

WHITE PAPER

CITIZENS' PROPERTY AND STATUS ISSUES IN COUNTRIES
SIGNATORY OF THE DAYTON AGREEMENT,
RESULTED FROM DISINTEGRATION OF YUGOSLAVIA,
WITH RECOMMENDATIONS FOR SOLUTIONS INCLUDED



THE PROJECT IS FUNDED BY EU



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Expert Elaboration of Unresolved Issues
among the Countries Signatories to the Dayton Agreement
Status and Property Issues of Citizens

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Introductory remarks

In the framework of the Igman Initiative's further strategy, program for the following period includes a number of important activities related to finding permanent solutions for citizens' property and status issues in countries signatory to the Dayton Agreement.

Igman Initiative upholds the view that only efficient addressing of certain outstanding issues between Dayton Agreement countries may speed-up further normalization of their relations and EU integration processes.

At the beginning of the past decade, initiation of the process of democratization of the signatory countries of Dayton Agreement set off a number of initiatives aimed at addressing numerous problems in mutual relations. In many spheres, legislation was harmonized and reconciled with European legislation, a number of bilateral agreements were signed and a considerable number of outstanding issues were approached in practice. It was a contribution to amendment and improvement of mutual relations and cooperation.

In spite of those efforts, a number of issues remain open, including citizens' status and property issues. There are several reasons for this state of affairs. First comes from the fact that these issues are closely connected with the issues concerning refugees and displaced persons, for which sufficient political will is lacking.

This project is being implemented in the midst of significant ongoing regional initiatives aimed at finding permanent solutions for citizens of the signatory countries of Dayton Agreement, who were victims of gravest and widespread forms of violation of human rights, in particular refugees and displaced persons. Upon the initiative launched by European Commission, OSCE and UNHCR, the representatives of countries in this region: Bosnia and Herzegovina, Croatia, Serbia and Montenegro, have adopted the Sarajevo Declaration in January 2005, and took on an obligation to facilitate the return and local integration of refugees and displaced persons in their countries through joint activities and mutual cooperation. However, in spite of additional incentives and initiatives from the international community, not much progress was made in implementation of the Sarajevo Declaration, which had aimed to finalize the process of return of refugees in the region by the end of 2006.

Adoption of the *Joint Declaration on Ending Displacement and Ensuring Durable Solutions for Vulnerable Refugees and IDPs* by Ministers of Foreign Affairs of Bosnia and Herzegovina, Montenegro, Croatia and Serbia, on November 7th in Belgrade, was also an important incentive in wrapping-up the refugee crisis in the West Balkans. Joint Regional Multi-Year Program focused on securing durable solutions for most vulnerable refugees and displaced persons was an integral part of this Declaration. Donor conference, which was held on April 24th 2012 in Sarajevo, is important for realization of this program. Joint Declaration emphasizes significance of full respect for refugee rights and internally displaced persons, as well as these countries' obligation to protect and improve their rights on the basis of principles of seeking permanent solution of refugee crisis as set out by the Sarajevo Declaration.

The purpose of this project as well as activities of the civil society organizations gathered around Igman Initiative is to contribute, through partnerships with national government institutions, to the establishment of European values in the region, first and foremost by taking as a starting point that human rights are the main foundation of those values. For that reason, only efficient, all-inclusive and fair strategy for durable solution of refugee issues in this region is the strategy that advocates consistent abiding with human rights of refugees and displaced persons as universal values, like all other human rights, which are a precondition for cooperation of these countries. This means that politics must not be above human rights and that those rights cannot be a subject to compromise or a chip in an international political trade. On the basis of these principles, it can be expected that the forthcoming donor conference will enhance human rights of refugees and displaced persons by means of offering concrete support to the Governments of Dayton Agreement signatory countries in protection and improvement of those rights, thus avoiding the diminution of this issue to the level of a humanitarian issue.

Urgency and necessity of addressing citizens' status and property issues in Dayton Agreement signatory countries are enhanced by the fact that relevance of addressing those issues applies not only to refugees and displaced persons, but to other people with rights vested during the times of SFR Yugoslavia as well. Namely, a number of citizens of former SFR Yugoslavia acquired those rights by birth, residence, property, labor, etc, within the then shared country (one of its Republics). They were in the same legal position and their rights and duties were equal to those of citizens of the Republic within which they held residence. Today, however, their access to vested and other rights is made difficult or impossible.

In the process of seeking permanent solutions to these issues, it became clear that regional cooperation must be intensified in order to attain a fair and all-inclusive solution for all affected citizens of the four countries, which would contribute to regional stability, process of European integrations, as well as the further improvement of neighborly.

General objective of the project derived from Igman Initiative's strategic programme and commitments is to contribute to the normalization of relations between Dayton Agreement signatory countries by finding a durable solution for citizens' property and status issues in those countries.

Obvious advantage of the Igman Initiative in realization of such a goal is the ability of its representatives to gather most relevant political leaders and experts from the governmental and non-governmental sector of the four countries in the region.

Furthermore, Igman Initiative has the capacity to initiate large scale media campaigns for the purpose of public distribution of project results and activities in all four signatory countries of Dayton Agreement.

Obstacles and hardships that citizens encounter in the process of solving property and status issues caused by the break-up of former Yugoslavia are concrete problems that this project aims to address.

Ratko Bubalo

*President of the Managing Board
Humanitarian Center for Integration and Toleration*

Statistical framework

Refugees are the largest category of people having trouble with status and property rights. However, the entire problem should not be diminished merely to official statistical data about the number of refugees and displaced persons

In **Bosnia and Herzegovina**, more than half of population, i.e. around 2,2 million persons were displaced or became refugees during the war in the period between 1992 and 1995. Out of that number, around 1,2 million persons have requested refugee protection in more than a 100 countries around the world. About a million were displaced within the territory of Bosnia and Herzegovina. Official statistics have registered more than a million returns to Bosnia and Herzegovina. Out of approximately 1,032,895 registered returns, 585,759 or 56,7% are related to the return of displaced persons, while remaining 447,136 or 43,3% are related to the return of refugees¹. 741,006 persons have returned to the Federation of Bosnia and Herzegovina, and 268,207 to the Republic of Srpska, 21,074 to Brcko District. As for the ethnic structure of returnees, there were 639,014 Bosnians, 253,107 Serbs, 132,677 Croats and 8,097 other nationalities.

More than half of refugees and displaced persons have not yet returned to their homes and it is estimated that around 400,000 refugees from 1992 - 1995 still live outside of Bosnia and Herzegovina. Most of them were integrated into the host country, but around 65,000 refugees from Bosnia and Herzegovina, among which almost 75% reside in neighboring countries of the region, are still waiting for lasting solutions. In Bosnia and Herzegovina, there were around 470,000 of the *so called minority returns*. Population of returnees, especially so called minority returnees, is mostly consisted of elderly people. According to the estimates of the Ministry of Human Rights and Refugees, percent of the so called minority returns, calculated on the basis of the assumed number of people who left their prewar residences and on the basis of the number of returnees, in the Federation of Bosnia and Herzegovina is 32% (returnees of Serbian nationality), in the Republic of Srpska 30%,

¹ Mario Nenadic, Assistan Minister at the Ministry of Human Rights and Refugees in Bosnia and Herzegovina, statement published in "Politika" daily newspaper, April 1st 2012. <http://www.politika.rs/rubrike/Tema-nedelje/povratak-srba/BiH-Zavrshen-proces-teritorijalne-homogenizacije.lt.html>

36,6% in case of Bosnians and 9,6% in case of Croats to the Republic of Srpska. According to available statistics in Bosnia and Herzegovina, there are more than 100,000 internally displaced persons that urgently need lasting and sustainable solutions. Many of those are critically vulnerable, traumatized and suffer from inhumane conditions of living in displacement. Around 2,700 families still live in collective forms of housing in Bosnia and Herzegovina, while approximately same number of returnees lives without electricity.

In Bosnia and Herzegovina, there are 6,941 registered refugees from Croatia, of which majority resides on the territory of the Republic of Srpska (in the period 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).

Having in mind that a large number of municipalities are lacking data on actually accomplished returns, and that some municipalities have not kept track of it, actual results in this regard will be available only after the census.

In the **Republic of Croatia**, according to the UNHCR estimates, there were 550,000 displaced persons in the period between 1991 and 1992. At the same time, this country has received around 400,000 refugees from Bosnia and Herzegovina, of which around 120,000 (mostly of Croatian nationality) had acquired Croatian citizenship. In Croatia, on December 31st 2011, according to UNHCR's records², there were 513 refugees from Bosnia and Herzegovina and 2,059 internally displaced persons. According to the UNHCR records, 132,608 returnees of Serbian nationality (out of over 400,000 Serbian refugees) were formally registered in the Republic of Croatia in December 2011. Out of that number, 93,012 returned from Serbia and Montenegro, and 14,656 from Bosnia and Herzegovina. 24,940 internally displaced persons of Serbian nationality have returned from other parts of Croatia.

According to the study on sustainability of minority returns to Croatia from 2011, commissioned by UNHCR³, at the time of the research (2010) "about 38% of registered returnees relatively permanently resides on the territory of Croatia, about 45% out of the country and approximately 17% deceased". Returnees are mostly elderly people (30% of returnees are older than 65 years of age, and 45% are older than 55 years of age), with lower level of education, returning to the rural areas. Official statistics about unemployment among the population of returnees reaches 68%, which is about 2,6 times greater than the average unemployment in the four counties where majority of returnees resides. Field research conducted jointly by UNHCR and Refugee Commissariat of the Republic of Serbia in 2008 have shown that only 5% of refugees still considered the possibility of repatriation⁴

In the **Republic of Serbia**, according to the first registry of refugees made in 1996, there were 537,937 refugees (44% from Bosnia and Herzegovina, 54% from Croatia) and 79,791 persons affected by war. Number of refugees from former SFR Yugoslavia in the Republic of Serbia decreased over 85% during the period between 1996 and 2012. Structure of refugees in regard of country origin also changed. On World Refugee Day, June 20th 2012, Serbian

² http://www.unhcr.hr/images/stories/news/stats/docs/2_2012/unhcr_statistical_report_december_2011.pdf

³ Minority return to Croatia – study on the open process, authors: Milan Mesic and Dragan Bagic , UNHCR 2011.

⁴ Republic of Serbia, Serbian Commissioner for Refugees, Conditions and needs of refugee population in the Republic of Serbia, December 2008., www.kirs.gov.rs

Commissioner for Refugees published an information that 66,408 persons with a refugee status resides on the territory of the Republic of Serbia, of which 49.917 or 75% from Croatia, and 16.414, or 25% of Bosnia and Herzegovina.⁵ Percentage of refugees from Bosnia and Herzegovina in the total number of refugees in Serbia dropped from 44% to 25%, while percentage of refugees from Croatia in the total number of refugees in Serbia increased from 54% to 75%, which indicates, among other, that refugees have easier access to their rights in Bosnia and Herzegovina than in Croatia, as well as that return of refugees from Serbia to Bosnia and Herzegovina went on and still goes on with fewer obstacles and hardships, in comparison to the return to the Republic of Croatia. According to the data issued by the Refugee Commissariat of the Republic of Serbia on July 1st 2012, there are still 37 Collective Centers with 553 refugees and 2,376 internally displaced persons (2,929 in total).⁶ Out of the total number of Collective Centers on the territory of Serbia, without Kosovo and Metohia, there are 24 Collective Centers with 2,405 persons, while on the territory of Kosovo and Metohia there are 13 Collective Centers with 524 persons. Around 20% of refugees have been provided with accommodation, while others still reside in private accommodation.

Number of refugees requesting local integration or repatriation, regardless of the recognition of refugee status, is about 300,000. In 2008, UNHCR added Serbia to the list of 5 countries in the world suffering from long-term refugee crisis, which calls for immediate action and cooperation between countries in the region, with support from the international community.

According to the data of the Bureau for the Care of Refugees of the **Republic of Montenegro** published in June 2012, there were 3,412 displaced persons (DP) from Bosnia and Herzegovina and Croatia listed in the MIA registry.⁷

In keeping with the amended Law on Foreign Nationals, all these persons have the opportunity to obtain the right to permanent or temporary residence in Montenegro. To this day, status of foreign national with the right to permanent residence was requested by 7,200 displaced (from Bosnia and Herzegovina and Croatia) and internally displaced persons (from Kosovo and Metohia). To this point, around 4,300 applications have been processed. Temporary residence was requested by 340 displaced and internally displaced persons, of which 90 applications were processed. Application deadline was prolonged till the end of this year.

In summary of the official data recorded by the government bodies and UNHCR we may conclude that project activities will indirectly be focused on the target group of about 180,000 persons with a formal status of refugee or displaced person, as final beneficiaries of this project's results. The actual number of final beneficiaries is several times larger, having in mind that there is a significant number of citizens who no longer hold the status of refugee, displaced or internally displaced person or who never had that status, but encountered status issues or at least encountered problems related to realization of the right to pension, property or other vested rights, on the basis of the fact that they lived and worked in any of the Republics of former Yugoslavia during a certain period.

⁵ <http://www.kirs.gov.rs/articles/navigate.php?type1=3&lang=SER&id=1788&date=0>

⁶ <http://www.kirs.gov.rs/articles/centri.php?lang=SER>

⁷ http://www.zzzi.co.me/index_files/Statistika.htm

This report does not include issues of over 220,000 displaced persons from Kosovo and Metohia who found refuge in Bosnia and Herzegovina, Montenegro, Croatia and Serbia, because it would require, among other, participation and contribution of NGOs from Kosovo and Metohia in the realization of this project, as well as because of specificities and complexity of those issues that also require additional and comprehensive expertise, which is going to be addressed in continuation of this project.

Concrete citizens' issues which are to be affected by the results of this project are:

I. Issues of citizens' status

Regulation of issues of citizenship in now independent states of former SFR Yugoslavia has great repercussions on citizens' lives, especially in case of refugees and other displaced persons in the region, above all regarding their access to human rights.

Citizenship is one of the basic human rights guaranteed by Article 15 of the UN Universal Declaration of Human Rights from 1948.⁸ Citizenship is often defined as a right to have rights, i.e. citizenship is a legal foundation for realization of many other human rights. That is why every country's sovereign right to proscribe conditions and procedures for acquisition or cancellation of citizenship is not absolute and limitless. Certain standards of international rights endorsed by international conventions, international common law and by general principles regarding citizenship, must be honored as well.

Principles determined by the Council of Europe and other corresponding international conventions are a foundation for addressing citizenship issues in countries successors to the SFR Yugoslavia, as well as for reaching agreements and mutual understanding, reconciliation of countries' interests and interests of individuals, especially regarding the respect for vested rights of citizens of former SFR Yugoslavia.

1. Harmonization of internal citizenship rights of Dayton Agreement countries with new international regulations on citizenship

Harmonization of citizenship regulations and other relevant regulations in Dayton Agreement countries is of crucial importance in addressing citizens' status and property issues that resulted from disintegration of Yugoslavia. Among other, the following European and international conventions are relevant:

- *European Convention on Nationality, signed in 1997*
- *Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession, signed in 2006*
- *Convention on the Reduction of Statelessness signed in 1961*
- *European Convention on the Participation of Foreigners in Public Life at Local Level, signed in 1992*

⁸ ...“by proclaiming the right of each person to citizenship and incorporation of this right into the human rights *corpus*, emphasis on country's discretionary right was “shifted” in the direction of benefit of the person, subject of citizenship rights” (Vida Cok, Right to Citizenship, Belgrade Center for Human Rights, Belgrade, 1999, page 19.)

- *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, signed in 1990*
- *European Convention on the Legal Status of Migrant Workers, signed in 1977.*

a) In 1997, Council of Europe has adopted the *European Convention on Nationality* which is now a mandatory legal instrument for countries - members of the Council of Europe.

Among Dayton Agreement countries, *European Convention on Nationality* was ratified by **Bosnia and Herzegovina** (Official Gazette - International Agreements 2/08) and **Montenegro** (Official Gazette - International Agreements 2/10). Croatia and Serbia are still expected to do so.

In their second report on **Croatia**, European Commission against Racism and Intolerance (ECRI),⁹ adopted on December 15th 2000, have recommended to the Government of Croatia to sign and ratify European Convention on Nationality. In their third report, adopted on December 17th 2004, ECRI have noted that "Croatia has signed this Convention and the Croatian authorities have indicated that ratification is expected to follow." ECRI urges Croatian Government to do so and recommends completion of the process of ratification of the European Convention on Nationality.¹⁰

In the report of the Croatian Parliament's Legislative Board on the proposed Law on amendment and supplementation of the Law on Croatian Citizenship, which included the final proposal for this Law, P.Z. No. 913 from the 139th session held on October 26th 2011, it was stated that "Current Law and proposed amendments and supplementations were not entirely in keeping with European Convention, especially those in regard to citizenship and reduction of statelessness, which implies the need to determine and issue a new integral Law on Croatian Citizenship."

In their first report on **Serbia**, which was adopted on December 14th 2007, ECRI noted that Serbia has not ratified the European Convention on Nationality and therefore, ECRI recommended the ratification of this Convention as soon as possible. In their report adopted on March 23rd 2011 (fourth monitoring cycle) ECRI reminded Serbian Government about their first recommendation to ratify the European Convention on Nationality, after noting that this hasn't been done as of yet. Serbian Government informed ECRI that, in principles, there were no objections to the ratification of this Convention. Once again, ECRI advises Serbian Government to ratify the European Convention on Nationality as soon as possible.

⁹ European Commission against Racism and Intolerance (ECRI) was founded by the Council of Europe. This Commission is an independent body for monitoring in the field of human rights, specialized in issues of racism and intolerance. It is comprised of independent and unbiased members, elected on the basis of their moral authority and acknowledged expertise in the field of fight against racism, xenophobia, anti-Semitism and intolerance. In the framework of their statutory activities, ECRI conducts monitoring for each country and analyses the situation in each of the member countries in regard of racism and intolerance, and formulates suggestions and propositions for solution of identified problems.

¹⁰ Proposed Law on Confirming the European Convention on Nationality was on the agenda on the 19th session of Croatian Parliament, held in March and April 2006. Proposition was discussed and adopted during the session of the Parliament's Legislative Board on January 24th 2006, on the session of the Board for Human Rights and Rights of Ethnic Minorities on January 31st 2006 and on the session of the Board for Internal Affairs and National Security on January 24th 2006. However, Government of the Republic of Croatia, as the party that proposed this Law, had withdrawn the proposal from the Parliament procedure, on February 21st 2006. In answer to the inquiry from the Civil Committee for Human Rights on February 24th 2012 Ministry of Internal Affairs stated that "this Ministry has no knowledge about possible re-instigation of the process to confirm the European Convention on Nationality within the legislative procedure of the Republic of Croatia"

b) Council of Europe adopted the *Convention on the Avoidance of Statelessness in relation to State Succession*, on May 19th 2006, to be an all-inclusive international instrument for observation of succession of countries and avoidance of statelessness which should be interpreted and applied in the spirit of European Convention on Nationality.

