenog pitanja u oblasti povraćaja imovinskih prava u BiH.

Pored prava na slobodan povratak i povraćaj imovine, Aneks VII Dejtonskog mirovnog sporazuma zagarantovao je i *pravo svih izbeglica i raseljenih osoba na kompenzaciju za imovinu koja im se ne može vratiti*. Ujedno je predviđen i mehanizam ostvarivanja prava na kompenzaciju. Veliki broj izbeglica i raseljenih osoba, podneo je zahtev za kompenzaciju Komisiji za raseljene osobe i izbeglice, dok su drugi pokrenuli parnice na sudovima u iste svrhe. Kompenzacija je do danas ostala nedostupna u praksi. I nakon 15 godina od potpisivanja Dejtonskog mirovnog sporazuma, još uvek postoji otpor uvođenju formalnog kompenzaciskog mehanizma u Bosni i Hercegovini. Brojni su i raznovrsni razlozi zbog kojih je to tako, uključujući velike troškove i opterećenja koje bi svaki oblik kompenzaciske sheme prouzrokovao za državne budžete. Uopšteno je prihvaćeno pojašnjenje OHR-a o smislu ove institucije iz Aneksa VII Dejtonskog mirovnog sporazuma, tj. da je reč samo o kompenzaciji za stambenu jedinicu ili dom. Prema tome, kompenzacija ne predstavlja pokušaj ostvarivanja sveukupne naknade za sve gubitke koje su ljudi pretrpeli u ratu. Drugim rечima, kompenzacija u smislu Aneksa VII u ovom trenutku predstavlja način da se ljudima koji se ne mogu vratiti pomogne u iznalaženju trajnog rešenja i to ostvarivanjem pristupa pravu na dom. Stoga iznos kompenzacije treba da bude ograničen na sumu koja je adekvatna za osiguranje minimalnih stambenih uslova u skladu sa važećim propisima.

U Bosni i Hercegovini je od oko 1,1 milion stambenih jedinica evidentiranih zadnjim popisom stanovništva iz 1991. godine, u periodu između 1992. i 1995. godine uništeno ili oštećeno oko 453.000, što čini oko 42% prijeratnog stambenog fonda. Uništavanje stambenog fonda nastavljeno je i nakon potpisivanja Dejtonskog mirovnog sporazuma, tako da je dodatno u periodu nakon 1995. godine, devastirano gotovo 14.000 stambenih jedinica, od kojih najveći broj (preko 80%) na području sadašnje Federacije BiH.¹⁵ Do

¹⁵ REVIDIRANA STRATEGIJA BOSNE I HERCEGOVINE za sprovođenje Aneksa VII Dejtonskog mirovnog sporazuma, Sarajevo, oktobar/listopad 2008. godine

sada je u BiH *obnovljeno* oko 317.000 stambenih jedinica, što čini stopu obnovljenosti od oko 68%. Procenjuje se da je blizu dve trećine, odnosno oko 200.000 stambenih jedinica obnovljeno raznim vidovima međunarodnih i domaćih donacija, dok je preostala trećina, uglavnom manje oštećenih objekata, sanirana privatnim sredstvima vlasnika i nosilaca stanarskog prava. Na osnovu podataka prikupljenih na terenu od nadležnih općinskih službi, još je oko 150.000 neobnovljenih stambenih jedinica u BiH, odnosno 32% od ukupnog oštećenog i uništenog stambenog fonda. Prema pokazateljima koji su utvrđeni u podnesenim zahtevima za povratak do početka 2008. godine hitno je potrebno obnoviti najmanje 45.000 stambenih jedinica, a vrednost poslova obnove se procenjuje na oko 300 miliona eura. Potrebno je obnoviti i oko 450 stambenih zgrada sa oko 2.500 stanova ili oko 1% ove vrste stambenog fonda iz 1991. godine. U budžetima planirana finansijska sredstva nedovoljna su za dinamičnu obnovu i ne postoji okvirni plan i program obnove. Nije utvrđen ni opšti pravni okvir kojim bi izbeglicama i interno raseljenim licima u BiH, kojima je stambena imovina oštećena ili uništena, od strane države bilo garantovano pravo na obnovu pod jednakim uslovima. Značajan broj obnovljenih stambenih objekata se ne koristi ili se samo povremeno koristi, jer nisu istovremeno stvarani i svi neophodni uslovi za održiv povratak, od izgradnje infrastrukture do mogućnosti zapošljavanja.