To this day, **Montenegro** is the only country among Dayton Agreement countries where European Convention on Avoidance of Statelessness in relation to Succession of States signed in 2006 was ratified. (Official Gazette - International Agreements 2/10).

c) On August 30th 2011, on the occasion of celebrating fifty years of adoption of the *Convention on the Reduction of Statelessness* which was signed in 1961, UNHCR has launched a campaign, within its mandate to prevent statelessness, to focus public attention on this often neglected problem, in order to reduce statelessness around the world. For this purpose, UNHCR encourages governments to ratify and enforce this Convention.

In **Bosnia and Herzegovina**, Convention on the Reduction of Statelessness signed in 1961 is in force (Annex I, Constitution of Bosnia and Herzegovina, Additional Agreements on Human Rights, which are to be enforced). On May 27th 2011, at the session of the Croatian Parliament, the **Republic of Croatia** has ratified the Convention on the Reduction of Statelessness (Official Gazette - International Agreements 8/2011), which came into force on December 21st 2011. **Serbia** has ratified the Convention on the Reduction of Statelessness, at the session of the People's Assembly on October 18th 2011 (Official Gazette of the Republic of Serbia - International Agreements 8/2011, October 19th 2011).

Montenegro has not ratified this Convention yet.

d) *European Convention on the Participation of Foreigners in Public Life at Local Level*, signed in 1992, emphasizes the principle of gradual recognition of civil and political rights to foreign nationals with residence rights, including the right to vote.

None of the Dayton Agreement countries have ratified this Convention.

Croatia has informed the ECRI about its monitoring in regard to the European Convention on Participation of Foreign Nationals in Public Life on the Local Level, as well as about the decision to sign and ratify this document depending on situation's development¹¹

In their report on **Montenegro**¹² ECRI has noted that "Montenegro has neither signed nor ratified this Convention and there are no plans to do so". The reason for this lays in the fact that, according to the Article 45 of the Constitution, only "citizens with at least two years' residence in Montenegro can vote or stand for elections... ECRI notes that Montenegro has significant numbers of 'displaced' and 'internally displaced' persons who fled from conflicts in Bosnia and Herzegovina, Croatia and Kosovo in the 1990s. The majority of these people have already resided in Montenegro for many years, some even decades, and contributed to the life of the local community. However, they are denied the right to participate in the local decision-making process on matters which affect them...If Montenegro intends to integrate the 'displaced' and 'internally displaced' persons who wish to remain in the country, it

¹¹ European Commission against Racism and Intolerance, Third Report on Croatia, adopted on December 17th 2004, page .7

¹² Report of the European Commission against Racism and Intolerance (ECRI) about Montenegro (fourth monitoring cycle), adopted in December 2011

should take the necessary steps to become party to the Convention on the Participation of Foreigners in Public Life at Local Level.”

Once again, ECRI advises **Serbia** to ratify the Convention on Participation of Foreign Nationals in Public Life on the Local Level, as soon as possible. Same thing is advised to **Bosnia and Herzegovina, Montenegro and Croatia**. Serbian authorities have informed the ECRI that, in principle, there are no objections to the ratification of this Convention. However, *Serbia, Croatia, Federation of Bosnia and Herzegovina and Republic of Srpska, just like in case of Montenegro, should amend constitutional provisions in regard to electoral rights in order to provide foreign nationals with the possibility to take part in public life on the local level.*

e) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, signed in 1990, starts with a notion that rights of migrant workers and their family members are not adequately recognized for the most part, which is a situation that calls for adequate international protection.

To this day, **Bosnia and Herzegovina** is the only Dayton Agreement country that has ratified this convention. In Bosnia and Herzegovina, it is being enforced on the basis of Annex I of the Constitution of Bosnia and Herzegovina (Additional Agreements on human rights which are to be enforced in Bosnia and Herzegovina).

Montenegro has signed this convention on October 23rd 2006, but it still needs to be ratified. In the Report, ECRI states that authorities have informed them about the initiation of the process of ratification and that Ministry of Labor and Social Care is preparing the relevant text. ECRI advises Montenegro to complete the ratification of this Convention, accordingly.

Croatia have not signed nor ratified this Convention. Croatian authorities have informed the ECRI that possibilities of ratification of this Convention will be further discussed, taking into account *inter alia* ratifications in other European countries. ECRI advises Croatian authorities to sign and ratify this Convention.

On November 11th 2004, **Serbia** has signed this Convention, but it has not been ratified as of yet. ECRI advises Serbian authorities to ratify the International Convention on Protection of Rights of all Migrant Workers and Their Family Members. Serbian authorities have informed ECRI that, in principle, there are no objections to the ratification of this Convention.

f) Member Countries of the Council of Europe have adopted the European Convention on the Legal Status of Migrant Workers which was signed in 1977 for the purpose of achieving greater unity of its members in realization of ideals and principles of their shared legacy, as well as for the purpose of facilitation of their economic and social progress with respect for human rights and basic liberties.

None of the countries of Dayton Agreement have signed or ratified this Convention.

Croatia had informed ECRI about monitoring in regard to European Convention on Legal Status of Migrant Workers, as well as about their decision to sign and ratify this Convention depending on situation's development. ECRI advises Croatia to ratify this Convention. ECRI

also advises **Serbia** to ratify this Convention. In their reports on Bosnia and Herzegovina and Montenegro, ECRI makes no references about this Convention.

Out of six afore mentioned Conventions important for harmonization of domestic legislations with European and International Law, Croatia and Serbia haven't yet ratified five, Montenegro haven't ratified four and Bosnia and Herzegovina haven't ratified three Conventions.

Recommendations

Croatia and Serbia should ratify the European Convention on Nationality, which was signed in 1997

Bosnia and Herzegovina, Croatia and Serbia should ratify the Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession, which was signed in 2006

Montenegro should ratify the Convention on the Reduction of Statelessness, which was signed in 1961

Countries of Dayton Agreement should ratify the European Convention on the Participation of Foreigners in Public Life at Local Level, which was signed in 1992

Montenegro, Croatia and Serbia should ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which was signed in 1990

Countries of Dayton Agreement should ratify the European Convention on the Legal Status of Migrant Workers , which was signed in 1977

Countries of Dayton Agreement should review and harmonize their domestic regulations on citizenship and other relevant regulations with principles and rules stipulated by those Conventions.

National authorities are advised to use the right to citizenship as an instrument for protection of vested rights and solution for numerous problems of the "new" foreigners on the territory of the former joint State.

Starting from international principles and rules in regard of citizenship, partly listed within afore mentioned Conventions, it is necessary to:

1.1. Mitigating circumstances for acquiring citizenship for citizens of other Republics of former SRF Yugoslavia who resided in those Republics on the day of succession

In former SFR Yugoslavia, its citizens had held dual citizenship (Federal and Republic). Basically, a citizen of any Republic had the same rights on the territory of any other Republic as a citizen of that given Republic. Therefore, citizenship of the Republic was of marginal

importance. However, after proclamation of independence of once federal units of Yugoslavia, it became crucial.

Many people have acquired certain rights in other Republics without acquiring citizenship of those Republics even though in most cases, these rights are closely connected with citizenship (right to own property – house, apartment, land, forest, right to accommodation, right to employment, right to social security and social care, right to health care, free primary education, including universal availability of high school and university level education under equal terms, right to possess the passport issued by the given Republic at the place of residence, active and passive voter's right, which made them eligible to vote on first multi-party elections in the nineties and on the referendum on independence of the Republic where they held residence, etc.). By binding the possibility to realize some of those rights to the possession of citizenship of the Republic where residence was held many vested rights of citizens with residence in other Republics of former SFR Yugoslavia were violated, putting a number of citizens in jeopardizing legal position and living circumstances, especially in case of refugees and displaced persons.

International law, however, is based on the principle of respect for rights vested on the day of succession, i.e. the date upon which the successor State replaced the predecessor State in the responsibility for the international relations of the territory to which the succession of States relates. Purpose of this is to avoid legal vacuum and sustain legal security of legal entities and persons, which is in a way mandatory for the country successor. That was the starting fact for the Arbitration Commission of the Peace Conference on Yugoslavia, which concluded that “the peremptory norms of general international law and, in particular, respect for the fundamental rights of the individual and the rights of peoples and minorities, are binding on all the parties to the succession”, as it was published in the Opinion No. 1 (Dissolution of SFRY), on December 7th 1991.¹³

However, in practice on the territory of former SFR Yugoslavia, especially in parts that were battlegrounds and locations of mass forceful relocation of population, legal vacuum was not avoided and legal security of legal entities and persons was violated, above all in the field of status, property, social, pension and other vested rights. Countries successors to SFR Yugoslavia did not adequately recognize the new reality in relations developed by the dissolution of former Yugoslavia. Regulation of citizenship did not take place in the framework of boundaries determined by the international law. In practice, main principles were not respected in relation to their own citizens of different ethnic background (refugees and displaced persons). Lateness in issuing and enforcement of the law, unequal treatment of effective connection, absence of solution for the protection of family integrity, negatively affected issues related to realization of citizens' rights. Gradually, problems were

¹³ „That is why citizenship should be used as an instrument for protection of vested human rights and for solution to many problems of the “new” foreigners on the territory of once joint State. In this regard, dual citizenship would be very significant. International and domestic laws provide opportunity for such a solution.” (Vida Cok: Right to citizenship, BCLJP, 1999, page 104). Development of law related to human rights since the Second World War indicates growing recognition of basic human rights within the discretionary rights of each state. Therefore, for example, Inter-American Court for Human Rights had proclaimed in its advisory opinion in 1984 that right to citizenship is the basic human right recognized by the international law and that countries' authorities to regulate issues connected to citizenship are limited by the obligation to ensure full protection of human rights (in regard of Amendments to provisions on naturalization in the Constitution of Costa Rica, OC-4/84, HRLJ (1984), Vol. 5, page 161)

surmounted by legal novelties and administrative acts of successor countries, but certain issues remained unsolved, especially from the aspect of equality before the law.

Rules and principles of succession of states obligate countries – successors to the former SFR Yugoslavia to proscribe extenuating circumstances in acquiring citizenship for citizens of other Republics of former SFR Yugoslavia in which they held residence on the day of succession.

Article 18 of the *European Convention on Nationality* from 1997 stipulates the principles in regard of issues of citizenship and succession. Paragraph 2 of this Article stipulates that “in deciding on the granting or the retention of nationality in cases of State succession, each State Party concerned shall take account in particular of:

- a. the genuine and effective link of the person concerned with the State;
- b. the habitual residence of the person concerned at the time of State succession;
- c. the will of the person concerned;
- d. the territorial origin of the person concerned”.¹⁴

Rules on non-discrimination and respect for person's preferences included in the *Convention on the Avoidance of Statelessness in relation to State Succession* are especially important for use of citizenship as an instrument for the protection of vested human rights as well as for addressing many other problems of the “new” foreigners on the territory of formerly shared state.¹⁵

Afore mentioned principles imply a clear obligation of each country – successor to the SFR Yugoslavia to proscribe extenuating circumstances for acquiring citizenship for persons who were citizens of another Republic of former SFR Yugoslavia and who had held residence on its territory in time of succession.

Acquiring citizenship of **Bosnia and Herzegovina** by citizens of other Republics of former SFR Yugoslavia is regulated by the Article 38, paragraphs 3 and 4 of the Law on Citizenship of Bosnia and Herzegovina (Official Gazette 4/97, 13/99, 41/02, 6/03, 14/03, 82/05 and 43/09). In keeping with international standards, the Law provides extenuated naturalization to the former citizens of former SFR Yugoslavia. *Extenuating circumstances* for acquiring citizenship of Bosnia and Herzegovina include among other, absence of obligation to renounce or annul in any way former citizenship after acquiring citizenship of Bosnia and Herzegovina, which means that these persons are thus acquiring dual citizenship. Besides that, unlike regular

¹⁴ Paragraph 3 stipulates that in case when acquiring citizenship is subject to cancellation of foreign citizenship, provisions of Article 16 of this Convention shall be applied, which means that cancellation shall not be a precondition in cases where cancellation is impossible or reasonably difficult to request. Explanation of the European Convention on Nationality and its Article 16 – *Retention of previous citizenship* includes following clarification: “The existence of unreasonable, factual or legal requirements is to be assessed in each particular case by the national authorities of the State Party whose nationality the person is seeking to acquire. For example, refugees cannot generally be expected to return to their country of origin or to request their diplomatic or consular representation to renounce or to obtain their release from their nationality”. As this article is particularly important in cases of state succession, Article 18 makes special reference to Article 16, which is important for limitations to countries' reservations in regard of certain provisions of this Convention.

¹⁵ When applying this Convention, States concerned shall not discriminate against any person concerned on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status (Article 4.). A successor State shall not refuse to grant its nationality under Article 5 paragraph 1, sub-paragraph b, where such nationality reflects the expressed will of the person concerned, on the grounds that such a person can acquire the nationality of another State concerned on the basis of an appropriate connection with that State (Article 7).

naturalization when competent government body has the right to a discretionary decision, i.e. when there is no obligation to grant citizenship of Bosnia and Herzegovina, in this case, if afore mentioned preconditions are met, competent government body must grant citizenship of Bosnia and Herzegovina.¹⁶

Owing to the legislation in neighboring countries, especially after ratification of bilateral agreements, it can be concluded that there are no significant problems in addressing citizenship issues of persons from former SFR Yugoslavia residing in Bosnia and Herzegovina. Large number of citizens of Croatian nationality in Bosnia and Herzegovina (practically all) also holds Croatian citizenship, as well as many Bosnians, especially in West Bosnia.

Preconditions for granting citizenship of Montenegro to the citizens of other Republics of SFR Yugoslavia with permanent residence held on the territory of **Montenegro** have been gradually altered.

Pursuant to Article 41 Paragraph 1 of the Law on Citizenship of Montenegro (Official Gazette 13/08, February 26th 2008), issued after proclamation of independence of Montenegro, citizen of any Republic of former SFR Yugoslavia with residence in Montenegro registered before June 3rd 2006¹⁷, can acquire citizenship of Montenegro. *Extenuating circumstances* for acquiring citizenship of Montenegro are to cease the requirement of 10 years of uninterrupted residence in Montenegro, as well as Montenegrin language skills. Deadline for applying for Montenegrin citizenship for citizens of other Republics of former SFR Yugoslavia was firstly extended till 05.05.2011 and till 31.06.2012. This relates to citizens of Republics of former SFR Yugoslavia with residence in Montenegro registered before June 3rd 2004, who do not possess the ID issued in Montenegro in keeping with regulations in force at that time, or for those who registered residence after June 3rd 2004, prior to June 3rd 2006.

Article 41v, Paragraphs 1, 2, 3 and 4 of the Law on Supplementation of the Law on Citizenship of Montenegro (Official Gazette 46/11, September 16th 2011) provides opportunity for the citizens of Republics of former SFR Yugoslavia with residence in Montenegro registered at least two years before June 3rd 2006, who possess ID issued in keeping with the Law on Personal Identification Documents that was in force at the time of issuance of that ID, to apply for citizenship of Montenegro without annulling the citizenship of the other state (i.e. possession of dual citizenship). With these extenuating circumstances, application for citizenship of Montenegro can be submitted to the competent government body by January 31st 2012 at latest.

¹⁶ In Bosnia and Herzegovina, there was a revision of the status of persons who were granted the citizenship of Bosnia and Herzegovina in the period between April 6th 1992 and January 1st 2006 (more than 10,000 people). This procedure was completed without significant corrections of citizenship statuses. In most cases, it was related to people from the territory of former SFR Yugoslavia. After that, granting citizenship to persons who failed to present personal identification number from the territory of former SFR Yugoslavia was also revised (about 1000 citizenships granted to Africans and Asians were revoked, among which majority did not have residences in the territory of Bosnia and Herzegovina). In some cases, expatriation procedure is still in process and they have already spent several years in the Center for Asylum Seekers.

¹⁷ June 3rd 2006 was selected because that was the date passing of the Resolution of Independence of Montenegro.

In the report about Montenegro European Commission against Racism and Intolerance (ECRI, fourth monitoring cycle) adopted on December 2011, it was noted that the deadline for application is too short – by January 31st 2012 (four months)

On the basis of Article 41v, Paragraphs 1, 2, 3 and 4 of the Law on Supplementation of the Law on Citizenship of Montenegro effected on September 24th 2011 and enforced until January 1st 2012, around 5000 people have applied for citizenship of Montenegro. Till February 8th 2012, 1,677 applications were processed, while others are still in process. Deadline for application on these legal grounds was January 31st 2012, in accordance with this Law, and there were no extensions.

According to the Law on Foreigners (Official Gazette of Montenegro 82/08, 72/09, 32/11 and 53/11), citizens of countries created on the territory of former SFR Yugoslavia with residence in Montenegro registered prior to June 3rd 2006 are **entitled to permanent residence**, without obligation to submit application forms and seek special approval, only with an obligation to apply for registration (Article 54, paragraph 1). Citizen of a country established on the territory of former SFR Yugoslavia with residence registered after June 3d 2006, until March 4th 2008 is entitled to permanent residence without special approval, only with application for registration to the registry of foreign nationals with permanent residence and with a valid travel document, if by the date of submission residence in Montenegro was not canceled (Article 54, Paragraph 2).

Corpus of rights guaranteed to these citizens on the basis of citizenship can be structured in various ways, but the most usual way is division in three categories: human rights, political rights and social rights (economic & social). Once an individual acquires those rights he/she can be deemed a citizen in full sense of that term. On the other hand, legal status of foreigner with permanent residence is much more uncertain, having in mind that citizen of Montenegro cannot be expatriated or extradited to another country, except in keeping with international obligations of Montenegro, while a foreign national loses the right to permanent residence, in case of being sentenced to banishment or displacement; in case if uninterrupted and more than one year long residence in another country is determined without providing due information about this to the Ministry; or in case permanent residence has been annulled.

Acquiring **Croatian citizenship** by citizens of other Republics of former SFR Yugoslavia with residence in Croatia on the day of proclamation of independence on October 8th 1991 is regulated by the Article 30, paragraph 2 of the Law on Croatian Citizenship, on ethnically selective grounds. Out of the number of all citizens of other Republics of former SFR Yugoslavia in Croatia who had held residence in Croatia on October 8th 1991, only ethnic Croats were recognized as citizens of Croatia, on condition of declaring themselves as citizens of Croatia.

Persons who are not ethnic Croats and who are citizens of other Republics of former SFR Yugoslavia with residence held in the Republic of Croatia on October 8th 1991 were deprived of benefits granted to ethnic Croats. Those persons had to fulfill conditions proscribed for regular naturalization of foreigners. Absence of extenuating circumstances for naturalization has put this category of residents in the Republic of Croatia, who had enjoyed all rights connected with citizenship in Croatia on the basis of permanent residence in Croatia, in a

very difficult legal position and living circumstances.¹⁸ They became foreigners in Croatia, which created a legal vacuum and jeopardized legal security of those persons, especially in regard of status, property and other vested rights guaranteed by imperative norms of general international law. Today, many of those are refugees or persons expatriated from Croatia, whose permanent or temporary residence was in the meantime annulled by the Ministry of Internal Affairs of the Republic of Croatia, on grounds of being citizens of other Republics of former SFR Yugoslavia.

In practice, there are cases when citizens of other Republics of former SFR Yugoslavia who had held residence in the Republic of Croatia on October 8th 1991 cannot be given the right to housing because of unresolved status or residence in the Republic of Croatia, in spite of the lack of legal obstacles. The conditions proscribed for the regulation of status or residence in the Republic of Croatia are not the only obstacles to the realization of the right to housing. Actions of administrative bodies, above all the actions of the Ministry of Internal Affairs, are an obstacle in practice as well.

Only after amendments and supplementation to the Law on Croatian Citizenship adopted in late October 2011, those persons' access to Croatian citizenship was extenuated to some extent. Residence held on October 8th 1991 in the Republic of Croatia and approved permanent residence is an extenuating circumstance which implies fulfillment of residence related conditions for acquiring Croatian citizenship. Those persons are not required to present proof of a previously approved temporary residence in order to receive approval for permanent residence nor are they obligated to present proof of the possession of sufficient means for livelihood, health insurance, Croatian language skills, writing system, understanding of Croatian culture and social order. Preconditions for approval of permanent residence include only valid travel document and a proof that applicant is not a threat to the public order, national security and public health. Legal precondition for naturalization of these persons, which is not obligatory for ethnic Croats, is the release from citizenship of another country or a proof of pending release upon acquiring Croatian citizenship¹⁹

From the aspect of provisions set out by the Article 5 of *European Convention on Nationality* from 1997 in regard to *prohibition of discrimination*, proscribing extenuating circumstances for acquiring Croatian citizenship in the case of this category of applicants on the basis of ethnically selective criteria is questionable. Namely, in keeping with this Article, the rules of a State Party on nationality shall not contain distinctions or include any practice which amount to discrimination on the grounds of sex, religion, race, colour or national or ethnic origin.

¹⁸ In the report on realization of human rights in Croatia for 1999, published by the Department for Democracy, Human Rights and Labor at the US Ministry of Foreign Affairs on February 23th 2000 it was stated that "the Law on Citizenship distinguishes between those who have a claim to Croatian ethnicity and those who do not... Non-ethnic Croats must satisfy more stringent requirements through naturalization in order to obtain citizenship, even if they were previously lawful residents of Croatia in the former Yugoslavia (see section 1.d.). This double standard led to discrimination in other areas, in particular the right to vote (see section 3)."

¹⁹ "ECRI is concerned to learn that there are still serious problems when it comes to obtaining Croatian nationality. Persons of non-Croat origin remain at a disadvantage compared with ethnic Croats in terms of the requirements to be met for obtaining Croatian nationality. Numerous barriers to naturalisation remain in place. For example, it is not possible to obtain Croatian nationality unless the original nationality has been renounced... ECRI urges the Croatian authorities to take all the necessary measures to resolve the problems that long-term residents who are not ethnic Croats have encountered in obtaining Croatian nationality. In particular, naturalisation could be facilitated by abolishing the requirement that any other nationality be renounced and by embracing the concept of dual nationality." (ECRI's third report on Croatia published on December 17th)

While *European Convention on Nationality* proscribes only general principles, *Convention on the Avoidance of Statelessness in relation to State Succession* proscribes rules for enforcement in cases of succession, which is exactly the issue that Article 30, paragraph 2 of the Law on Croatian Citizenship paragraph 2 treats by favoring naturalization of ethnic Croats who were citizens of other Republics of former SFR Yugoslavia who had held residence in the Republic of Croatia on October 8th 1991. This Convention (not yet ratified by Croatia) obligates countries to prevent discrimination on basis of gender, race, color of skin, language, confession, political or other opinion, national or social background, affiliation with national minority by quality, birth or any other status (Article 4)

Proscribing extenuating circumstances for acquiring Croatian citizenship, similar to those provided for ethnic Croats, would represent Croatian Government's guarantees for unobstructed and unconditional return of those citizens, as well as legal treatment equal to other categories of people in regard to rights derived from the status of returnees.

Law on Croatian citizenship includes another provision that favors ethnic Croats in acquisition of Croatian citizenship. In keeping with Article 16 of the Law, ethnic Croat without residence in the Republic of Croatia can acquire Croatian citizenship if he/she provides a written statement that he/she considers himself/herself a Croatian citizen and if his/her demeanor implies respect for legal order and customs of the Republic of Croatia, as well as acceptance of Croatian culture.

*Law on Citizenship of the Republic of Serbia*²⁰ (Article 23, paragraph 1) proscribes that ethnic Serbs without residence on the territory of the Republic of Serbia has the right to be accepted in citizenship of the Republic of Serbia without release from foreign citizenship if he/she is 18 years of age and with valid capacity to contract. He/she must submit a written statement saying that he/she considers the Republic of Serbia as his/her own country. Unlike Croatian Law on Citizenship which lacks such provisions, Article 23, paragraph 3 of the Law on Citizenship of the Republic of Serbia provides same conditions for applicants of other nationality or members of ethnic community from the territory of Serbia in acquiring citizenship of the Republic of Serbia. Amendments and supplementations to this Law proscribed a limited deadline for submission of applications for citizenship of the Republic of Serbia in regard of applicants of other nationality or members of ethnic communities from territory of the Republic of Serbia. Deadline is two years from the day this Law was put in force (October 7th 2007).

Compliance of the provision that limits the application deadline for citizenship of the Republic of Serbia for members of other nationalities or ethnic communities from the territory of the Republic of Serbia with the Constitution of the Republic of Serbia and international agreements was examined by the Constitutional Court of the Republic of Serbia. Constitutional Court denied the proposition to declare this provision unconstitutional and non-compliant with international agreements²¹

²⁰ Official Gazette 135/04 and 90/07.

²¹ Decision was published in the Official Gazette of the Republic of Serbia, issue 18/2012 on March 9th 2012. In explanation of their decision, Constitutional Court also includes the European Convention on Nationality signed in November 6th 1997, which was not ratified by the Republic of Serbia. Principles and rules related to citizenship were established, and countries signatory to this Convention will have to conform to it, especially with Articles 3, 5, 6 and 17. Court's view is that legislator had the right to, according to the authorization set out by Article 38 paragraph 1 of the Constitution, envisage acquiring

Explanatory Report of the European Convention on Nationality in 1997 is also useful in defining the criteria to determine whether differences in citizenship issues on ethnic grounds are allowed or represent a discriminatory approach. Annotations to Article 5 focused on non-discrimination reads that „the very nature of the attribution of nationality requires States to fix certain criteria to determine their own nationals. These criteria could result, in given cases, in more preferential treatment in the field of nationality... States Parties can give more favourable treatment to nationals of certain other States. For example, a member State of the European Union can require a shorter period of habitual residence for naturalization of nationals of other European Union States than is required as a general rule. This would constitute preferential treatment on the basis of nationality and not discrimination on the *ground of national origin*...It has therefore been necessary to consider differently distinctions in treatment which do not amount to a discrimination and distinctions which would amount to a prohibited discrimination in the field of nationality...The list in paragraph 1 therefore contains the core elements of prohibited discrimination in nationality matters and aims to ensure equality before the law. Furthermore, the Convention contains many provisions designed to prevent an arbitrary exercise of powers (for example Articles 4.c, 11 and 12) which may also result in a discrimination.“

Report of the European Commission for Democratization through Law (Venice Commission) on the preferential treatment of national minorities by their Kin-State, adopted on their 48th plenary session on October 19-20th 2001, includes a more detailed explanation of (non) discrimination in citizenship issues. According to the Commission's opinion, countries signatory to the European Convention on Human Rights (ECHR) must provide non-discriminatory fulfillment of rights foreseen by this document for every person in country's jurisdiction. Article 14 prohibits discrimination between individuals based on their personal status; it contains an open-ended list of examples of banned grounds for discrimination, which includes language, religion, and national origin. As regards the basis for the difference in treatment under the laws and regulations in question, in the Commission's opinion the circumstance that part of the population is given a less favourable treatment on the basis of their not belonging to a specific ethnic group is not, of itself, discriminatory, nor contrary to

citizenship as stipulated by Article 23 of the Law on Citizenship and regulate this issue as a right or legal opportunity which is to be used within a proscribed deadline. Constitutional Court points out that it was up to the legislator's will to determine goals in creation of legislative policies in this field, which is what happened in case of this provision. Constitutional Court took also into account the fact that this deadline in preferential procedure for acquiring citizenship stipulated by the provision in question applies equally to all applicants in this category – members of other nationalities or ethnic communities from the territory of the Republic of Serbia. Hence, according to the Constitutional Court, there is no discrimination. Due to all afore mentioned reasons, Constitutional Court decided that the disputed provision of the Article 18 of the Law on Amendments and Supplementation of the Law on Citizenship of the Republic of Serbia is not in conflict with constitutional principles of prohibition of discrimination, i.e. prohibition of discrimination of national minorities stipulated by Article 21, paragraphs 1 and 3 and Article 76, paragraphs 1 and 2 of the Constitution, nor with Article 14 of the European Convention on Protection of Human Rights and Basic Liberties, or Article 1 of the Protocol 12 to the Convention. Professor Marija Draskic, PhD Constitutional Court magistrate had separately expressed opinion that the “disputed provision is a textbook example of inequality in treatment proscribed by law and that Constitutional Court had failed to address this issue adequately... Allowed differences in treatment have been many times clearly explained by the European Court for Human Rights during their very rich practice related to the Article 14 of the Convention...” Therefore, the fact that Constitutional Court had missed the opportunity to assess whether imbalance in treatment was objective or reasonably justified is regretful. This Court should have relied on the well established practice of the European Court for Human Rights. In other words, Constitutional Court was hardly able to identify any legitimate goal to justify difference in treatment between ethnic Serbs and members of other nationalities or ethnic communities from the territory of the Republic of Serbia merely on the basis of arguments that followed the process of adoption of this questionable novelty in the Law.

the principles of international law. Indeed, the ethnic targeting is commonly done, for example, in laws on citizenship. (Commission, for example, points out Article 116 of German Constitution (*German Grundgesetz*) regarding citizenship of persons with German ethnic background). The acceptability of this criterion will depend of course on the aim pursued. In this respect, the Commission finds it appropriate to distinguish, as regards the nature of the benefits granted by the legislation in question, between those relating to education and culture and the others. Insofar as the first are concerned, the differential treatment they engender may be justified by the legitimate aim of fostering the cultural links of the targeted population with population of the kin-State. Preferential treatment cannot be provided in fields other than education and culture, except in special cases if legitimacy of purpose of such treatment can be proved and if it is proportionate to the given purpose.

According to the Commission's opinion, country can legitimately issue laws and regulations in regard to foreign nationals without previous approval from countries of corresponding citizenship, as long as those laws and regulations have an effect only within its own boundaries. When these acts aim at deploying their effects on foreign citizens abroad, in fields that are not covered by treaties or international customs allowing the kin-State to assume the consent of the relevant home-states, such consent should be sought prior to the implementation of any measure.

In any case, mutual exchange of information and making agreements in sensitive issues in regulation of citizenship on the territory of former SFR Yugoslavia contributes to reinforcement of mutual trust and development of friendly relations between the states, as well as to the respect for human rights and basic liberties, especially to the prohibition of discrimination.

Determination of extenuating circumstances for naturalization of citizens of other Republics who had held residence in **Serbia** began with passing of the Law on Yugoslav Citizenship (Official Gazette of FR Yugoslavia 33/96 and 9/01), which was put in force on January 1st 1997. As one of conditions for acquiring Yugoslav citizenship, legislator of FR Yugoslavia had proscribed that the citizens of other Republics of former SFR Yugoslavia had to present a written statement, along with the application for Yugoslav citizenship, saying that no other citizenship was being held at the time. In case if there was another citizenship, applicants were obligated to renounce it by presenting a written statement.

Amendments and supplementations to the Law on Yugoslav Citizenship²² issued in March 2001 have provided citizens of other Republics of former SFR Yugoslavia with an opportunity to acquire Yugoslav citizenship without renouncing previous citizenship, i.e. dual citizenship was allowed. In this way, legal preconditions for extenuated naturalization of citizens from other Republics of former SFR Yugoslavia were created.

The Law on Citizenship of the Republic of Serbia that was put into force on February 27th 2005 stipulates the requirements for dual citizenship.

Termination of the State Union of Serbia and Montenegro had transformed domestic citizens (citizens of Montenegro who stayed on the territory of the Republic of Serbia) into non-citizens/"new" foreigners. That is why amendments and supplementations to the Law

²² Official Gazette of FR Yugoslavia 9/01. Law was put in force on March 10th 2001

on Citizenship of the Republic of Serbia provided citizens of Montenegro who had held residence in Serbia on June 3rd 2006 (day of legal succession to the Republic of Serbia) with an opportunity to acquire citizenship of the Republic of Serbia under extenuating conditions, i.e. position of citizens of Montenegro was equalized with the position of citizens of other Republics of former SFR Yugoslavia in the process of acquiring and cancellation of citizenship of the Republic of Serbia. Besides holding residence on June 3rd 2006, another condition for naturalization was the submission of a written statement saying that the applicant considers himself/herself a citizen of the Republic of Serbia, accompanied by the submission of a request for enlistment on the registry of citizens of the Republic of Serbia. Statement and request can be submitted within a five-year deadline from the day this Law was put in force (October 9th 2007). Without passing any special decree, administrative body of the Ministry of Internal Affairs would issue a written order for applicant's enlistment on the registry of citizens of the Republic of Serbia, if afore mentioned conditions were met.

According to the data of the Ministry of Internal Affairs of the Republic of Serbia in the period since this Law on Yugoslav citizenship was put in force (January 1st 1997) until March 13th 2012, 363,021 citizens of other Republics of former SFR Yugoslavia who had held residence on the territory of the Republic of Serbia had received citizenship of the Republic of Serbia, in keeping with Article 47 of the Law on Yugoslav Citizenship and Article 52 of the Law on Citizenship of the Republic of Serbia. Since the termination of the State Union of Serbia and Montenegro, 71,102 citizens with registered residence on the territory of the Republic of Serbia on the day of termination of the State Union of Serbia and Montenegro were enlisted on the registry of citizens of the Republic of Serbia.

In conclusion, it can be stated that all Republics of former SFR Yugoslavia have, more or less, proscribed extenuating circumstances for acquiring citizenship for citizens of other Republics who had held permanent residence on their territory in times of succession. Hence, there are various problems within these countries in the field of protection of vested human rights and in the process of addressing other various issues.

Recommendations

Countries successors to SFR Yugoslavia should maintain regular exchange of information and make agreements on issues of regulation of citizenship on the territory of former SFR Yugoslavia, in order to conform legislative policies in adjust those policies to the principles of succession of citizenship. This would, at least partly, mitigate harmful consequences of succession on citizens vested rights and other issues regulated by civil law.

All countries of Dayton Agreement are invited to revise their current legal solutions once again and observe the possibilities of proscribing additional extenuating circumstances for acquiring citizenship in regard of citizens of other Republics of former SFR Yugoslavia who had held residence on their territory on the day of succession.

1.2. Mitigating circumstances for naturalization of refugees

Signatory countries of the *Convention relating to the Status of Refugees* from 1951, including countries successors to former SFR Yugoslavia took up an obligation proscribed by the Article 34 to facilitate “to the highest possible degree, assimilation and naturalization of refugees. Those countries will put special emphasis on efforts to speed-up the procedure of naturalization and reduce taxes and expenses of such procedure “

Article 6, Paragraph 4, al. G of the *European Convention on Nationality* from 1997 stipulates each country's obligation to amend domestic legislation in order to facilitate easier access to citizenship for persons without citizenship and for refugees with legal residence on their territory

Article 38, paragraphs 3 and 4 of the Law on Citizenship of **Bosnia and Herzegovina** proscribe extenuating circumstances for naturalization of refugees, although term “refugee” was not specifically used. All persons who were citizens of former SFR Yugoslavia who had permanently settled on the territory of any of entities during the period between April 6th 1992 until the day this Law was put in force and who maintained at least two years of uninterrupted residence after this Law was put in force, will be granted citizenship of the given entity as well as Bosnia and Herzegovina upon submission of request for citizenship.

Local integration of displaced persons from former Yugoslav Republics in **Montenegro** with the status determined in keeping with the Regulation on Housing for Displaced Persons (Official Gazette of Montenegro, issue 37/92)²³ will be facilitated in two ways: by granting citizenship of Montenegro or by granting refugee status with permanent residence permit.

Those persons can acquire citizenship of Montenegro if they fulfill conditions proscribed by the Law. According to the Article 13 of the Law on Citizenship of Montenegro, person with refugee status granted in keeping with the law that regulates issues of asylum²⁴ in Montenegro can acquire citizenship of Montenegro by recognition of extenuating circumstances such as: abrogation of the precondition of accommodation and permanent source of income that guarantee social security, as well as abrogation of precondition to possess Montenegrin language skills. However, among other preconditions, proof of release from foreign citizenship must be provided, as well as proof of uninterrupted 10-year legal residence in Montenegro before application for citizenship of Montenegro. Decision on Determination of Conditions for Acquisition of Montenegrin Citizenship (Official Gazette 47/08, 80/08 and 30/10) proscribes that legal and uninterrupted stay relates to persons from former Yugoslav Republics with status of displaced persons. Since May 5th 2008 (day of

²³ International law defines displaced persons as those who were forced to abandon their homes. There are two categories of displaced persons: refugees and internally displaced persons, depending on whether internationally recognized border was crossed or not. Refugees are foreigners in the harboring country, while internally displaced persons are generally citizens who were forced to find refuge in other parts of the same country. According to the Article 1 of the Guiding Principles on Internal Displacement, internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.

²⁴ Refugee status, in keeping with the Article 75, paragraph 2 of the Law on Asylum (Official Gazette 45/06, July 17th 2006) will be granted to persons with the status of displaced persons on the basis of Regulation on Housing for Displaced Persons (Official Gazette 37/02), on condition that this displaced person was permanently residing in Montenegro on the day this Law was put in force and that there are no reasons for termination or cancellation of the refugee status stipulated by this Law.

the beginning of enforcement of the Law on Montenegrin Citizenship) until December 9th 2011, 658 displaced persons from former Yugoslav Republics (Croatia, Bosnia and Herzegovina) have acquired Montenegrin citizenship by admission.

Law on Supplementation of the Law on Foreigners, which is being enforced since November 7th 2009 and stays in force until December 31st 2012,²⁵ proscribes that displaced persons from former Yugoslav Republics who had temporarily kept the status of displaced persons in keeping with the Decision on the Temporary Retention of the Status and Rights of Displaced and Internally Displaced Persons in the Republic of Montenegro (Official Gazette 46/06) can receive permit of permanent residence, on condition of being registered on the registry of displaced persons on the day this Law was put in force²⁶ Also, this Decision stipulates that the status of these persons will be addressed in keeping with laws that regulate issues of asylum seekers and foreigners.