Povraćaj imovine, naknada štete, obnova u Hrvatskoj

Uspostavljanje mehanizama za *stambenu i imovinsku restituciju* u Republici Hrvatskoj odvijalo se u mnogo čemu na bitno drugačiji način u odnosu na BiH, kako po dinamici uspostavljanja i njegovim kreatorima, tako i po njegovoj insuficijenciji u odnosu na kriterijume sveobuhvatnosti i pravednosti. Proces uspostavljanja mehanizama restitucije odvijao se veoma sporo, uz značajane političke otpore i prepreke i on do danas nije dovršen na način da ljudima koji ne mogu da se vrate pomogne u iznalaženju trajnog rešenja i to ostvarivanjem pristupa pravu na dom, što je kao minimum standarda restitucije prihvaćeno u BiH od strane međunarodne zajednice. U BiH vodeću ulogu u kreiranju i implementaciji mehanizama stambene i imovinske restitucije imala je međunarodna zajednica, pre svega, preko Kancelarije Visokog predstavnika. U Hrvatskoj glavni kreator mehanizama stambene i imovinske restitucije i njihove implementacije su bile državne institucije, dok se uloga međunarodne zajednice uglavnom svodila na monitoring tog procesa i povremene pritiske da se taj proces ubrza i učini efikasnijim. To je rezultiralo vidljivim razlikama u mogućnostima pristupa izbeglica i raseljenih lica imovinskim pravima u BiH i Hrvatskoj. One su vidljive i statistički. Veće mogućnosti pristupa imovinskim pravima u BiH u odnosu na Hrvatsku pokazuje i promjena u strukturi porekla izbeglica u Srbiji: učešće izbeglica iz Bosne i Hercegovine u Srbiji smanjilo se sa 43,3% po popisu 1996. godine na 26,42% 2005. godine, a izbeglica iz Hrvatske poraslo sa 54,0% 1996. godine na 73,43% 2005. godine. I ovi podaci svjedoče, pre svega, o tome da se povratak izbeglica iz Srbije u BiH odvijao i da se i dalje odvija s manje prepreka i teškoća u odnosu na povratak u Republiku Hrvatsku i da je on vezan, pre svega, za ubrzanu i delotvornu implementaciju imovinskih zakona u vidu povrata stambenih jedinica njihovim predratnim vlasnicima i nosiocima stanarskih prava.

Održivi povratak izbeglica u Republiku Hrvatsku umnogome zavisi i od mogućnosti pristupa njihovim imovinskim i drugim stečenim pravima. Kao što je poznato *Međunarodni krivični sud za bivšu Jugoslaviju* u Hague u svojoj prvostepenoj presudi