During the period between November 7th 2009 and December 9th 2011, 3,124 displaced persons have submitted requests for permanent residence permits, among which 1,823 requests were granted. Other remaining requests are still in process.

Displaced persons acquire the status of foreigners with permanent residence in Montenegro under the so called privileged conditions, because of the lack of obligation to provide proof of possession of sufficient means for livelihood, health insurance and secured accommodation. Valid travel document is one of the preconditions for displaced person's permanent residence. If such persons lacks a valid travel document necessary for realization of the right to permanent residence, temporary residence permit will be granted until valid travel document is obtained, three years after approval of temporary residence, at the latest.

Recognition of the right to permanent residence for displaced persons cancels out the status of displaced person in Montenegro.²⁷ Persons who fail to fulfill their right to permanent residence shall be deemed illegal residents in Montenegro.

Within the report on Montenegro, ECRI states that „the procedure established to address this issue (by application for the status of foreigner with permanent residence) is complex and many people will not be able to meet the requirements. Some people risk de facto statelessness. Non-citizens, including 'displaced' and 'internally displaced' persons cannot vote or stand for local elections. Their possibility to apply for Montenegrin citizenship is restricted.“

²⁵ Request for obtaining permanent residence, displaced persons can submit until December 31st 2012. (Art.105d, Law on amending and supplementing of the law on foreigners (Official Gazette 53/11, from 11.11.2011)

²⁶ Decision on the Temporary Retention of the Status and Rights of Displaced and Internally Displaced Persons in the Republic of Montenegro (Official Gazette of the Republic of Montenegro 46/06) stipulates that displaced persons from former Yugoslav Republics with the status determined by the Regulation on Housing of Displaced Persons (Official Gazette 37/92) temporarily keep the status and rights in the Republic of Montenegro held on June 3rd 2006

²⁷ At the moment of receiving the status of foreigner with permanent residence in Montenegro, in keeping with Article 17, Paragraph 2 of the Law on Employment of Foreigners, work permit shall be issued upon request submitted by a foreign national with approved permanent residence. Foreign national with this type of work permit has free access to the labor market, i.e. has the right to be employed under same conditions as Montenegrin citizens, with exception of jobs that require Montenegrin citizenship. During the period of unemployment, such person can be registered at the Department for Employment and is entitled to all rights derived from that status.

In the **Republic of Croatia**, Law on Citizenship has no provisions that regulate, to the highest possible degree, facilitated naturalization of refugees. On the basis of provisions on extenuated conditions for admission to Croatian citizenship, naturalization is facilitated only for refugees of Croatian ethnicity.

In their third report on Croatia, issued on December 17th 2004, ECRI notes that refugees from Bosnia and Herzegovina have been living under a temporary protection arrangement for several years now. Most are unwilling or unable to return to Bosnia and Herzegovina and would prefer to find some way of becoming socially integrated in Croatia. However, with the exception of offering state funds for helping these persons integrate at the local level, no specific measures such as the adoption of simplified naturalisation procedures are planned in this area. ECRI strongly recommends that the Croatian authorities move swiftly to find a long-term solution for persons from Bosnia and Herzegovina currently living in Croatia under the temporary protection regime. In Croatia, on December 31st 2011, according to UNHCR data, there were 513 refugees from Bosnia and Herzegovina.

In regard to possibilities for naturalization of refugees in **Serbia** and the then called Federal Republic of Yugoslavia, there was a legal vacuum that lasted from the adoption of the Constitution of Federal Republic of Yugoslavia on April 27th 1992 until June 1997, when new Law on Yugoslav Citizenship was put in force. During those five years, there were no legal opportunities for naturalization of refugees in Serbia, and therefore, their integration was not possible.

Extenuated circumstances proscribed by the legislator of the Federal Republic of Yugoslavia at that time, in the sphere of naturalization of refugees and other persons affected by war who found refuge in Serbia, were not adequate for permanent solution of their status and protection of their vested rights. Namely, legislator of Federal Republic of Yugoslavia proscribed as a condition for acquisition of Yugoslav citizenship, an applicant's written declaration of not having any other citizenship or of renouncement of any other citizenship. Non-acceptance of dual citizenship created unresolvable problems for refugees and other displaced persons, before all because it deprives them of fulfillment of vested rights derived from citizenship in the country of origin, as well as because it cancels out possibility of return. Therefore, many refugees decided not to take the risk of application for naturalization, i.e. for the first step in direction of integration in Serbia. Obligation to provide a statement on renouncement of citizenship of the country of origin in the procedure of acquiring citizenship of Serbia and FR Yugoslavia existed in the period between January 1st 1997 when new Law on Yugoslav citizenship was put in force, and March 10th 2001 when amendments to this Law were effected. Therefore, it can be concluded that legal opportunities for extenuated naturalization of refugees in Serbia which represent a necessary step in their integration, did not exist in the period between the first emergence of refugees from former SFR Yugoslavia in 1990 and March 2001.

Subject of integration of refugees in Serbia was a taboo for a long time, both on the national and international level, especially within major international humanitarian organizations. It was very difficult to open this subject, because of concerns that it would imply recognition of consequences of ethnic cleansing policies. Only after democratic change of government in the then FR Yugoslavia in 2000, this issues slowly came into focus. Almost a full decade had passed in Serbia with very little attention on facilitation of integration of refugees in Serbia.

In 2002, after almost 11 years after mass emergence of refugees on its territory, Serbia adopted a National Strategy for Resolving Problems of Refugees and Internally Displaced Persons.

According to the data of the Ministry of Internal Affairs of the Republic of Serbia, in the period between the beginning of enforcement of the Law on Yugoslav Citizenship on January 1st 1997 and March 13th 2012, 371,478 persons have acquired citizenship of the Republic of Serbia, in keeping with Article 48 of the Law on Yugoslav Citizenship and Article 23, Paragraph 2 of the Law on Citizenship of the Republic of Serbia which regulate issues of naturalization of refugees in Serbia.²⁸ This number is related not only with persons who had been granted the official status of refugees or expatriated persons (carrying refugee ID), but also with persons who found refuge in Serbia or those who were expatriated to the territory of the Republic of Serbia without official recognition of refugee status.

Recommendations

Countries of Dayton Agreement, before all Montenegro and Croatia are advised to revise their legislation and practice in regard to admission of refugees to citizenship, in order to complete their obligation of best possible facilitation of naturalization of refugees.

1.3. Mitigating circumstances for acquiring dual citizenship

The institute of dual citizenship could be an instrument for easier addressing of many problems of citizens from former SFR Yugoslavia. In the light of European perspectives of this region, having in mind that one important feature of this process is the fact that citizens of member countries are also citizens of the European Union, as well as the fact that European Union must respect the principle of equality of all its citizens (Article 9 of Lisbon Agreement on European Union), dual citizenship becomes a possible means of protection of vested rights and interests of citizens from former SFR Yugoslavia, derived from the basis of former citizenship of SFR Yugoslavia, which also implies fulfillment of obligations of successor countries of former SFR Yugoslavia in this respect. It represents a possible instrument for addressing many issues of the "new" foreigners on the territory of once common state, which contributes to finding permanent solution of problems of refugees and to the establishment of trust between newly created states.²⁹ Tolerance and legalization of dual citizenship would be a way to address mass problems related with settlement, movement, family and property relations of citizens from now independent Republics of former SFR Yugoslavia. Advantage of the institute of dual citizenship is based on the fact that it creates more than just a possibility of integration of refugees into the new environment. It also opens up a possibility of their return to the country of origin, when and if favorable

²⁸ Serbian Ministry of Interior, Police Directorate of Administrative Affairs 03/10 no. 204-136/12-P of 13.03.2012

²⁹ Vida Cok points out that dual citizenship is "often an expression of the necessity to "bridge" the negative consequences on residences in countries where internal political and legal order is being changed, all until formal systemic transformation in regard of division, separation or creation of new governmental constructs" (Vida Cok: Right to Citizenship, BCLJP, 1999, page 89)

circumstances arise. This would also be an incentive for movement of persons and peoples, as well as for revival of multiethnic, multi-confessional and multicultural society.

Advocating dual citizenship has a foothold in a notable trend in modern legislature, i.e. growing number of countries that recognize dual citizenship. This trend had also affected countries successors to the former SFR Yugoslavia.

Cautious approach to the institute of dual citizenship is explained by, among other, following reasons: Undesirable effects of dual citizenship come from the fact that person with dual citizenship in each state of which he/she holds citizenship may be entitled to doubled rights and doubled obligations. Dual citizenship also opens up an issue of double loyalty, especially if one of the two countries in question hosts a large minority population of the nationality of other, especially neighboring country. For small countries, possible consequence is that the majority of population may hold citizenship of a neighboring, larger country, which is a threat to the preservation of national identity and national security. When a country is small, neighboring countries can create a legal opportunity for admission of members of their people to their own citizenship (Croatia and Serbia already have such regulations).

In regard to open borders and free flow of people as well as lack of exchange of information between countries, there are some sensitive issue that are still open: employment of people with dual citizenship in the public sphere, on positions related to security and defense; diplomatic protection of holders of dual citizenship in the third countries; issues related to agreements on re-admission; obligatory conscription; some aspects of political rights; holding several permanent residences (unless regulated by agreement), for the purpose of fulfillment of the right to access social and other rights in both states.

These are the arguments indicating that in the process of addressing afore mentioned issues and bilateral agreements, all aspects of given problems should be very carefully considered, while taking care of countries' interests and above all interests of citizens and protection of their vested and other basic human rights.

1.3.1. Bilateral agreements on dual citizenship between the countries of the Dayton Agreement

Up until now, two bilateral agreements on dual citizenship have been concluded between the countries signatories of the Dayton Agreement:

- The Agreement on dual citizenship between Bosnia and Herzegovina and the FR Yugoslavia (Serbia and Montenegro), and this agreement has stayed in power after the separation of Montenegro and the Republic of Serbia (Official Gazette BH - International Agreements 4/03).³⁰

³⁰ For example, in 2009, under the Agreement on dual citizenship between BiH and Serbia, a total of 758 persons acquired BiH citizenship, 409 persons received the citizenship of BiH and the Federation, and 349 persons received the citizenship of BiH and the Republic of Srpska. In 2010, under the Agreement on dual citizenship between BiH and Serbia, a total of 728 persons received BiH citizenship, 478 people acquired the citizenship of BiH and Federation, and 250 people received a citizenship of BiH and the Republic of Srpska. Analysis of aggregate data on persons who acquired BiH citizenship by age and gender indicate that most persons who acquired BiH citizenship were between the ages of 18 to 59 and more women than men have acquired the citizenship of BiH. (Ministry for Human Rights and Refugees of Bosnia and Herzegovina, the Second periodic report of Bosnia and Herzegovina on the Rights of all Migrant Workers and Members of their Families, Sarajevo, May 2011.)

- The agreement on dual citizenship between Bosnia and Herzegovina and the Republic of Croatia (Official Gazette BH - International Agreements 10/11).

At the meeting on 18th September, 2008, the Government of Montenegro adopted the Bases for negotiations and conclusion of bilateral agreements between **Montenegro** and other countries on dual citizenship with the Draft agreement on dual citizenship.³¹ The Ministry of Internal and Public Administration of Montenegro submitted, through diplomatic channels, the Draft agreement on dual citizenship to the competent authorities of the Republic of Serbia, Republic of Croatia, and Republic of Bosnia and Herzegovina and proposed to immediately begin negotiations on the conclusion of the contract. On the other hand, on 9th September, 2008, the Ministry of Internal Affairs of the Republic of Croatia submitted the Draft agreement between the Republic of Croatia and the Republic of Montenegro on dual citizenship and proposed to start negotiations, and on 25th September, 2008, the Ministry of Internal Affairs of the Republic of Serbia submitted the Draft Agreement on dual citizenship between the Republic of Serbia and Montenegro.

According to the data of the Ministry of Internal Affairs of the Republic of Serbia the negotiations on dual citizenship between Serbia and Montenegro have started. However, negotiations with the Republic of Croatia have not started, as of yet. There were no problems in the implementation of the Agreement on dual citizenship with Bosnia and Herzegovina. Under the terms of this Agreement since the beginning of its implementation (entered into force on 15th May, 2003) 3020 persons received the citizenship of the Republic of Serbia.

Recommendations

Considering also that the laws of the countries of the Dayton Agreement provided possibilities of establishing dual citizenship via international treaties and agreements, with the condition of reciprocity, the Igman Initiative calls on the governments of these countries to conclude bilateral agreements on dual citizenship which would allow dual citizenship to be the instrument of the protection of acquired human rights and solving many life problems of the "new" aliens on the territory of the former common state, and resolve the issues of the so-called conflict of citizenship in accordance with the principles laid down in the European Convention on Nationality and other standards of international law.

2. Issues of obtaining documents

Numerous refugees, displaced persons and other citizens of the Dayton Agreement countries have problems in obtaining documents from the other republics of the former Yugoslavia from which they originate. According to research by the Commissariat for Refugees of Serbia 44.25% of refugees in Serbia are in a situation where they lack some of the documents from their country of origin. Due to the lack of documents those people often have problems concerning employment, medical care, residence, and education. It is

³¹ The data for Montenegro is from the Ministry of Internal Affairs of Montenegro

estimated that it is necessary to provide legal assistance for the acquisition of some 32,000 documents from different countries of origin. A large number of Serbian citizens who came to Serbia in colonizing waves after the Second World War and many others who settled in Serbia in the post-war years, which is especially noticeable in recent years due to the introduction of new biometric documents have the need for records from other republics of former Yugoslavia. The fact that since the dissolution of Yugoslavia over 800,000 citizens of other republics received the citizenship of the Republic of Serbia, on various grounds, and each of them had to submit at least two documents (proof of citizenship of country of origin and birth certificate) indicates that over 1,600,000 documents (not older than 6 months) from the countries of origin should be obtained just for the regulation of the citizenship status in Serbia.

The issue is, therefore, the millions of documents that the citizens of former Yugoslavia had and partly must still obtain from their countries of origin in order to even be able to gain access to their status, property and other acquired rights.

Other problems for the citizens, particularly refugees and displaced persons in obtaining documents are further enhanced by the practice of administrative and other state bodies which require them to obtain the documents and facts on which the authorities keep records and that the State agency conducting the proceedings, should obtain *ex officio*. The obligation of an official to obtain information on the facts of which the official records are kept by the authority in charge of addressing the administrative matter or another body, is prescribed by the laws in all signatory countries of the Dayton Agreement that stipulate general administrative procedure.³² Such a provision should improve the position of the party, but, on the other hand, the public law body is imposed with an obligation that is in practice often unfairly and unjustifiably avoided, with the excuse that the party would obtain the necessary information about the facts recorded in the official records sooner, especially when some records are kept by another body, not the body in charge of the proceedings. This practice is illegal. Today, when most of the state records are electronically recorded (land registers, cadastre registers, records of residence, citizenship record books, registries of births and deaths, marriage, etc.) there are no excuses for the public administration not to keep to its commitments to customers.³³

Other problems of citizens, particularly refugees and displaced persons when obtaining documents are further enhanced by the by-laws and practices of public law bodies that impose parties with excessive burden of proving (i.e., the acquisition of a large number of documents), which does not comply with the standards of international humanitarian law, as the causes and the nature of migration, require states to simplify procedures and facilitate the conditions of access to rights of refugees, among other things, determining the obligation of providing the minimum most necessary documents of evidence.

³² Article 134 of the Law on Administrative Procedure (Official Gazette of BiH 2/98 and 48/99), Article 124 of the Law on General Administrative Procedure (Official Gazette of the Republic of Srpska 13/02), Article 127 of the Law on General Administrative Procedure (Official Gazette of Montenegro 60/03), Article 47 of the Law on General Administrative Procedure (Official Gazette 47/09), Article 126 of the Law on General Administrative Procedure (Official Gazette of the FRY 33/97 and 31/01 and Official Gazette of RS 30/10).

³³ The new Croatian Government stated in its Programme for the 2011-2015 that it will **follow the procedure under which the majority of documents shall be obtained *ex officio*.**"

Documents from countries of origin can be obtained by personally travelling to the country of origin or to empower another person to obtain them, because in practice the mechanism for obtaining the documents through intergovernmental aid has not yet become popular, primarily because of its extreme slowness. The problem arises when these individuals are unable to personally travel to the country of origin due to age, illness, socio-economic reasons (poverty), or for fear of arrest or because they do not have passports and do not have any other person they could authorize to obtain the necessary documents. These persons, as by rule, need necessary assistance in obtaining documents from the country of origin, without which they cannot start e.g. naturalization proceedings and have access to rights in the process of their integration. That help is provided mainly through non-governmental organizations through projects of legal aid for refugees and displaced persons, which are on their last legs because the donor funds for them have considerably decreased.

A Regional Technical Group for simplifying the procedure of obtaining documentation, dedicated to solving the problem of obtaining documents in the Dayton Agreement signatory countries has so far held three meetings.³⁴ It is focused primarily on obtaining documents for displaced persons from former Yugoslav republics who reside in Montenegro, so that this person could apply for status regulation in Montenegro. These individuals may apply for documents (passport³⁵, travel document, birth certificate, citizenship certificate, etc.), as well as the registration and subsequent registration into the registry of births and citizenship record books. Along with the possibility of applying in their countries, they may also submit as well as pick up a document in diplomatic-consular missions of these countries in Montenegro.

The Regional Work Group concluded that the simplified procedure for obtaining documents includes not only displaced persons living in Montenegro, but also refugees and displaced persons residing in the Republic of Croatia, Serbia and Bosnia and Herzegovina, so that the results of the regional working groups are related to refugees, displaced persons throughout the region, as well as returnees.

The ad hoc model of obtaining documents from countries of origin, which was applied in Montenegro, have not transmitted to other countries of the Dayton Agreement, in terms of its accessibility and efficiency for refugees and displaced persons. For example, obtaining a birth certificate or citizenship certificate through diplomatic and consular missions of the Republic of Croatia in Serbia costs 27 Euros (price and tax forms for these documents in Croatia is about 4 Euros) and lasts for several months. The non-governmental mechanism for obtaining documents is much more efficient and cheaper than the state mechanism. For example, the Humanitarian Centre for Integration and Tolerance in Novi Sad, which has so far obtained over 29 000 documents for refugees from Croatia in Serbia, and over 8500 for refugees from Bosnia, on average obtains the documents in 15 days, free of charge. When

³⁴ The Regional technical working group is composed of representatives of the Ministry of Internal Affairs of Montenegro, Ministry of the Internal Affairs of Croatia, the Ministry of Internal Affairs of the Republic of Serbia and the Ministry of Civil Affairs of Bosnia and Herzegovina. The meetings were attended by representatives of diplomatic-consular missions of these countries in Montenegro, as well as representatives of the UNHCR offices from these countries. The Delegation of the EU in Podgorica was timely informed about the meetings.