protiv hrvatskih generala¹⁶ okvalifikovao je kao delo progona restriktivne i diskriminacione mere prema stambenim objektima i imovini krajinskih Srba sadržane u pravnim instrumentima donetim nakon „Oluje“. Te mjere su bile usmerene na to da, s jedne strane, spreče masovniji povratak prognanih i izbeglih Srba u Hrvatsku, a, s druge strane, da stimulišu i pospeše kolonizaciju Hrvata na područje Republike Hrvatske koje je bilo pod upravom odnosno zaštitom UN-a u razdoblju od 1991. do 1995. U skladu s tim su doneti i posebni propisi koji su značajno ograničili pravo vlasništva izbeglih i prognanih Srba. Tim propisima vlasnici nekretnina su privremeno sprečeni da ih poseduju, dakle, sprečeni su da stanuju u svojoj kući ili stanu. Za razliku od BiH u Hrvatskoj nije bio prihvaćen princip da je pravo na povratak i vraćanje u posed svog doma i imovine individualno i bezuslovno, i da ono ne zavisi od toga da li se poštuje pravo nekog drugog ili ne. Stoga se u Hrvatskoj *primenjivao princip da je pravo privremenog korisnika ispred prava vlasnika*, pa i u slučaju kada se vlasnik vratio u Hrvatsku on nije mogao ući u svoj dom dok se privremenom posedniku ne osigura alternativni smeštaj. Ovaj princip je uspešno doveden u pitanje pred Evropskim sudom za ljudska prava (ESLJP) koji je u *predmetu Radanović Seka protiv Hrvatske* dosudio da je Hrvatska prekršila Evropsku konvenciju o ljudskim pravima (EKLJP) i to zbog nerazumne dužine postupka (član 6.), prevelikog tereta stavljene na pojedinačnu socijalnu grupu, kao i zbog neuspeha u uspostavljanju fer balansa između rastuće socijalne potrebe za stambenim prostorom i stambenih prava pojedinaca (član 1. Protokola EKLJP). Kao rezultat toga, podnositeljica zahteva morala je nositi prekomeren pojedinačni teret; ona je bila prisiljena da snosi teret osiguranja mesta za boravak privremenom korisniku – koji je trebala snositi država, i to teret koji je podnositeljka zahtjeva na kraju morala nositi više od šest godina; stoga se mešanje u njeno pravo na vlasništvo ne može smatrati srazmernim s legitimnim ciljem koji se želeo ostvariti. Stoga je došlo do povrede člana 1. Protokola br. 1.

U Hrvatskoj je, po podacima hrvatskih vlasti, bilo evidentirano ukupno 19.280 slučajeva davanja, odlukama državnih organa, stambenih jedinica u privatnom vlasništvu na privremeno korišćenje drugim osobama. Procentualno je zanemarljiv deo zahteva za povraćaj u posed stambene imovine ostao nerešen. Ipak, ovaj statistički podatak ne obuhvata slučajeve samoinicijativnog okupiranja stambenih jedinica bez odluka državnih organa, gdje postoje zahtevi za povrćaj u posed stambenih jedinica i koji su još uvek u sudskim postupcima, kao i slučajeve imovine za koju nije upućen zahtjev za povraćaj u posed.

Rešavanje problema oduzetih stanarskih prava od izuzetne je i nezaobilazne važnosti za povratak urbane populacije izbeglih i prognanih Srba u Hrvatsku. Riječ je o brojci od oko 100.000 osoba. U Hrvatskoj je putem sudskih postupaka *in absentia* (u odsustvu) 23.700 porodica izgubilo stanarsko pravo, a po sili zakona preko 6.300 porodica. Pitanje eventualne novčane ili druge vrste naknade za raseljene nosioce stanarskih prava ostalo je kao jedno od otvorenih pitanja u okviru sprovodenja procesa iniciranog potpisivanjem Sarajevske deklaracije. Pravni okvir i mehanizmi za rešavanje ovog pitanja u Republici Hrvatskoj nisu uspostavljeni. U Hrvatskoj, za razliku od Bosne i Hercegovine, nisu poništeni akti kojima je oduzeto stanarsko pravo prognanim i izbeglim Srbima i nije im omogućeno da uđu o posed stanova na kojima im je oduzeto stanarsko pravo i da ih otkupe pod istim povoljnim uslovima kao što je to bilo omogućeno ostalim hrvatskim državljanima. Na tu obavezu upućuje i Rezolucija 1120

¹⁶ *Sažetak presude u predmetu Tužitelj protiv Ante Gotovine, Ivana Čermaka i Mladena Markača*, (Den Haag, 15. april 2011.).

Veća sigurnosti Ujedinjenih nacija od 14. jula 1997. godine, kojom se ponovo potvrđuje pravo svih izbeglica i raseljenih osoba poreklom iz Republike Hrvatske na povratak u njihove izvorne domove u Republici Hrvatskoj odnosno domove u kojima su stanovali pre izbeglištva.