³⁵ Displaced persons from Croatia residing in Montenegro, can apply for a passport, and pick up their passport at the Embassy of the Republic of Croatia in Podgorica and the Consulate General of the Republic of Croatia in Kotor, for a limited period from 15th August, 2011 to 31st December, 2011, while persons from Bosnia and Serbia there are no limitations in terms applying and picking up the passports in the diplomatic-consular missions of their countries in Montenegro.

there are no donations then costs of obtaining documents are almost three times lower than the cost of their acquisition by the state mechanism. Therefore, the agility in regulating questions of civil status and exercising rights still does not depend solely on the interest and initiative of individual persons, but also on the obligation of states to create a simple, affordable, cheap and effective mechanism for obtaining documents from countries of origin.

Recommendations

In order to solve the problem of obtaining documents, the Igman Initiative proposes:

- **Simplification of documentation acquisition procedures and in this regard support to the agreement reached at a meeting of the Regional Technical Group on the simplification of procedures of obtaining documentation, held in Podgorica on 7th September, 2011, thus urging authorities to take all necessary measures to make it more prominent in practice as soon as possible;**
- **to Dayton Agreement countries to further undertake to create simple, affordable, cheap and effective mechanisms for obtaining documents from countries of origin of refugees and displaced persons as soon as possible;**
- **Revision of by-laws, instructions and forms in administrative proceedings and harmonization of the procedures of administrative bodies and legal persons with public authorities, for the purpose of obtaining consistent application of the obligations of obtaining the certificates about the facts on which official records are maintained ex officio;**
- **In accordance with the standards of international humanitarian law, simplification of procedures and facilitation of the conditions of access to rights of refugees and displaced persons, inter alia, by determining the obligation for the minimum most necessary documentation e.g. proof;**
- **Support to the activities of nongovernmental organizations through cross-border initiatives of obtaining documents, which largely compensates for inertia, complexity and inefficiency of the state mechanism of obtaining documents, and requires the activity of modest means in relation to the effects to be achieved.**

II. Property issues

Repossession of property, recognition of the right to property and protection of property of refugees and displaced persons and other citizens with property owned within any of former Yugoslav Republic are part of the process that took many years and still awaits completion. In countries of this region, there are different approaches and practices of ensuring access to property and homes.

1. Balanced regional approach to the solution of property issues

Large obstacle in the process of seeking permanent solution to the problems of refugees, especially their return, was unequal regional approach to certain legal problems of crucial importance, such as repossession of property and tenancy rights, participation in privatization, etc. This was a source of double standards in addressing identical problems and issues within this region. Hence, there are differences in legal status of refugees and displaced persons as well as approach to finding lasting solutions. For example, in some cases refugees were given the opportunity to repossess and purchase their own, once socially owned apartments in the country of origin (Bosnia and Herzegovina). Others were offered with housing programs under restrictive conditions that only a small number of refugees can meet, instead of repossession of their own apartments in the country of origin (Republic of Croatia). Some were given the right to take part in privatization on grounds of past labor (Bosnia and Herzegovina), others were deprived of that option (Republic of Croatia). Refugees from Croatia living in Bosnia and Herzegovina are being evicted from the housing units that they exchanged with refugees from Bosnia and Herzegovina living in Croatia, on the basis of legally valid court's decisions on annulment of contracts on exchange of property in Bosnia and Herzegovina and Republic of Srpska, while in Croatia, institute of recognition of foreign court's decisions is not being enforced. Therefore, refugees from Bosnia and Herzegovina living in Croatia have acquired property in both states, while refugees from Croatia living in Bosnia and Herzegovina have lost their property in both states. Refugees in Croatia were given supremacy in temporary possession over house or apartment against the rightful owner, until alternative accommodation is provided, while in other signatory countries of the Dayton Agreement, owner's rights had supremacy over the rights of temporary occupants, which made the return of refugees to Croatia more difficult and less efficient, etc.

Recommendations

Countries of Dayton Agreement are advised to develop mechanisms for regular exchange of information and agreements for the purpose of setting up balanced regional approach to addressing issues of citizens' property, especially in case of refugees and displaced persons, beginning with acceptance and consistent application of standards, principles, rules and customs of international law focused on protection of citizens' property rights, especially for refugees and displaced persons, as the foundation and most efficient mechanism of conformation of legislation and practice in Dayton Agreement countries.

2. Implementation of the Annex G of the Agreement on Succession Issues

In the process of addressing problems of refugees, displaced persons and other citizens of Dayton Agreement signatory countries, the Agreement on Succession Issues signed by representatives of countries successors to former SFR Yugoslavia on June 29th 2001 in Vienna is of a great importance. Annex G of this Agreement stipulates protection of private

property and vested rights of people and other legal entities of SFR Yugoslavia³⁶.

Annex G stipulates basic principles of succession in regard to private property and vested rights, such as: principle of equality in recognition and protection of vested rights, principle of recognition and protection of rights vested by certain date, principle of natural restitution, principle of the right to compensation if natural restitution is not possible, principle of recognition of standards and norms of international rights, etc. Having in mind that Annex G stipulates only basic principles of succession in issues related to private property and vested rights of citizens and other legal entities, Article 4 of the Annex G obligates countries successors to “take such action as may be required by general principles of law and otherwise appropriate to ensure the effective application of the principles set out in this Annex, such as concluding bilateral agreements and notifying their courts and other competent authorities”. In other words, as it was stated by the Constitutional Court of the Republic of Croatia, “countries successors have the obligation to take all measures that ensure enforcement of those principles, which includes issuing corresponding legal acts and bylaws, concluding international agreements, etc. In doing so, all successor countries are obligated to enforce this Agreement in good faith and in keeping with UN Charter and international law.”³⁷

However, in practice the measures that ensure enforcement of afore mentioned principles set out by the Annex G, such as issuing corresponding legal act and bylaws, concluding bilateral agreements, etc, were not taken, which means that legal and other preconditions for all-inclusive enforcement of provisions stipulated by the Annex G were not yet established. During the previous period, representatives of successor countries were mostly committed to division of diplomatic and consular offices, archives and other government property, etc.

At the meeting of the Permanent joint Committee formed of high representatives of successor countries of former SFR Yugoslavia held in Belgrade on September 17-18th 2009, in regard to implementation of Annex G of the Agreement on Succession Issues, a *Recommendation No. 5* was issued, which recommends Governments of interested successor countries to conclude bilateral agreements³⁸

³⁶ Annex G, paragraph 2, section 1, subsection a) stipulates that the rights to movable and immovable property located in a successor State and to which citizens or other legal persons of the SFRY were entitled on 31 December 1990 shall be recognized, and protected and restored by that State in accordance with established standards and norms of international law and irrespective of the nationality, citizenship, residence or domicile of those persons. Persons unable to realize such rights shall be entitled to compensation in accordance with civil and international legal norms; b) Any purported transfer of rights to movable or immovable property made after 31 December 1990 and concluded under duress or contrary to sub-paragraph (a) of this Article shall be null and void. Article 6 of the Annex G of this Agreement foresees that domestic legislation of each successor State concerning dwelling rights shall be applied equally to persons who were citizens of the SFRY and who had such rights, without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

³⁷ Decision of the Constitutional Court of the Republic of Croatia, U-I-1777/2003, March 17th 2009 (Official Gazette 38/09). Article 8 of the Annex G provides that each successor country shall, on the basis of reciprocity and in keeping with domestic regulation, take all measures necessary to ensure implementation of provisions set out by this Agreement, in order to make them acceptable and efficient in domestic courts, councils and administrative bodies, as well as to ensure that all other successor countries and their citizens shall have access to those courts, councils and administrative bodies for the purpose of application of this Agreement.

³⁸ In keeping with issued recommendation, Ministry of Finances of the Republic of Serbia had made a Draft Agreement between the Republic of Serbia and the Republic of Croatia, about the implementation of Annex G of the Agreement on Succession Issues, which was delivered to the Croatian counterpart on December 31st 2009. Republic of Serbia urged

In regard to measures necessary for efficient application of principles set out by Annex G, stances were not entirely conformed. For example, competent courts and prosecutors in the Republic of Croatia refuse to enforce the Agreement on Succession Issues, including Annex G, with explanation that this Agreement cannot be directly enforced and that issues of repossession of property must be addressed by conclusion of bilateral agreements. Ministry of Finances of the Republic of Serbia have responded to the inquiry of the Center for Regionalism (e-mailed on March 2nd 2012) in regard to possibilities of protection and dispose of property as defined by Annex G of the Agreement on Succession Issues. Among other, the following was indicated in the response: "Procedure for protection of violated right should be initiated by a legal entity or a private individual whose right was violated in any of successor countries by acts of other legal entities or private individuals or by the country itself...Successor countries may take measures, such as conclusion of bilateral agreements, which ensure efficient application of Annex G. However, bilateral agreements are not a replacement for actions initiated by legal entities or private individuals in proceedings for protection of violated rights. To this day, not even one bilateral agreement has been concluded in this respect".³⁹ While Ministry of Finances observes conclusion of bilateral agreements as non- obligatory but possible measures, competent courts in the Republic of Serbia, just like courts in Croatia, observe conclusion of bilateral agreements as a necessary precondition for their actions in cases related with enforcement of Annex G.⁴⁰

Since the last ratification of the Agreement in 2004 until April 2012, eight years have passed without taking measures necessary for efficient implementation of Annex G and its principles which stipulate protection of private property and vested rights of individuals and other legal entities of SFR Yugoslavia by successor countries.

Citizens, especially refugees and displaced persons, as well as legal entities, look upon Annex G as significant for protection of their private property and vested rights. Those hopes were so far betrayed and they suffer the loss of non-fulfillment of successor countries' obligations to take all measures necessary for efficient implementation of Annex G of the Agreement on Succession Issues.

Article 4 of the Agreement on Succession Issues stipulates establishment of a Permanent joint Committee comprised of high representatives of each successor country. Main task of this Committee is to monitor the efficiency of implementation of this Agreement and it represents a forum where issues resulted from implementation of this Agreement can be discussed. If necessary, Committee will be entitled to provide recommendations for Governments of successor countries.

Croatia, on several occasions, to respond, but the answer from Croatia in regard of proposed Draft Agreement never came. Ministry of Finance of the Republic of Serbia, 08 4-00-6/2012, February 6th 2012.

³⁹ Snezana Nedeljkovic, Head of the Department for Property Protection and Recovery Abroad of Maintenance at the Ministry of Finances of the Republic of Serbia

⁴⁰ "Court of first instance rightfully concludes that quoted provisions of this Agreement are not canceling out court's competence in proceedings initiated upon requests for determination of the right to immovable property, but this competence is preconditioned by antecedent proceedings before the government body in a procedure stipulated by bilateral agreements which were concluded between successor countries. For this reason, conclusion of bilateral agreement between the Republic of Serbia and the Republic of Croatia, as well as devising methods for regulation of the fulfillment of rights envisaged by this Agreement, including antecedent implementation of this procedure, are preconditions for court's actions taken upon request of the prosecutor and the accused. (Decision of the Higher Court of Commerce, Pg. 67)

Since the day the Recommendation No. 5 was issued, which recommends the governments of interested successor countries to conclude bilateral agreements, two and a half years have passed without a single bilateral agreement being concluded.

The fact that conclusion of the Agreement on Succession Issues came after several years of hard negotiations, with assistance of and various pressures from the European and International community, as well as the fact that almost a decade had passed without fulfillment of obligations taken up by successor countries in regard of implementation of Annex G, points out to the need for a joint regional conference of representatives of competent government bodies of successor countries, which should be convened together with representatives of the civil society, for the purpose of addressing issues of implementation of the Annex G of Agreement on Succession Issues, with emphasized role and active participation of representatives of European and International community.

Recommendations

Igman Initiative proposes that a joint regional conference should be organized, with participation of representatives from the European and International community, representatives of competent administrative bodies of governments of successor countries, experts in the field of property rights and succession issues, representatives of non-governmental organizations and refugee associations, representatives of legal entities – companies, firms, enterprises, with an aim of identifying measures necessary for efficient implementation of the Annex G of Agreement on Succession Issues.

Successor countries are proposed to immediately initiate bilateral dialog and reach agreement on measures which are necessary in each of those countries for efficient implementation of the Annex G of Agreement on Succession Issues, as soon as possible.

2.1. Settlement of all obligations towards citizens on grounds of old foreign currency savings

Implementation of the Agreement of Succession Issues should include issues of unsettled obligations on grounds of old foreign currency savings, which is a problem that affected large number of citizens.

In keeping with Article 7 (Financial claims and debts) of the Annex G of the Agreement on Succession Issues, guarantees by the SFRY or its NBY of hard currency savings deposited in a commercial bank and any of its branches in any successor State before the date on which it proclaimed independence shall be negotiated without delay taking into account in particular the necessity of protecting the hard currency savings of individuals. This negotiation shall take place under the auspices of The Bank for International Settlements.

In the framework of the Bank for International Settlements based in Basel (BIS), four meetings of representatives from successor countries to former SFR Yugoslavia were held and various views of those countries successors were presented⁴¹

All successor countries decided to keep their earlier expressed attitude. Hence, after a deadlock, negotiations mediated through the Bank for International Settlements in Basel were concluded.

In the absence of agreement, successor countries have differently approached issues of foreign currency savings.

In Bosnia and Herzegovina, issues of old foreign currency savings in banks located in Bosnia and Herzegovina are treated by regulations of Bosnia and Herzegovina. Savings in banks outside of Bosnia and Herzegovina are practically neglected, even twenty years after the break-up of former SFR Yugoslavia which guaranteed cash out of these savings.

Proceedings before the European Court of Human Rights in Strasbourg in Ruza Jelacic's case against Bosnia and Herzegovina initiated in 2002 were concluded by ruling in favor of plaintiff on October 31st 2006. This case had expedited issuance of a new legal framework in Bosnia and Herzegovina which regulates old currency savings with several laws on national level, as well as on the level of entities and Brcko District.

In the Republic of Srpska, return of old currency savings began immediately after passing the new legal framework and there were no court proceedings in dispute of the way that return of old foreign currency savings was treated. In the Federation of Bosnia and Herzegovina and Brcko District, in spite of adopted legislation about the return of old foreign currency savings, this process was considerably stalled. According to the statement of the Federal Ministry of Finance from September 2011, 6,728 claims for old foreign currency savings were settled in entirety to make a total of 24,418 settled claims, which include 17,690 previously settled claims.

Many owners of foreign currency are not satisfied by conditions proscribed by the law in regard to return of old foreign currency savings. Associations of owners of old foreign currency savings often make public statements in this respect and call upon other owners to boycott the verification of claims on these grounds. International organizations in Bosnia and Herzegovina, especially OHR believe that current legal framework provides owners with means of compensation for money and protects public finances, which secures, among other, continuation of providing social services.

⁴¹ Attitudes advocated by representatives of successor countries of former SFR Yugoslavia in Basel:

Representatives of Bosnia and Herzegovina, Croatia and Macedonia maintained position that means for cash out of foreign currency savings in branch offices that operate on the territory of other former Republics, outside of the Republic where parent bank's Head Office is located, should be provided by the parent bank and by the successor country hosting the office of the parent bank (principle of legality);

Representatives of Slovenia and FR Yugoslavia (today Serbia and Montenegro) maintained the territorial principle, i.e. means for cash out of foreign currency savings should be provided by banks and successor countries only for savings deposited at all branches of the bank located on the territory of the former Republic.;

Chairman Mr. Meyer, proposed a half-way compromise between the two opposing positions, i.e. parent banks and country hosting those banks' offices should provide half of the means in the given bank's branch offices outside of the given former Republic, while other half should be provided by the country where those branch offices conducted their business.

Article 1, Paragraph 4 of the Law on Settlement of Obligations Arising from Old Foreign Currency Savings stipulates that the return of debt in respect of foreign currency savings in banks located outside of Bosnia and Herzegovina, in accordance with the Agreement on Succession, shall be obligation of the successor country where those banks' office is located. Bosnia and Herzegovina is obligated to help owners of old foreign currency savings in these banks to fulfill their right through international activities, at least identically to the treatment of owners of old foreign currency savings in banks located on the territory of Bosnia and Herzegovina.

Council of Ministers of Bosnia and Herzegovina adopted the Strategy and Modalities of Settling Debts Arising from Old Foreign Currency Savings in Ljubljanska Bank, Invest Bank Belgrade and other non-domicile banks on July 16th 2009. Adoption of this strategy is an expression of readiness of Bosnia and Herzegovina to actively participate in the protection of interests of its owners of foreign currency savings in bilateral and multilateral sphere.

Republic of Croatia had settled claims of citizens of Bosnia and Herzegovina with Splitska Bank: 109 million of the principal amount and 47 million of the interest amount, which means that obligations were settled in entirety.

In Montenegro, in keeping with the Act on Foreign Currency Savings Deposited with Authorized Banks Based Outside of Montenegro⁴², citizens' claims are being settled on condition that they had held residence in Montenegro on the day this Act was put in force, if they were deprived of disbursement in keeping with laws of the country where given banks are located.

Means for disbursement of foreign savings will be provided by Montenegro. For foreign currency savings disbursement in keeping with this Act, Montenegro reserves the right to claim in regard to foreign currency savings in successor countries of SFR Yugoslavia, FR Yugoslavia and Union of States of Serbia and Montenegro, unless decided otherwise in the process of succession.

In **Republic of Croatia**, in keeping with the *Act on Converting Households' Foreign Exchange Deposits into the Public Debt of the Republic of Croatia*⁴³, citizens with foreign currency savings deposited at the organizational units of banks located outside of the Republic of Croatia were able to transfer their savings by July 6th 1992 to banks located in the Republic of Croatia (Article 14 of the Act) and thus enjoy equal rights and guarantees like citizens with old currency savings in banks located in the Republic of Croatia. This Act had authorized the Minister of Finance of Republic of Croatia to determine conditions and ways that these citizens, who failed to transfer their foreign currency savings by July 6th 1992 from organizational units of banks located outside of Republic of Croatia to the banks located in the Republic of Croatia, can use to conduct subsequent transfer of their savings to a bank in the Republic of Croatia. In regard to owners of old foreign currency savings whose deposits were not converted into the public debt of the Republic of Croatia, Agreement on Succession

⁴² Official Gazette of the Republic of Montenegro 81/06, December 29th 2006 and 20/09, March 17th 2009

⁴³ Official Gazette 58/93

In November 1993, Act on Converting Households' Foreign Exchange Deposits into the Public Debt of the Republic of Croatia was adopted, which entirely corresponds to the contents of the Regulation (Official Gazette 106/93).

Issues stipulates that successor countries will take all measures necessary to settle their claims as soon as possible.