Dok međunarodni dokumenti i odluke rešavanje pitanja oduzetih stanarskih prava stavljuju u okvir ljudskih prava, hrvatska vlada ga tretira isključivo kao humanitarno pitanje. Na redukciji ljudskih prava na humanitarni problem, dakle, ne na pravnom već na vanpravnom ili nepravnom polazištu se i temelji sadašnja politika rešavanja problema oduzetih stanarskih prava kroz program stambenog zbrinjavanja, kao humanitarnog programa, a ne programa kompenzacije (naturalne ili novčane) na arbitrajan način oduzetih stanarskih prava. Program stambenog zbrinjavanja, kao državnog milodara odnosno milosrđa prema povratnicima, uvodi niže standarde stambenog zbrinjavanja i zato diskriminiše korisnike stambenog zbrinjavanja u odnosu na ogromnu većinu građana Hrvatske koji su privatizovali (otkupili) stanove. Uspostavljeni pravni okvir je nepotpun, partikularan, stvara neopravdane razlike (različit pravni položaj) među pojedinim grupama korisnika stambenog zbrinjavanja,¹⁷ dovodeći tako u pitanje ustavno načelo jednakosti građana pred zakonom i pravnu sigurnost građana.

Ogromna većina bivših nosilaca stanarskog prava, kojima je stanarsko pravo oduzeto sudskim odlukama u odsustvu ili silom zakona ne mogu ispuniti uslove za stambeno zbrinjavanje. Podatak iz marta 2011. godine da je više negativnih u odnosu na pozitivno rešene zaheve (54,1% negativno i 45,9% pozitivno riješenih zahtjeva u odnosu na ukupan broj rešenih zahtjeva), te da još uvijek nije rešeno 25,3% (jedna četvrtina) od ukupno podnetih zahteva zbog nekompletiranih zahtjeva, a oni se ne mogu kompletirati, u pravilu, zbog toga što podnosioci zahteva ne ispunjavaju uslove za stambeno zbrinjavanje, pokazuje koliko su retriktivni sadašnji uslovi za stambeno zbrinjavanje.¹⁸ Zbog sadašnjih veoma retriktivnih uslova Program stambenog zbrinjavanja će omogućiti smeštaj za veoma ograničen broj nosilaca oduzetog stanarskog prava (samo oko 5% - 10% postojećih stambenih problema izbeglica čija su stanarska prava oduzeta).¹⁹

Imajući u vidu težinu problema, njegove kontinuirane negativne posledice za oko 100.000 izbeglica kojima je uskraćen povratak u svoj dom, najčešće u gradske sredine i korišćenje svojih elementarnih ljudskih prava, kao i potpuni neuspeh do sada sprovođenih pregovora i alternativnih mera u svrhu zadovoljenja potreba oštećenih, neophodno je da se ovo pitanje konačno riješi na sveobuhvatan, pravičan i održiv način, u skladu sa međunarodnim standardima ljudskih prava i međunarodnopravnim obavezama Republike Hrvatske.

¹⁷ Primerice, izbeglicama iz BiH u Hrvatskoj se uz određene uslove poklanjaju stanovi i kuće, a izbeglicama iz Hrvatske, među kojima je više onih koji ne ispunjavaju uslove za stambeno zbrinjavanje od onih koji ih ispunjavaju, nudi se otkup po ceni koja prevazilazi ekonomske mogućnosti velikog dela izbeglica.

¹⁸ Obzirom na odnos pozitivno i negativno rešenih zahtjeva za stambeno zbrinjavanje i stanje nerešenih predmeta, realno je očekivati da će manje od 2.000 zahtjeva biti pozitivno rešeno, što je manje od 8% bivših nosilaca stanarskih prava.

¹⁹ Prema podacima hrvatskih vlasti, do 1. septembra 2009. primljeno je 13.655 zaheva za stambeno zbrinjavanje, od kojih 4.576 izvan, a 9.119 na područjima koja su bila zahvaćena ratom.