In the **Republic of Serbia**, settlement of claims on old foreign currency savings is conducted in keeping with the Law on Regulation of Public Debt of Federal Republic of Yugoslavia arising from Citizens' Foreign Exchange Savings, issued on July 4th 2002⁴⁴

Article 21 of the Law stipulates that citizens of former Republics of SFR Yugoslavia outside of Federal Republic of Yugoslavia, who had deposited old foreign currency savings with authorized banks located on the territory of Federal Republic of Yugoslavia, as well as citizens of FR Yugoslavia who had deposited such savings with banks' branch offices on the territory of former Republics of SFR Yugoslavia until the day of separation of those Republics – can settle their claims in respect of their foreign currency savings in a way arranged by agreements with successor countries of SFR Yugoslavia. Citizens temporarily employed abroad and foreign private individuals who had deposited their foreign currency savings with banks in FR Yugoslavia are entitled to disbursement in keeping with this Law. Means for disbursement of foreign currency savings will be provided by the Republic of Serbia and by the Republic of Montenegro, in accordance with location of banks' offices keeping those savings.

The European Court of Human Rights has received claims against all successor countries of SFR Yugoslavia - parties to the European Convention on Human Rights, regarding inability to disburse old foreign currency savings. In court's decision in the case Kovacic and others against Slovenia (*Claims 44574/98, 45133/98 and 48316/99*) brought on October 3rd 2008, the European Court of Human Rights "observes at the outset that it has received applications against all of the SFRY successor States Parties to the Convention from applicants who have been affected by these matters. Several thousand such applications are currently pending. Even though such issues fall within the Court's jurisdiction as defined in Article 32 of the Convention, the Court can only subscribe to the view of the Parliamentary Assembly in Resolution 1410 (2004) that the matter of compensation for so many thousands of individuals must be solved by agreement between the successor States... The Court calls on the States concerned to proceed with these negotiations as a matter of urgency, with a view to reaching an early resolution of the problem."⁴⁵

⁴⁴ Law was published in Official Gazette of Federal Republic of Yugoslavia 36/02, 80/04 and 101/05

⁴⁵ During the Parliamentary sitting of the Council of Europe, issues of old foreign currency savings in countries of former SFR Yugoslavia were addressed and *Resolution* was adopted 1410 (2004):

„1. The Parliamentary Assembly is seized of the question of the non-repayment by the Ljubljanska Banka (LB) in Ljubljana, Slovenia, of the foreign exchange deposited with the branches of the LB in Zagreb, Sarajevo and Skopje over a period of more than ten years, between 1977 and 1991, before the dissolution of the Socialist Federal Republic of Yugoslavia (SFRY).

2. The depositors from Bosnia and Herzegovina, Croatia and "the former Yugoslav Republic of Macedonia", as successor states of Yugoslavia, claim that Slovenia is liable to repay these deposits because the head office of LB is, and was, located in Slovenia. The smaller and larger claims by some hundreds of thousands of depositors total several hundred million German marks, including a very high percentage of accumulated interest.

3. The Assembly is of the opinion that it is unfair to keep the depositors waiting until the legal, economic and political questions have been solved between the successor states which have guaranteed these deposits.

4. The Assembly welcomes the fact that certain groups of savers have received at least partial compensation from their governments: those who deposited their savings in LB offices in Slovenia or in "the former Yugoslav Republic of Macedonia" and those who accepted the Croatian Government's limited offer to transform the savings into Croatian national debt. It considers that similar solutions should be offered to all those whose savings were lost in the collapse of the banking system in the SFRY.

Recommendations

Irreconcilable attitudes of successor countries are harmful for the owners of old foreign currency savings who had entrusted their money in good faith to the banks of former SFR Yugoslavia. All countries are invited to build a joint foundation for addressing issues of non-domiciled foreign currency savings, and to organize a meeting of Ministers of Finances from respective government ministries of countries successors of former SFR Yugoslavia.

Successor countries should, following the example of Montenegro and Republic of Croatia, address issues of their citizens' foreign currency savings, regardless of the final outcome of dispute in regard to location of parent banks with obligations in foreign currency savings.

Foreign currency savings and methods of approach to these issues should not be bound to other issues of succession.

III. Issues of return of property, reconstruction and damage compensation

In countries of Dayton Agreement where armed conflicts directly took place (Bosnia and Herzegovina, Croatia) issues of return of property, reconstruction and damage compensation are especially emphasized.

5. The Assembly does not consider it to be its task to take sides in the legal dispute between Slovenia and some of the savers who deposited their savings in Ljubljanska Banka offices located in other former Yugoslav republics, a dispute which has been brought before the European Court of Human Rights by a group of depositors in Croatia.

6. The Assembly therefore considers that it is primarily for the Court, and not the Assembly, to decide on the expediency of invoking, in the cases in question, the principle of protection against expropriation guaranteed by the European Convention on Human Rights, if the Court regards such claims to be admissible.

7. However, notwithstanding the decision of the Court to declare two individual applications from Croatian depositors admissible, the Assembly considers that the matter of compensation for so many thousands of individuals would best be solved politically, between the successor states, instead of an already overburdened Court. The Assembly therefore:

i. appeals to the successor countries of the SFRY to address without further delay the plight of the depositors of hard-currency savings in former Yugoslav banks, many of whom lost access to their modest life savings in the collapse of the banking system of the SFRY;

ii. proposes that the four countries concerned set up a collective fund under the auspices of the Council of Europe in order to compensate the depositors for the capital of their original foreign-currency savings, possibly with some compensation for inflation, in order to help the savers, who have been deprived of access to their life savings for more than ten years. The fund should be financed by all four governments concerned, in principle proportionately to foreign-exchange deposits made on the territory of each of the countries. In negotiating the precise burden-sharing arrangement between the successor countries of the SFRY, due account should be taken of the following factors, in so far as they can be properly established:

a. actual hard-currency transfers made to the Ljubljana office of Ljubljanska Banka of savings deposited in offices located in other republics and use of such funds for the economic development of Slovenia;

b. the possibility offered, or not, to Ljubljanska Banka to pursue its banking activities in the other republics after the breakdown of the SFRY, thus making it possible for the LB to recover debts owed by clients for loans granted;

c. the fact that compensation has already been given to depositors by some states and that the claims of these depositors have been taken over by those states;

iii. invites the European Union to examine the possibility of making a contribution to the collective fund;

iv. instructs its Committee on Economic Affairs and Development to study the arrangements for setting up the above-mentioned collective fund."

Bosnia and Herzegovina

Return of private property and tenancy rights

Dayton Agreement observes *return of private property and tenancy rights* as one of the main preconditions for realization of the right to return of displaced persons and refugees. Therefore, obligation of each side to prioritize the return of property to prewar owners was very clearly proscribed and it has no alternative. However, it soon became clear that this was a task too big for national governments, i.e. there was no sufficient internal political will to complete the task. Hence, international community had to take up the leading role through the High Representative for Bosnia and Herzegovina, in the sphere of rule of law and issuance of laws that regulate restitution and return.

High Representative for Bosnia and Herzegovina was forced, after numerous obstructions from the governments of entities and after difficult negotiations, to issue a package of regulations in 1998 in order to initiate the process of establishing legal mechanisms for house and property restitution in Bosnia and Herzegovina. All administrative, juridical and other enactments which canceled tenancy rights of holders of tenancy rights were annulled. Prewar holders of tenancy rights were granted the opportunity to enter in possession of their apartments and buy them off under favorable conditions. Principle of supremacy of owners' rights over the rights of temporary occupants was accepted, for the purpose of expedited vacating of temporary occupied apartments. Therefore, best results in regard to return of property rights were accomplished in Bosnia and Herzegovina, having in mind that more than 99% of property was returned to its legal owners, regardless of their location in Bosnia and Herzegovina or country where they found refuge.

However, there were instances of unbalanced approach and discrimination in this process. In ECRI's report on Bosnia and Herzegovina on June 25th 2004, the following was stated: „Roma are reported to have experienced serious difficulties and discrimination in exercising property rights and, therefore, their right to return to their pre-war homes. It has been reported to ECRI that, since many Roma lived in social housing before the war, this group of persons has been particularly negatively affected by the fact that property laws passed after the war do not recognise in principle social housing as a form of tenure to which one might claim repossession rights. Furthermore, many of the Roma who used to live in informal settlements before the war have been unable to return there, as such settlements had been destroyed and no alternative provision of accommodation has been made. Those Roma who could claim repossession of personal property are also reported to have experienced serious difficulties and, often, discrimination by the authorities and by other citizens. There are reports, for instance, that local authorities have often obstructed Roma repossession claims on grounds that temporary occupants of their property had nowhere to go...ECRI therefore considers that there is an urgent need for the authorities of Bosnia and Herzegovina at all levels to become aware that the situation of disadvantage of the Roma population can only be adequately addressed if general measures are coupled with the adoption of positive measures specifically targeted at this part of the population.“

The only issue where right to the return of immovable property was disputed was the *issue of the so called "army's apartments"* i.e. apartments from the fund of former Yugoslav National Army (JNA). Issue of army's apartments was approached differently in entities of

Bosnia and Herzegovina. Republic of Srpska has returned the apartments to former officers of JNA, without regard on their relocation to Slovenia, Croatia, Serbia, Macedonia, Montenegro or Federation of Bosnia and Herzegovina. In Federation of Bosnia and Herzegovina, legislation in regard to this area was transformed from complete negation of the right to return, gradual mitigation of conditions and expansion of the circle of people entitled to the return of "army's apartments", all the way to complete stalling, even regression, where amendment of laws brought owners of these apartments into a less favorable position then before the new laws. Having in mind that changes of legislation mostly came from interventions of the High Representative of United Nations in Bosnia and Herzegovina who had the right to pass decrees on amendment of laws, it may be concluded that progress in the process of addressing issues of the return of "army's apartments" in Federation of Bosnia and Herzegovina was terminated when High Representative lost interest in this sphere. Such conditions lasted all until May 4th 2012 when European Court of Human Rights in Strasbourg made a decision in the case *Branimir Djokic* against Bosnia and Herzegovina (*Application* 6518/04). According to regulations of Federation of Bosnia and Herzegovina, appellant in this case did not fulfill conditions for return of property, in spite of the fact that he bought the apartment, because he was a member of armed forces of Bosnia and Herzegovina (Army of FR Yugoslavia) after the war. Court in Strasbourg had identified a violation of the right to peaceful enjoyment of property and obligated Bosnia and Herzegovina to compensate him in amount corresponding to the apartment's market value (60,000 EUR). This judgment has shown that federal legislation in this sphere is not in keeping with Annex 7 of the Dayton Agreement. Crucial provision of the first paragraph of this Annex reads: "All refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them."

It can be expected that after this judgment, even in spite of opposition and announcement of non-enforcement of this judgment by political structures in Federation of Bosnia and Herzegovina, a fair solution to the only unsolved issue in the field of return of property rights in Bosnia and Herzegovina will be found. After ECHR's judgment in the case *Djokic* against Bosnia and Herzegovina brought on May 27th 2010 till today there was no progress in regard to return of "army's apartments" within the legislative framework of the Federation of Bosnia and Herzegovina. Besides that, proceedings in addressing citizens' cases in regard of army's apartments before the courts in Bosnia and Herzegovina have been stalled for many years.⁴⁶

In Bosnia and Herzegovina, *tenancy rights* are treated as property rights and therefore those rights were returned within the regime of return of property. Because of results achieved in the field of return of tenancy rights, Bosnia and Herzegovina can serve as an example to those countries where tenancy rights were canceled during the break-up of SFR Yugoslavia. However, statistically speaking, a small number of cases still remains unsolved because of certain specificities connected with Bosnia and Herzegovina (in most cases in regard to apartments used by active army officers).

⁴⁶ For example, citizen DJ.V., who was a civilian, not an active officer of the Yugoslav National Army (JNA) appealed to the Supreme Court of the Federation of Bosnia and Herzegovina in 2005 to dispute the judgment of the Cantonal Court in Bihac. Seven years have passed without decision of the Supreme Court of Federation of Bosnia and Herzegovina in this case.

In keeping with section II of the Annex 7 of the Agreement on Refugees and Displaced Persons, which is a part of the Peace Agreement in Bosnia and Herzegovina, Commission for Real Property Claims of Displaced Persons and Refugees (CRPC) was established, as an independent body in charge of property requests of displaced persons, including requests for the return of tenancy rights. CRPC's decisions were final and every transfer, legitimation, mortgage or any other legal document issued or granted by this Commission was legally recognized throughout Bosnia and Herzegovina. Commission enforced their own regulations and no other regulation or individual decision of any level of government was binding to them. Individual decisions in regard of return of real estate property became final and binding immediately on the day of passing those decisions. Reconsideration of decisions was possible, but only CRPC could reconsider their own decisions. CRPC, which was established through Annex 7 had fulfilled its purpose and secured the return of ownership over real estate property and tenancy rights.

This institution was not envisaged by the Constitution of Bosnia and Herzegovina, nor were these affairs a part of government's mandates. That is why this institution had a very limited validity period (five years)⁴⁷. Problems are expected after the transfer of responsibilities for finances and operations of the Committee to the Council of Ministers of Bosnia and Herzegovina, i.e. transfer of responsibilities to the national Commission for Real Property Claims of Displaced Persons and Refugees, in keeping with the special agreement made by signatories to the Annex 7.

All concluded cases of (international) CRPC were delivered to the Archives of Bosnia and Herzegovina, while ongoing cases were transferred to the competent bodies at lower levels of government. However, other objections were presented to the Commission in keeping with the Rulebook on Conditions and Proceedings in Making Decisions on Real Property Claims from Displaced Persons and Refugees. This relates only to objections submitted within the proscribed time frame, which were not addressed before the cessation of CRPC's operation.

Commission for Human Rights at the Constitutional Court of Bosnia and Herzegovina has concluded that "CRPC system established by Annex 7 ceased to exist at the moment of transfer of authorities to the national institutions. Judicial control of decisions made by "domestic" CRPC was requested, as well as that all decisions must be brought in keeping with regulations of Bosnia and Herzegovina. Amendment of the Law on Administrative Disputes provided the opportunity of appealing to the Court of Bosnia and Herzegovina against Commission's decisions, but regulations on the level of State were not issued, having in mind that the State does not hold competence in regard to these issues.

Omission of timely consideration of all relevant facts created a kind of a paradox. According to the Annex 7, these decisions are not subject to the control of any domestic institution. Domestic CRPC was established only for the purpose of addressing these objections, not as a body of administration or a court. Being a domestic institution implied prohibition of hybrid character. Introduction of administrative proceedings in dispute related to objections against the decisions actually implied juridical control of enactments of the "international" CRPC, but because of the fact that Commission ceased to exist, respondent side also disappeared.

⁴⁷ Issues of return of property, tenancy rights, issues of compensation of damage, etc have been regulated by entities' legislation, as it is the case today as well. Administrative bodies and courts in entities are competent in these matters.

Consequence of this paradox is that due objections to the decisions of the Commission for Real Property Claims of Refugees and Displaced Persons were not addressed to this day (over 700 related documents in regard to return of tenancy rights, most of which related to army's apartments).

Recommendations

Federation of Bosnia and Herzegovina is advised to set up a constitutional and legal framework that enables progress in regard to return of "army's apartments". Competent courts of Bosnia and Herzegovina are advised to urgently process cases related to immovable property, including those related to army's apartments, and thus make a contribution to the timely completion of proceedings in regard to return of property, as well as to the elevation of the level of legal security.

Council of Ministers in Bosnia and Herzegovina is advised to take measures and conduct activities in cooperation with the Parliamentary Assembly of Bosnia and Herzegovina for the purpose of addressing remaining due unresolved objections to the decisions of "international" CRPC.

Reconstruction

In Bosnia and Herzegovina, out of around 1,1 million housing units registered during the last census in 1991, in the period between 1992 and 1995 around 453,000 (42%) were destroyed or damaged. Destruction of the housing fund continued even after the conclusion of Dayton Peace Agreement. After 1995, almost 14,000 additional housing units were devastated, of which majority (over 80%) on the territory of Federation of Bosnia and Herzegovina.⁴⁸ Concluding with 2011, 325,000 housing units were reconstructed. According to information provided by competent services, 125,000 have not yet been reconstructed (30%). Because of destroyed infrastructure, around 2500 families living in returnee settlements are now deprived of electric energy. During the eight years of implementation of the Strategy for Implementation of Annex 7 of the Dayton Peace Agreement (2003-2011), around 9,000,000 KM were invested, of which nickel short of 25% came from foreign donors. It has been estimated that nearly two thirds, i.e. 200,000 housing units were reconstructed by various kinds of international and domestic donations, while remaining third, mostly less damaged buildings, were reconstructed by private finances of owners and holders of tenancy rights.⁴⁹ According to indicators determined by number of submitted requests for the return since early 2008, at least 45,000 require urgent reconstruction. Total value of these operations is estimated to around 300 million EUR. Around 450 apartment buildings with around 2,500 apartments (around 1% of total housing fund in 1991) also need to be reconstructed.

⁴⁸ REVISED STRATEGY OF BOSNIA AND HERZEGOVINA for implementation of Annex VII of the Dayton Peace Agreement, Sarajevo, October/November 2008

⁴⁹ Evident efforts in realization of return, especially assistance in reconstruction of houses, apartments and infrastructure has resulted with a growing trend of returns of refugees and displaced persons. Since 2003, number of returns to Bosnia and Herzegovina drops below 6000 registered returnee, but in the last three years (2008 -2011) number of returnees has grown to over 20,000 (Brochure of the Ministry for Human Rights and Refugees – Returns in 2011)

Revised strategy for implementation of the Annex 7 of the Dayton Peace Agreement envisages addressing issues of more than 105,000 displaced persons living in inhumane conditions. Long term solutions must be found for around 2700 families, i.e. 8,000 persons who currently reside in collective centers. Together with UNHCR, a project for definitive shut down of collective centers was devised, and for this purpose, a loan in amount of 40,000.000 will be requested from the European Development Bank.⁵⁰

In Bosnia and Herzegovina, unlike the situation in Croatia, there is no general legal framework that provides settlement for refugees and displaced persons whose housing property was destroyed or damaged in Bosnia and Herzegovina, which would provide guarantees for a fair and balanced realization of the right to reconstruction. Partial and non-synchronized reconstruction increased expenses of sustainable return per returnee family. Switching to the “project approach” in realization of the process of return should reduce those expenses, increasing a number of users that can be covered by resources at disposal. Significant number of reconstructed housing objects is not in use or is used only temporarily, due to the fact that all other necessary conditions for sustainable return, like infrastructure and employment opportunities, had not been created simultaneously.⁵¹

Recommendations

In Bosnia and Herzegovina, reconstruction of housing units, in accordance with proscribed minimum of housing conditions for all those who fulfill the criteria for receiving assistance in reconstruction, must be insisted upon, along with prioritizing cases of most vulnerable persons. This is to be done, among other ways, by increased budgetary reservations at all levels of government, having in mind that relying on domestic funds had produced most realistic and most significant results in the process of return.