Iako je u članu 2. Aneksa G Sporazuma o sukcesiji, utvrđeno da će prava na pokretnu imovinu na koju su građani imali pravo na dan 31.12.1990., biti priznata, zaštićena i vraćena u prvobitno stanje od strane države, u konkretnom slučaju – Hrvatske, u skladu s utvrđenim standardima i normama međunarodnog prava, ovo je još uvek samo deklarativna obaveza, odnosno u praksi se gotovo ništa nije uradilo na zaštiti pokretnih stvari izbeglih Srba iz Republike Hrvatske. Zakonska obaveza državnih stambenih komisija je bila da prilikom davanja imovine u posed i na korišćenje sačini zapisnik o stanju imovine i uvođenju u posed. Osobe koje su dobile imovinu u posed i na korišćenje dužne su imovinom upravljati pažnjom dobrog gospodara, u zaštiti te imovine prema trećim osobama imaju sva ovlašćenja koje pripadaju vlasniku imovine, te prihode koje imovina ostvaruje mogu koristiti za svoje potrebe. Po ovom zakonu na pokretnu imovinu koja je data u posed i na korišćenje ne može se steći vlasništvo prisvojenjem (okupacijom). Osobama koje posjeduju i koriste ovu imovinu protivno odredbama ovoga Zakona oduzeće se posed rešenjem Komisije. Ne raspolaže se podacima da je barem jedno rešenje o oduzimanju poseda doneto zbog ovog razloga. Pokretna imovina izbeglih Srba u većini slučajeva je razgrabljena.

Najveći napredak u ostvarivanju povratničkih prava u Hrvatskoj postignut je u obnovi kuća u vlasništvu Srba povratnika. Dosad je obnovljeno oko 147.000 kuća, pri čemu se dve trećine tog broja odnosi na vlasnike Hrvate. U praksi su postupci rešavanja zahteva za obnovu trajali i po više godina. Osim toga, nedosledna i neujednačena praksa u primeni Zakona o opštem upravnom postupku, posebno u prvostepenom postupku, kao i brojne greške u procedurama za procenu štete prolongiraju rešavanje zahteva za obnovu i po nekoliko godina. Ima i slučajeva da se s obnovom ne započinje iako je prošlo tri i više godina od zaključenja ugovora o obnovi. Zato je definisanje rokova u kojima bi se završili poslovi na obnovi, bez ikakvih uslovljavanja i dodatnih zahteva, jedan od osnovnih uslova povratka izbeglica.

Obnovu kuća ne prati odgovarajuće ulaganje u razvoj tih pretežno ruralnih područja, koja su ekonomski nerazvijena i devastirana. Sama obnova kuća, bez programa ekonomске podrške reintegraciji kroz otvaranje novih radnih mesta, uključujući i obnovu i izgradnju neophodne infrastrukture, ne može osigurati održivost povratka. Zbog nepostajanja egzistencijalnih uslova za održiv povratak, mnogi vlasnici obnovljenih kuća ne prebivaju stalno u tim objektima. Pozivom na okolnost stalnog neprebivanja u obnovljenom stambenom objektu nadležno državno odvjetništvo u Republici Hrvatskoj sve češće pokreće sudski postupak protiv izbeglice – vlasnika obnovljenog stambenog objekta radi povraćaja sredstava za obnovu sa pripadajućom zakonskom kamatom i uz naknadu parničnih troškova, i to pod pretnjom izvršenja (ovrhe), dakle, gubitka stambene imovine, što sve dovodi izbeglice u bezizlaznu egzistencijalnu i životnu situaciju.

III. Penziono i invalidsko osiguranje

Prava iz penzionog i invalidskog osiguranja spadaju među najznačajnija od stečenih prava, kako zbog obima tako i zbog činjenice da ona predstavljaju, praktično, jedini izvor sredstava za život starijih osoba. Višegodišnji vakuum u uspostavljanju odnosa u oblasti socijalnog osiguranja između država Dejtonskog četvorougla produbljavao je egzistencijalne probleme mnogih građana, a posebno izbeglica i raseljenih lica. Mnogi građani koji su ostvarili pravo na penziju u nekoj od država nekadašnje Jugoslavije primaju je u značajno nižem iznosu od realno zasluženog iznosa penzije. Razlozi su

uglavnom u otežanom dokazivanju radnog staža i staža osiguranja usled nedostatka odgovarajuće dokumentacije (radnih knjižica, M-4 obrazaca) ili neuvažavanja njihove dokazne snage u postupcima ostvarivanja prava na penziju.