Beside domestic funds, final completion of the process of reconstruction could be financially secured by serviceable loans and donor's funds. Regional Donor Conference which is going to take place in April 2012 in Sarajevo is a chance for all countries of this region engulfed by war and conflicts to complete the project of reconstruction and sustainable return.

Governments are advised to provide assistance in reconstruction of destroyed or damaged housing to refugees and internally displaced persons of Roma nationality in Bosnia and Herzegovina without discrimination.

⁵⁰ Data provided by the Ministry for Human Rights and Refugees in Bosnia and Herzegovina

⁵¹ In regard of approach to reconstruction in non-discriminatory way, ECRI reports on Bosnia and Herzegovina on December 7th 2010 (fourth monitoring cycle): “In some cases, Roma could not obtain assistance in reconstruction because their prewar property was not registered in many cases, and therefore there were no proofs of ownership over property, in spite of reports that persons with similar issues who are not Roma were treated better. Additional problems for many Roma people who lived in informal settlements or social housing is the impossibility of restitution for this type of property. Advisory Board for the Framework Convention on Protection of National Minorities had analyzed these reports on slower reconstruction of devastated property of Roma people, in comparison with other population groups, as well as lack of government's reaction to the requests for the return or rehabilitation of housing property of Roma people. Roma representatives are reporting that all these reasons are the reason why such a small number of Roma people who had fled their homes during the war managed to return to their homes.” Therefore, ECRI “encourages authorities to provide assistance in reconstruction without discrimination, not only on paper but in practice as well, in order to guarantee that Roma people will not be deprived of possibility to willfully return to their prewar homes because of arbitrary decisions of local authorities.”

Compensation of damage

Beside the right to free return and return of property, Annex 7 of the Dayton Peace Agreement guarantees the *right of all refugees and displaced persons to compensation for nonreturnable property*. At the same time, mechanism of realization of the right to compensation is envisaged. Large number of refugees and displaced persons has submitted requests for compensation to the Commission for Displaced Persons and Refugees, while others have initiated litigation proceedings before courts for the same purpose. To this day, compensation remains unavailable in practice. Even fifteen years after Dayton Peace Agreement, there is resistance against introduction of formal compensatory mechanisms in Bosnia and Herzegovina. There are numerous and various reasons to this, including large expenses and burdens that any type of compensation scheme may cause on country's budget. OHR's explanation on purpose of this institution from the Annex 7 of the Dayton Peace Agreement is generally accepted, i.e. this relates only to compensation for housing units or homes. Therefore, compensation does not represent an attempt to receive an all-inclusive compensation for all losses suffered during the war. In other words, compensation presented by the Annex 7 at this moment represents a way of helping people who cannot return in finding more lasting solutions by providing access to the right to have a home. Therefore, amount of compensation should be limited to the sum that is adequate for securing minimal housing conditions in keeping with current regulations.

Recommendations

Competent government bodies in Bosnia and Herzegovina are advised to establish a legal framework, on the basis of previously conducted research and analysis of actual state of affairs in regard to this issue, which will provide for adequate compensation or financial compensation in the amount that secures fulfillment of the right to accommodation for displaced persons and refugees, also as a means to solve accommodation needs for specific social categories, like traumatized persons, disabled persons, socially vulnerable categories of population dependent on other people's care and assistance as well as persons who are unable to return to their residences because of objective reasons and who hadn't solved their own housing problems in any other way.

Property issues caused by establishment of new state borders

The most striking problem of using property after the war in Bosnia and Herzegovina was the problem of real estate property across the river Drina, in Janja near Bjeljina. Namely, hydroelectric power plant Zvornik made river Drina change its course in Janje area. New course in this area enters the territory of Bosnia and Herzegovina up to two kilometers. On the opposite bank of Drina river, there is around 4,500 *dulum* (1000m²=dulum) of territory that used to be within the state borders of Bosnia and Herzegovina, which is for the most part economic and arable property of Janje citizens. There used to be a ferry crossing point to the other side of the river and citizens of Janje could easily access their land.

Ferry was destroyed when war began and access to property was blocked. On the other side of Drina, army and police of the Republic of Serbia held their positions. After the signing of Dayton Peace Accord, significant number of refugees and displaced persons returned to Janje area (over 7,000 Bosniac returnees), but the minority on the other side of Drina were not able to access their property by simply crossing the river. They were practically forced to go via border crossing located 40km away. There were cases when property owners were arrested during access to their property. Earlier reports documented mass devastation of property, illegal exploitation of gravel that caused additional damage to Bosniac lands on the other side of Drina.

In November 2011, after the Izetbegovic-Tadic talks in Sarajevo (July 6th 2011), small-border crossing and a ferry line were established in this area of the river Drina, which was a positive solution for the concrete problem of Janje citizens, without effect on other territorial or border issues. It was a positive example of addressing citizens' issues, like the issue of property located on other side of the Drina in Janje area, which proved that some issues can be addressed partially i.e. without tackling overall relations between the two countries in regard of state border with the Republic of Serbia.

Recommendation

Neighboring countries should everyday address issues of use and ownership of property located near the border or on both sides of the border and those issues must be addressed to the benefit of the citizens' daily life and free movement of people and goods in border areas.

Republic of Croatia

Return of private property and addressing issues of deprived tenancy rights

Establishment of mechanisms for *housing and property restitution* in the Republic of Croatia was conducted in a way very different than it was conducted in Bosnia and Herzegovina, in respect of dynamics, its creators, as well as in respect of shortcomings in regard to the criteria of fairness and all-inclusiveness. Process of establishing mechanisms of restitution was very slow, with considerably large obstacles, and to this day it was not completed in a way that helped people to find lasting solutions, regardless of their intention to return or not. In Bosnia and Herzegovina, international community had the leading role in creation and implementation of mechanisms of housing and property restitution, above all through the Office of the High Representative. In Croatia, main creators of mechanisms of housing and property restitution and its implementation were government institutions. Role of international community was limited to monitoring and occasional pressures to expedite the process and make it more efficient. It resulted with observable differences in possibilities of access of refugees and displaced persons to their property rights between Bosnia and Herzegovina and Croatia.

Sustainable return of refugees to the Republic of Croatia or rather integration in countries of refuge greatly depends on possibilities of access to their property and other vested rights.

Unlike the situation in Bosnia and Herzegovina, principle of individual and unconditional return and entering into possession in the Republic of Croatia was not accepted. Therefore, *principle of supremacy of the right of temporary users over owner's rights* was applied. In case of owner's return to Croatia, repossession of property was not possible before alternative accommodation of temporary occupants was secured. This principle was successfully disputed before the European Court of Human Rights (ECHR), when decision was made in the CASE OF RADANOVIĆ v. CROATIA (*Application no. 9056/02*) that Croatia had violated the European Convention on Human Rights by unreasonably long proceedings (Article 6), by placing excessive burden on individual social group, as well as by failing to establish a fair balance between the growing social need for housing and individual's housing needs (Article 1 of the Protocol ECHR). As a result, appellant had to endure an excessive individual financial burden; she was forced to entirely cover expenses of providing temporary occupant with new accommodation, which should have been covered by the State. This burden had to be endured for more than six years. Therefore, interference in her right to ownership cannot be deemed proportionally adequate to the legitimacy of the intended goal Article 1 of the Protocol 1 was violated.

According to the data provided by Croatian authorities, there were 19,280 cases of granting privately owned housing units upon decisions made by government bodies to other people for temporary occupancy. Percentage of still unsettled claims for the return of housing property is statistically insignificant. These statistics do not include cases of arbitrary occupation of housing units without government's decision, where claims for repossession are still being subject of court proceedings, neither those cases when proceedings in regard of such claims have not been initiated yet.

In spite of the Article 2 of the Annex G of the Agreement on Succession which stipulates that right to movable property held by citizens on December 31st 1990 will be recognized, protected and acted upon in order to be returned to the original condition by the country in question, in this particular case of the Republic of Croatia, this is merely a declarative obligation conformed with standards and norms of international law but never implemented in practice in protection of movable property owned by Serb refugees from the Republic of Croatia. Legal obligation of Government's housing commissions was to make a report on condition of property before granting to other occupants for use and possession. Persons who received such property for possession and use are obligated to manage such property in good spirit. According to this Law, ownership of this property cannot be acquired by occupancy. Persons owning and using this property in conflict with provisions set out by this Law will be deprived of this property upon the Commission's decision. It is not known if there was any case of terminated possession due to afore mentioned reasons. In most cases, property of Serb refugees was treated as something up for grabs.

Addressing issues of deprived tenancy rights is of extreme and unavoidable importance for the return of urban population of Serb refugees and expatriated Serbs to Croatia, as well as for prospects of their integration in countries where they found refuge. Around 100,000 persons were affected by cancelation of tenancy rights.

On the territory of Croatia which was governed legally and factually by the Republic of Croatia during armed conflicts, majority of refugees have lost their tenancy rights by *in absentia* court proceedings, in keeping with Article 99 of the then enforced Law that

regulated housing relations for apartments not used for more than six months. Majority of those proceedings did not meet the criteria of “fair proceeding” stipulated by the Article 6 of the European Convention on Human Rights. In most cases, proceedings were conducted in absence of the respondents who were then assigned with temporary legal representatives without proper background in law. In some cases, temporary representatives have not even filed complaints on behalf of their defendants for unfavorable judgments, etc. According to the data provided by the Ministry of Justice of the Republic of Croatia, 23,700 families have lost tenancy rights in proceedings of this kind on the territory of Croatia which was governed legally and factually by the Republic of Croatia⁵²

The revocation of occupancy rights in the form of collective complaints was the subject of decision making process conducted by the European Committee of Social Rights as well - a body that decides on violations of rights stipulated by the European Social Charter. In the case Centre for Housing Rights and Evictions (COHRE) against Croatia (complaint no. 52/2008)⁵³ the European Committee for Social Rights brought the Resolution on the merits of 22nd June, 2010. The request COHRE made can be summarized as follows: COHRE requests the Committee to find Croatia in violation of Article 16 of the Charter alone or as interpreted in light of the non-discrimination clause of the Preamble to the Charter, on the basis that the lack of an effective remedy for the loss of special occupancy rights by ethnic Serbs and other minorities constitutes a continuing violation of housing rights and therefore of the right of families to enjoy social, legal and economic protection. In particular, COHRE claims that the failure to provide adequate restitution or compensation to ethnic Serbs who were arbitrarily expelled from their homes during the period of the conflict in the former Yugoslavia constitutes an on-going denial of the right of families to enjoy protection of their housing rights free from discrimination, and that by virtue of the principle of restorative justice,

⁵² In the report made by *Tadeusz Mazowiecki*, UN Special Rapporteur, on conditions in the sphere of human rights on the territory of former SFR Yugoslavia, made on November 17th 1993 and delivered to the General Assembly of UN, among other following was stated: „Many of the evictions have been carried out by the military police without prior legal proceedings. In some instances violence was employed. Furthermore, the Housing Commission of the Ministry of Defence (hereafter referred to as the "Housing Commission") has often refused to address individual complaints.“ Further in the same report, it was stated: „It also appears that rulings by courts for the reinstatement of tenants have not been observed by the military police.“ At the end of the report, it was said: “Apart from illegal evictions, the Special Rapporteur is also concerned with aspects of housing legislation which have adversely affected the rights of tenants, often on a discriminatory basis.“ On three occasions, UN Special Rapporteur had addressed the vice-President and Minister of Foreign Affairs, Mate Granic about this, reminding him of Croatia's obligations to take efficient measures for prevention and termination of illegal evictions that seriously violates human rights. In his report that was delivered to the UN Committee for Human Rights on February 21st 1994, Special Rapporteur reports that has continued to receive verified information about violent evictions kept coming and he reiterated that “court orders for the reinstatement of tenants continue to be disregarded and frequently, the evicted tenants also lose their personal belongings in the apartment.”

In their decision on the case of *Vojnovic vs Croatia* issued on March 30th 2009, UN Committee for Human Rights have concluded that cancellation of tenancy rights on the basis of Croatian law represents arbitrary interference of one's right to accommodation which is a violation of the Article 17 of International Covenant on Civil and Political Rights (ICCPR). Cancellation of tenancy rights will be deemed arbitrary because it was conducted in an unfair and discriminatory manner. While pointing out to the violation of Article 17, Committee believes that interference in one's apartment must be legal, not arbitrary or illegal. Having in mind that cancellation of tenancy rights was conducted in keeping with Croatian law, the question was raised whether such cancellation was arbitrary. „The Committee considers that the concept of arbitrariness in article 17, of the ICCPR is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the ICCPR and should be, in any event, reasonable in the particular circumstances.“ Due to the threats and intimidations suffered by Dusan Vojnovic and his family because of their affiliation with Serbian ethnic minority, having in mind armed conflicts in and around Croatia during the period in question, Committee is of opinion that their departure from Croatia “was caused by duress and related to discrimination.”. Committee had concluded that in such circumstances cancellation of tenancy rights is arbitrary and in violation of Article 17 of ICCPR.

⁵³ The Croatian translation of the Decision is made available on the website of the Ministry of Justice of the Republic of Croatia. COHRE is an international non-governmental organization with consultative status with the Council of Europe.

persons subject to this alleged denial of rights should benefit from appropriate restitutionary measures.

The Committee did not evaluate the manner in which the deprivation of occupancy rights happened having in mind that it happened prior to the European Social Charter coming in force in Croatia, therefore, these matters were beyond their authority at that point in time. Therefore, the Committee considers that Article 16 of the Charter imposes obligations upon the Government of Croatia in respect of those families who have expressed their clear wish to return to Croatia, or those for whom the lack of an effective and meaningful offer of housing and other forms of economic, legal or social protection has constituted an obstacle to return. In contrast, families who choose not to return to Croatia fall outside the material scope of application of Article 16, as the responsibility of the Government of Croatia to provide economic, legal and social protection cannot be considered to be engaged in respect of families who choose to reside permanently in another jurisdiction. The Committee considers that Article 16 must be interpreted in the light of relevant international treaties that serve as inspiration, and *notes that no element of this Decision should be interpreted as limiting the scope of obligations under other international instruments to which the Government of Croatia may be subject.*

For those reasons, the Board finds, by 9 votes to 5 the following is beyond the scope of the Article 16: the persons who do not wish to return to Croatia as well as the issue of restoration to previous condition or compensation for the loss of a building or occupancy rights. The Committee has unanimously concluded that there was no violation of Article 16 in light of non-discrimination clause in the Preamble on the basis of failure to implement the program of housing within reasonable time, as well as due to the fact that the increased vulnerability of many displaced families, particularly ethnic Serbian families was not taken into account.

The International Criminal Tribunal for the Former Yugoslavia in The Hague in its first instance against the Croatian generals⁵⁴ qualified this as an act of persecution the restrictive and discriminatory measures against the residential units and properties of the Serbs in Krajina contained in legal instruments obtained after the "Storm". Those measures were aimed at preventing the massive return of refugees and displaced Serbs in Croatia, on one hand, as well as stimulating and fostering the colonization of Croats on the territory of the Republic of Croatia which was under the administration and protection of UN in the period from 1991-1995, on the other. Accordingly, special regulations were brought which, among other things, by force of law revoked the occupancy right of the refugees in the Republic of Croatia which was under UN protection in the period from 1991- 1995, and the property owners had significantly restricted rights of ownership. With these regulations the owners of residential units (houses or flats) were temporarily unable to own them, and therefore, to reside in them.

The Law on Lease of Apartments in Liberated Areas (Official Gazette 73/95) after the military operation "Storm" and the establishment of the Croatian authorities on the territory of the former Krajina, the housing rights of refugees and displaced Croatian citizens of Serbian nationality were revoked because they were absent from the apartment for more than 90

⁵⁴ *Judgement summary in the case Plaintiff against Ante Gotovina, Ivan Čermak and Mladen Markač*, (Den Haag, 15th April, 2011.).

days from the date of enactment of this law (those who hadn't returned to their apartment until 27th December 1995, were revoked their housing rights by operation of law).

It was common knowledge, even to the Croatian legislators, that, when this law was passed, there were no conditions for displaced and refugee Serbs to return to their homes within 90 days of the enforcement of this law and that therefore they will lose the tenancy of these apartments, among other things, because the borders between Croatia and the former Yugoslavia were closed because of the war conflicts, and because the displaced and refugee Serbs from the Krajina region did not have the new Croatian personal documents to be able to travel back to Croatia, for example, through Hungary, nor were they able to obtain them in the former Yugoslavia, because there were no diplomatic relations between the two countries, and therefore, no open diplomatic-consular missions to perform consular affairs for refugees and displaced Croatian citizens of Serbian nationality, etc.

According to its ratio legis and consequences, the Law on Lease of Apartments in Liberated Areas, which the Croatian Parliament passed after the "Storm", represents an act by which the property of Serb refugees and displaced persons is treated as war booty. To this end, in the legal system in the Republic of Croatia, among other things, all legal remedies were denied, and any judicial and constitutional protection of the right to a home to this category of the holders of the housing rights.⁵⁵

On the other hand, new tenants of these apartments were guaranteed, according to Article 8 of the *Law on Lease of Apartments in Liberated Areas*, the right to purchase the apartment at about 10% of market value after the expiry of three years of renting the apartment, and in accordance with the provisions of the Law on the Sale of Apartments with Occupancy Rights. Before the expiration of three years, the Croatian Parliament adopted the Law on Cessation of the Law on Lease of Apartments in Liberated Areas, and so did not acquire legal options for the purchase of these flats.⁵⁶ However, they do not have to pay the price of approximately 10% of market value anymore because according to the *Law on Areas of Special State Concern* from 2008⁵⁷, these apartments provided that they use the apartment and reside there for at least 10 years from the date of the decision and that they do not own other residential property in Croatia, therefore, they may have property in Bosnia or anywhere else outside the Republic of Croatia (Article 10, paragraph 2, item 3). Thus, the Croatian government created a *fait accompli*.

In Croatia, unlike Bosnia and Herzegovina, the acts that denied housing rights for displaced and refugee Serbs and which did not allow them to enter the properties over which their housing rights were revoked and to buy them under the same favorable terms as it was allowed to other citizens of Croatia, were not invalidated. This obligation is referred to in the Resolution 1120 of the UN Security Council on 14th July, 1997, which reaffirms the rights of

⁵⁵ The document (Doc. 12106 on 8th January 2010.) on the Resolution of property issues of refugees and displaced persons, the Rapporteur for the Committee for Migration, Refugees and Population of the Parliamentary Assembly of the Council of Europe Mr. Jørgen Poulsen notes that „contrary to the practice in the rest of the region, no legal remedies have been offered for the estimated 30 000 Serb households stripped of occupancy/tenancy rights to socially owned apartments after fleeing during the conflict. Instead, those who are willing to return and do not have access to property elsewhere have been offered housing assistance.“

⁵⁶ Official Gazette 101/98

⁵⁷ Official Gazette 86/08 and 57/11

all refugees and displaced persons originating from the Republic of Croatia to return to their original homes in Croatia or in homes where they lived before the exile.