Građani država Dejtonskog četvorougla koja su staž osiguranja ili njegov deo ostvarila u drugoj državi, pri ostvarivanju prava iz penzionog i invalidskog osiguranja najčešće se suočavaju sa sledećim problemima:

- Većina osiguranika ima problem pribavljanja dokumenata potrebnih za ostvarivanje prava na penziju, od kojih su mnogi uništeni ili nestali tokom ratnih sukoba. Osim toga, raširena je praksa nadležnih organa da traže od građana da pribave razne isprave o činjenicama o kojima ti ili drugi organi, odnosno službe inače vode službene evidencije i po zakonu su obavezni da ih po službenoj dužnosti pribave;
- Prekogranični postupak rešavanja o zahtevu za ostvarivanje prava iz penzijskog i invalidskog osiguranja traje suviše dugo. Saradnja organa za vezu nije uvek na takvom nivou da omogućava efikasno sprovođenje zaključenih sporazuma o socijalnom osiguranju;
- Iako zakon obavezuje nadležne organe da osiguraju pomoć strankama u postupku i propisuje precizne rokove za obavljanje radnji u postupku, u praksi pomoć često izostaje, a zakonski rokovi se višestruko prekoračuju, i dr.

Problem isplate penzija ostvarenih pre rata i isplate zarađenih penzija koje do Sporazuma o socijalnom osiguranju između BiH i Srbije (SR Jugoslavije) 2004. godine,²⁰ nisu bile isplaćivane i dalje je predmet sudskega postupaka u BiH. Mora se naglasiti da je najveći broj penzionera primao u ratnom i posleratnom periodu do navedenog sporazuma penzije iz Fonda PIO Srbije, koje su u određenim periodima bile manje, veće ili u određenim periodima jednake penzijama koje bi primali iz fonda u kojem su ostvarili penzionalni staž. U maju ove godine, potpisivanjem izmenjenog sporazuma o socijalnom osiguranju između BiH i Srbije, ispravljena je nepravda da se na račun penzionera, odnosno umanjenja njihovih penzija izmiruju dugovi između fondova za PIO dve države.

Najčešći problemi sa kojima se u praksi suočavaju izbeglice iz Hrvatske i građani koji su deo radnog staža ostvarili u Hrvatskoj u ovoj oblasti jesu:

- Problemi u vezi s utvrđivanjem i dokazivanjem staža osiguranja

Raširen je problem nedostatka evidencije staža mirovinskog osiguranja u Hrvatskom zavodu za mirovinsko osiguranje uz raznovrsne probleme i prepreke njegovog dokazivanja. U evidenciji nedostaju duža razdoblja (čak i 1/3 i duže) ostvarenog radnog-penzionog staža, zbog čega osiguranik – podnositelj zahteva za ostvarivanje prava na penziju biva oštećen, jer mu se to razdoblje ne priznaje u penzionalni staž, iako se radi o razdoblju pre 1991. godine, kada po pozitivnim propisima nije bila moguća situacija da se isplati neto plata bez prethodne uplate raznih doprinosova, uključujući i doprinos za penzionalno osiguranje. Posebno se ta ocena odnosi na osiguranike koji su radili na području nadležnosti Područne službe Hrvatskog zavoda za mirovinsko osiguranje u Gospiću, gde se retko može susresti osoba koja nema nevidentirani staž penzionog osiguranja (koja nema „rupe“ u stažu osiguranja).

²⁰ „Službeni list SCG – Međunarodni ugovori“, br. 10/2004

Kada se otkriju ti problemi, a oni se najlakše otkriju pribavljanjem potvrda o stažu penzionog osiguranja od Područnih službi ili od Središnje službe HZMO, tada je put dokazivanja i utvrđivanja tog staža dugotrajan i mukotrpan, sa veoma neizvesnim krajnjim ishodom. Teret dokazivanja je na licima koja podnose zahtev za priznanje prava na penziju, a ne na telima odgovornim za vođenje evidencije o stažu osiguranja.

- Problem dospelih a neisplaćenih penzija

Tokom devedesetih godina prošloga veka oko 50.000 korisnika penzija, koji su ostali da žive na teritorijama pod upravom UN ili su izbegli, ostali su bez penzija, jer im je isplata obustavljena jednostranim aktom penzionog fonda Republike Hrvatske zbog prekida platnog prometa, usled ratnih okolnosti, između Republike Hrvatske i područja u Republici Hrvatskoj koja su bila pod upravom ili zaštitom Ujedinjenih nacija. U Hrvatskoj je u vezi s obavezom isplate dospelih a neisplaćenih penzija došlo do promene oficijelnog stava – od priznanja prava na isplatu dospelih a neisplaćenih penzija do negiranja tog prava, nakon donošenja Zakona o konvalidaciji krajem septembra 1997. godine. Iako upravna i sudska tela u Hrvatskoj priznaju da je do prekida platnog prometa i obustavljanja isplate penzija došlo zbog ratnih okolnosti, u vezi s pitanjem isplate dospele a neisplaćene penzije u praksi se primenjuje zakonska odredba po kojoj pravo na isplatu dospele a neisplaćene mirovine zastareva ako je do obustavljanja isplate penzije došlo zbog okolnosti koje je izazvao korisnik primanja. Prema Zakonu o penzionom osiguranju zastarevanje isplate dospele a neisplaćene penzije je moguće samo u slučaju da je korisnik primanja izazvao okolnosti zbog kojih je došlo do obustave isplate. Međutim, obzirom da je do obustavljanja isplata penzija došlo zbog ratnih okolnosti, a ne okolnosti koje je izazvao korisnik primanja, onda nije nastupilo zakonsko zastarevanje prava na isplatu dospelih a neisplaćenih penzija. Penzije su stečeno i neotuđivo pravo. Obzirom da nisu ispunjeni zakonski uslovi za zastarevanje isplate dospelih a neisplaćenih penzija niti za primenu odredbe da korisnik penzije može koristiti samo jednu penziju, prema vlastitom izboru, neophodno je i ovim penzionerima osigurati jednakopravan položaj u odnosu na ostale hrvatske penzionere osiguravanjem mehanizama za isplatu dospelih a neisplaćenih penzija

- Konvalidacija staža osiguranja

Za mnoge izbeglice nerešen je problem konvalidacije staža osiguranja ostvarenog na područjima Republike Hrvatske koja su bila pod zaštitom ili upravom Ujedinjenih nacija u periodu od 1991. do 1995. godine. Ponođeni pravni okvir za rešavanje pitanja konvalidacije nije adekvatan složenosti problema, posebno zbog velikih zahteva u vezi s dokazivanjem staža osiguranja u odnosu na postupak dokazivanja propisan hrvatskim zakonima (*Zakon o mirovinskom osiguranju i Zakon o općem upravnom postupku*). U vezi s tim podsećamo i na izjavu državnog sekretara Ministarstva za rad i socijalnu skrb RH Vere Babić, datu "Jutarnjem listu" 24.07.2002.g.: "Svima koji su radili u tzv. RSK, Republika Hrvatska će priznati radni staž i sva prava koja iz toga proizlaze jer su dokumentacije penzionih i zdravstvenih fondova dobro očuvane, pa neće biti problema kod priznavanja radnog staža." Međutim, u praksi postoje veliki problemi kod priznavanja staža osiguranja, jer nadležna tela najčešće ističu da te dokumentacije nema, te se od podnositelja zahteva za konvalidaciju traži da dostave relevantne materijalne dokaze. Osim toga, u praksi se često proširuju zahtevi za pribavljanjem dokaznih sredstava za utvrđivanje stanja stvari, tako da se kao relevantni dokazi ne priznaju samo radne knjižice ili originalni školski dnevničici ili overene zdravstvene knjižice i sl., već se traže dodatni pisani dokazi. Propisivanje obaveze dostavljanja velikog broja

dokumenata odnosno nametanje prekomernog tereta dokazivanja nije u skladu sa standardima međunarodnog humanitarnog prava koji, s obzirom na uzroke i prirodu izbeglištva, nalažu državama da pojednostave procedure i olakšaju uslove pristupa pravima izbeglica, pored ostalog, određivanjem obaveze dostavljanja minimuma najnužnijih dokumenata odnosno dokaznih sredstava. Uostalom, i sam Zakon o penzionom osiguranju u članu 99. stavu 2. propisuje da se svojstvo osiguranika i mirovinski staž, kada podatke o tome nije moguće pribaviti zbog okolnosti uzrokovanih Domovinskim ratom, može dokazivati i izjavama svedoka.²¹ Takođe, i Zakon o opštem upravnom postupku u članu 70. propisuje da ako za utvrđivanje određenih činjenica ne postoje drugi dokazi, za utvrđivanje takvih činjenica može se kao dokazno sredstvo uzeti i izjava stranke.²² Zbog toga svim građanima koji su radili na ratnim područjima treba omogućiti da u birokratski nekomplikovanom i pojednostavljenom postupku ostvare svoje pravo i konvaliduju staž osiguranja, kako bi pod jednakim uslovima mogli ostvarivati prava iz radnih i penzionih odnosa kao i svi drugi građani.

Ostale preporuke

- *Ljudska prava izbeglica, kao i svih drugih ljudi su univerzalna vrednost i uslov za saradnju svih država, te stoga ne smeju biti predmet kompromisa niti se mogu koristiti za međunarodnu političku trgovinu. Politika ne može biti iznad ljudskih prava. Poštovanje ljudskih prava je jedan od temeljnih principa EU. Stoga se ljudska prava izbeglica i svih drugih ljudi ne mogu redukovati i rešavati kao humanitarni problem, kao akt državnog milosrđa. Jedno je humanitarna pomoć u rešavanju problema izbeglica, a drugo su obaveze poštovanja njihovih ljudskih prava.*
- *Neophodno je intenzivirati međudržavnu saradnju u regionu u cilju postizanja pravičnog, sveobuhvatnog i trajnog rešenja problema izbeglih lica. Takođe su i dalje neophodni mehanizmi monitoringa, posredovanja, uslovljavanja i pomoći međunarodne zajednice kako bi se ubrzalo rešavanje otvorenih problema izbeglica i zatvorilo izbegličko pitanje kroz afirmaciju vladavine prava i jačanje pravne države u regionu.*
- *U cilju otklanjanja raznih diskriminacionih i pravnih prepreka ostvarivanju i zaštiti ljudskih prava izbeglica i uopće ljudskih prava i stvaranja pretpostavki za pravnu državu i primjenu međunarodnih pravnih standarda, nevladine organizacije trebaju nastaviti istovremeno vršiti i unutrašnji pritisak, kroz postupke u institucijama pravnog i političkog sistema, zajedničke akcije lobiranja, zagovaranja, kampanja na konkretnim pitanjima, te spoljni pritisak, putem raznih inicijativa lobiranja i postupaka pred evropskim i međunarodnim institucijama i stalnog insistiranja na aktivnijoj ulozi međunarodne zajednice. U tom cilju neophodno je ojačati regionalnu saradnju nevladinih organizacija.*

²¹ U skladu s tim se i u članu 110. stav 4. ZOMO izričito propisuje da se za utvrđivanje činjenica o penzionom stažu, plati, osnovici osiguranja te drugih činjenica koje utiču na sticanje i utvrđivanje prava na penziju ne mogu kao jedino dokazno sredstvo koristiti izjave svedoka, osim u slučaju iz spomenutog člana 99. stava 2. i 3. ovog Zakona.

²² „Narodne novine“, br. 47/09