In order to resolve the issues of tenancy rights revoked in a discriminatory manner the United Nations Principles on housing and property restitution for displaced persons and refugees ("Pinheiro Principles")⁵⁸ are of utmost importance. The Council of Europe Parliamentary Assembly urged upon their application in their resolution 1708 (2010) on 28th January, 2010 on resolving property issues of refugees and displaced persons. Also, the European Court of Human rights in Strasbourg refers in its practice to the "Pinheiro Principles", as relevant international documents.⁵⁹

The European Court of Human Rights in Strasbourg has referred to, among other relevant international documents, the Resolution 1708 (2010) of the Parliamentary Assembly of the Council of Europe on 28th January, 2010 on solving the property issues of refugees and internally displaced persons, in the verdict Đokić vs. the Republic of BiH.⁶⁰

The Supreme Court of Croatia also confirmed that tenancy rights are considered as property rights, which should be protected as well as other assets, with a series of resolutions, e.g. on 31st March, 1971 no. GŽ 801/70-5 and on 17th January, 1973 no. GŽ 557/72-2. "As stipulated

⁵⁸ They were adopted by Sub-Commission of the United Nations for the promotion and protection of human rights in 2005. (E/CN.4/Sub.2/2005/17).

⁵⁹ For example, in the judgment on 27th May 2010, in the case Branimir Djokic against BiH (Application no. 6518/04) ECHR, among others, refers to the following **Pinheiro principles**:

Principle 2. (The right to housing and property restitution)

2.1 All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal.

2.2 States shall demonstrably prioritize the right to restitution as the preferred remedy for displacement and as a key element of restorative justice. The right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution.

Principle 16. (The rights of tenants and other non-owners)

16.1 States should ensure that the rights of tenants, social-occupancy rights holders and other legitimate occupants or users of housing, land and property are recognized within restitution programmes. To the maximum extent possible, States should ensure that such persons are able to return to and repossess and use their housing, land and property in a similar manner to those possessing formal ownership rights.

Principle 21. (Compensation)

21.1 All refugees and displaced persons have the right to full and effective compensation as an integral component of the restitution process. Compensation may be monetary or in kind. States shall, in order to comply

with the principle of restorative justice, ensure that the remedy of compensation is only used when the remedy of restitution is not factually possible, or when the injured party knowingly and voluntarily accepts compensation in lieu of restitution, or when the terms of a negotiated peace settlement provide for a combination of restitution and compensation.

21.2 States should ensure, as a rule, that restitution is only deemed factually impossible in exceptional circumstances, namely when housing, land and/or property is destroyed or when it no longer exists, as determined by an independent, impartial tribunal. Even under such circumstances the holder of the housing, land and/or property right should have the option to repair or rebuild whenever possible. In some situations, a combination of compensation and restitution may be the most appropriate remedy and form of restorative justice.

⁶⁰ Important parts of the resolution, according to ECHR, are, among other, the following: "10. Bearing in mind these relevant international standards and the experience of property restitution and compensation programmes carried out in Europe to date, member states are invited to: ...

10.4. ensure that previous occupancy and tenancy rights with regard to public or social accommodation or other analogous forms of home ownership which existed in former communist systems are recognised and protected as homes in the sense of Article 8 of the European Convention on Human Rights and as possessions in the sense of Article 1 of Protocol No. 1 to that convention;

10.5. ensure that the absence from their accommodation of holders of occupancy and tenancy rights who have been forced to abandon their homes shall be deemed justified until the conditions that allow for voluntary return in safety and dignity have been restored;"

in the resolution of this Court on 31st March, 1971 no. GŽ 801/70-5, tenancy rights are considered as property rights, hence the unlawful revocation of these rights results in a claim for damages. Therefore, the plaintiff has the right to seek compensation from the defendant because they made it impossible for the plaintiff to exercise their tenancy rights, with their unlawful actions."

While international documents and resolutions include resolving these issues of revoked tenancy rights in the framework of the protection of fundamental human rights (protection of home according to Article 8 of the European Convention on Human Rights and the protection of property rights, pursuant to Article 1 of the Protocol 1 to the Convention), the Croatian government treats this issue only as a humanitarian issue. The current policy of solving revoked tenancy rights is based on the reduction of human rights to merely humanitarian issues through the housing program, as a humanitarian program, and not a program of compensations (cash or in kind) for arbitrarily revoked tenancy rights. The foundations of the housing programs are not human rights, but humanitarian aid to returnees – holders of housing rights taken away in their housing issues.

The Administrative Court, i.e. the High Administrative Court of Croatia, has taken this view, e.g., in their practice in resolving cases arising from complaints in connection with resolutions on housing outside areas of special state aid in Croatia.⁶¹ The view of the Court is such that the request for housing outside the ASSC is not decided on in an administrative procedure and that an act deciding on a request for housing outside the ASSC is not and there is no legal remedy against it.

The right of appeal or other legal remedy against the resolutions of courts and other public-legal bodies is a fundamental human right. However, as already stated, the basis of the housing issues is not human rights, but humanitarian aid for returnees – holders of revoked housing rights.

Unlike housing outside the ASSC, where there is no statutory right of housing or the possibility of legal remedies (judicial review of the legality of the resolution on housing), within the ASSC in accordance with the Law on the ASSA stipulates a right to housing and provides a possibility of legal remedies. Housing outside the ASSC is sub-norm; here there are no clear procedural rules or the possibility for beneficiaries to use legal remedies, which offers a wider scope of opportunities for the arbitrary actions of administrative bodies at the expense of the legal security of the citizens.

From all this, it is evident that the Croatian legislator has not resolved the housing issue in a unique way, but in accordance with particular rules that apply only to a part of the territory of the Republic of Croatia. In addition, they have different legal rank (different legal force). Residential care in special areas of state aid governed by law, passed by the Croatian Parliament, as the legislative body, and outside the ASSC by a conclusion or decision, brought by the Government as the executive body.

⁶¹ See. Judgement of the Administrative Court on 13th April, 2011, Judgment of the Administrative Court on 1st December, 2011., Business number: Us-13497/2009-4, Judgment of the High Administrative Court of the Republic on 8th February, 2012, Business number: us-6520/2009-4

The consequence of this fragmented legal framework is the existence of unequal legal regime for all beneficiaries of housing on the entire territory of the Republic of Croatia. Croatian citizens are not the same legal position regarding the conditions for the realization of housing, content and scope of rights, terms, possibilities of the use of legal remedies and the conditions for privatization of houses and apartments.⁶² Thus, for example:

- the beneficiaries of housing in ASSC are entitled to a legal remedy, unlike those outside the ASSC (no possibility of judicial control of the legality of the decision on housing);
- some citizens have the option of privatizing the apartments at a cost of approximately 10% of its market value, others have the option of privatizing the houses and apartments at a cost of about 30% of their market value, some have the option of privatizing the apartments at a cost of about 50% of their market value, a some get apartments and houses as state aid;
- some users are entitled to housing under the condition that “on the liberated territories they are carrying out tasks of interest for the security, reconstruction and development, return of displaced persons, refugees and immigrants, and other activities of public interest on this territory, with the obligation of the person to spend at least 3 years working on this territory”, so, they can own a house or an apartment elsewhere in Croatia or abroad, while other beneficiaries are entitled to housing under the condition that they do not own or co-own any another family house ready to move in or apartment in Croatia, in the area of the states formed after the dissolution of the SFRY or anywhere else in the world, or if the same haven't been sold, donated or otherwise alienated after 8th October 1991, or if they haven't acquired the legal status of a protected tenant;
- some beneficiaries of the housing obtain apartments provided that they do not own other residential properties in the Republic of Croatia, and others obtain a house or apartment provided that on the territory of Croatia and Bosnia and Herzegovina do not own or co-own another family house ready to move in or an apartment, or if the same haven't been sold, donated or otherwise alienated after 8th October 1991, etc.

Returnees of Serbian nationality, whose rights were revoked, exercise their housing on the territory of the Republic of Croatia outside the ASSC in most adverse terms, and with the most unfavorable prices of the apartments of approximately 50% or more than their market value.

On the other hand, the latest amendments to the Law on the ASSC the circle of people who have the right to housing by being donated a house or an apartment has expanded. Based on these legislative amendments an additional 4,000 houses and flats are planned for donation to those who used to live in houses owned by displaced and refugee Serbs from Croatia, which they left only after being granted the use of an apartment or a house owned by the state.⁶³ So far, the Croatian government donated some 4,700 apartments⁶⁴ or houses owned by the state through housing program, therefore, more than the total number of applications for housing outside ASSC, submitted by, until the opening of the new deadline,

⁶² For example, Croat refugees from BiH in Croatia, under certain conditions received flats and houses, Serbian refugees from Croatia are offered to purchase at a price that exceeds the economic potential of a large portion of the refugees.

⁶³ Draft Law on the amendments to the Law on Areas of Special State Concern, with the Final proposal of the law. Class: 015-02/11-01/01 No: 5030112-11-1 Zagreb, 2nd April, 2011 (The consequences that will arise by adopting the Law)

⁶⁴ Ibid

the holders of the revoked housing rights. And that's not all, as thousands of houses and apartments are intended for donation in accordance with other provisions of the Law on ASSC.⁶⁵

It is undisputable that the legislation may help to vulnerable social groups. However, in order to introduce measures of the so called affirmative action it is necessary to have a reasonable or objective justification for differences in treatment between different groups of beneficiaries of housing. There should be strong, convincing and very serious reasons, i.e. that the affirmative action is aimed at remedying the consequences of continued discrimination against these groups in the past, to correct the historical injustice and inequality. Therefore it is limited in its duration and will cease when the persons, with equal potential are ensured with equal opportunities.

It is obvious that the so called test of the feasibility of different actions has not been completed. Therefore, the introduction of the non-objective and non-reasonable justification, unequal legal regime for the beneficiaries of housing and different treatment and placing of certain nationals in a more favorable position than others when regulating the right to purchase the apartment, and when their situation is completely comparable, leads to direct discrimination, because the distinction is based on nationality. In more concrete terms, the legal provisions are in question when members of one ethnic group are put in a more privileged position in relation to the members of other ethnic groups, although they have similar status and are in a similar situation.

With this legal framework the principle of non-discrimination stipulated in Article 14 of the Constitution of the Republic of Croatia, Articles 2 and 26 of the International Pact on Civil and Political Rights, Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination and Article 4 of the Framework Convention for the Protection of National Minorities and Article 14 European Convention on Human Rights and Fundamental Freedoms and finally Article 1 of the Protocol 12 of the Convention, has been brought into question.

The housing program, as a humanitarian aid program for returnees, has more restrictive conditions for the realization of housing of the holder of the revoked housing rights - beneficiaries of housing, in relation to the vast majority of Croatian citizens who have privatized (bought) the apartments with previous housing rights. Because of that numerous former holders of housing rights, whose rights were revoked by court decisions in their absence or by the force of law, cannot qualify for housing.

The data from February, 2012⁶⁶ that from the total of 3708 resolved requests for housing, there were more denied (2,022 or 54.53% of total requests resolved) than there were

⁶⁵ While the Croatian authorities generously donate homes to one part of the Croatian citizens, they simultaneously claim that "the main factors that affect the speed and efficiency in the implementation of housing for this purpose are the funds provided by the state budget as well as the number of available and appropriate housing units. Economic recession and the consequences economic crisis also had an impact on the implementation of housing programs and the effectiveness of the implementation of the same." (Explanation of the Draft Decision on the housing of returnees-former tenancy right holders outside ASSC)

⁶⁶ The notification from the Ministry of Regional Development and European Integration at the request of the Civic Committee for Human Rights on 21st February, 2012, Zagreb, CLASS: 019-06/12-01/149 URBROJ: 538-06-1/0097-12-2

granted requests (1,686 or 45.47% of total requests resolved)⁶⁷, and that there are still 1938, or 34.33% unresolved (one third) of the total of requests, mainly due to incomplete requirements, and they can't be completed because the applicants, in principle, do not qualify for housing, shows how unfavorable are the current requirements for housing for the majority of the holders of the revoked housing rights.

Due to the current very restrictive conditions, the Housing program will provide accommodation for a very limited number of holders of revoked housing rights (it is realistic to expect that only about 10% of refugee families, whose housing rights have been revoked, will solve the housing problem through a program of housing). This is confirmed by a small total number of applications for housing outside the ASSC. Out of so far (February 2012) a total of 5646 applications for housing of the holders of revoked housing rights outside the area of special state aid⁶⁸, with the new deadline of March 9th 2011 – April 30th 2012, 1092 requests (19.34% of 5646) were submitted to date. Meanwhile, 51 (4.67% of 1092) requests were resolved positively, out of which 15 were provided, while for 36 beneficiaries the housing right was determined.

The purchase of housing units outside the areas of special state aid is provided to former holders of housing rights in accordance with the *Decision on the sale of apartments owned by the Republic of Croatia* (Official Gazette 109/11). Requests for the purchase have so far been submitted by 1237 beneficiaries, out of which only for six (0.49%!) of them the sales contracts were prepared, which were forwarded to the relevant municipal state attorneys' offices for their opinion. Upon the submission of the opinions of the state municipal attorneys' offices, the Ministry will intensify the preparation of other contracts for all completed applications.

The buyout prices, determined by the Decision and Regulation,⁶⁹ in principle, are not for appropriate socio-economic potentials of the housing beneficiaries. It is the financial difficulties of the housing rights holders that are the most important problem in the realization of the purchase of the majority state-owned apartments in Croatia, even though they were privatized by the purchase price of only about 10% of their market value.⁷⁰ Financial difficulties of the beneficiaries of housing in terms of purchasing potential are even greater because the redemption price, stipulated by this decision, is several times higher than the purchase price at which the majority of public apartments in Croatia were

⁶⁷ Out of the total of 1686 (100%) positively resolved applications, 1399 (82.98%) beneficiaries were provided housing, and the Ministry signed a rental agreement with 1327 (78.71%) beneficiaries. In total 2022(100%) negative first instance decisions and conclusions of the right of housing 613 (30.32%) complaints were filed. In the second instance 587 complaints were resolved while 26 complaints are in the resolution process. On the issued second instance decisions so far 93 administrative procedures were started before the Administrative Court of the Republic of Croatia and so far in 27 cases the judgments were brought. (Notification of the Ministry)

⁶⁸ According to *Conclusion on the way of providing housing care for returnees who do not own a house or an apartment, but used to live in socially-owned apartments (former tenancy rights holders) in the Republic of Croatia, which are outside the areas of special state concern* (Official Gazette 100 / 03, 179/04 and 79/05) as well as *Decision on Housing Care for Returnees to the RC, Former Occupancy Rights Holders outside the Areas of Special State Concern* (Official Gazette 29/11, 139/11).

⁶⁹ Regulation on the conditions for the purchase of a family house or an apartment owned by the state in areas of special state aid (Official Gazette 19/11 and 56/11)

⁷⁰ In a survey in June, 1992 conducted by the Institute of Sociology of the Faculty of Philosophy at the University of Zagreb, in four Croatian cities: Zagreb, Rijeka, Split and Osijek with the total sample of 1000 examinees, cited as aggravating, among others, are the following conditions: lack of financial resources (43%), housing prices are too high (27%). Therefore, as one of the recommendations from this study is lowering the purchase price of an apartment. (Ognjen Čaldarović, Privatization through the purchase of tenancy rights: First sociological findings and aspirations, Druš.istraž. Zagreb 8/god. 2 (1993), no. 6, pg. 1021-1040.)

privatized.⁷¹ In addition, the beneficiaries of housing had or still have refugee status and as such, in socio-economic terms, are one of the most vulnerable social groups, therefore it is necessary to define additional programs and affirmative action measures, i.e. to introduce positive discrimination in order to thus overcome their vulnerable social position. However, with this decision they have been placed in the most unfavorable position with regard to the manner of calculating and the purchase price of the apartment.

Sales of houses and apartments owned by the state that are used on the grounds of the housing program is not determined in a uniform way, but in accordance with particular legal regulations of different rank (different legal power), which prescribed unequal conditions for the privatization of housing. Citizens differ in the extent of the rights they are entitled with. Although they are in a similar legal situation, to some houses and flats are donated while some may only purchase a house or apartment in order to privatize them, in addition to different ways of calculating the purchase price of the apartment, there are also different conditions in relation to discounts for payment of the purchase price of the apartment and different conditions in relation to the terms of the deadlines for the payments and the interest rate of the payments. Unadjusted legal framework has created a basis for the discrimination of citizens or putting some in a more disadvantaged position in relation to the others.

Finally, it can be concluded that there are still serious deficiencies, in both the incompleteness of the legal framework and in the implementing of the envisaged housing measures. With all the complexity and ambiguity, the housing program is unfavorable and unacceptable to the refugees who see a permanent solution without the option of returning to Croatia. The current, still small number of requests for housing and purchase of apartments is the result of the restrictive conditions for the realization of housing and lack of necessary socio-economic measures which would ensure the sustainability of their return.

In a situation where in connection with the revocation of housing rights a fait accompli was committed, the solutions cannot be sought in restitution of housing rights, because that category does not exist in the legal system of the Republic of Croatia anymore and one error cannot erase another (to those who as per the existing regulations have become tenants of these apartments by either buying them or receiving them as a donation).⁷²

⁷¹ According to the 1991 census, Croatia had a total of 1,575,644 housing units, meant for permanent housing, of which 1,182,402 were privately owned, and 393 242 units were public-owned. Out of this number of socially-owned units, until the end of 1997, 299.136 or 76% of the housing units were privatized (Mladen Mirko Tepuš, Analyses of models of housing financing in the Republic of Croatia, the Croatian National Bank, November 2004). According to the data of the Ministry of Construction and Environmental Protection, in late 1992 in Croatia, "12 500 public housing units were demolished and 36 000 units are in the occupied territories. "Gojko Bežovan, PRIVATIZATION OF HOUSING – EFFECTIVE HOUSING SUPPLY, DRUŠ. ISTRAŽ. ZAGREB 3/GOD. 2 (1993), no. 1, p. 107-124

⁷² In its Recommendation on 28th January 2010 [(REC 1901 (2010))] "Solving property issues of refugees and internally displaced persons", the Parliamentary Assembly of the Council of Europe „considers that for both refugees and internally displaced persons (IDPs), the loss of homes and land presents a serious obstacle to achieving durable solutions in post-conflict situations and to restoring justice. Legal remedies against such loss are an essential component for restoring the rule of law in post-conflict situations. Such remedies, including the relevant redress and the mechanisms and procedures through which such redress is sought and implemented, are directly linked to stability, reconciliation and transitional justice and are therefore indispensable elements for any constructive peace-building strategy.“

Recommendation

Given the severity of the problem, its continuing negative consequences for some 100,000 refugees who were denied return to their homes, most commonly in urban areas, as well as the failure of negotiations so far and the lack alternative measures in order to meet the needs of victims, it is essential that the issue of revoked housing rights be finally resolved in a comprehensive, justified and sustainable manner, starting from the United Nations Principles on housing and property restitution for displaced persons and refugees ("Pinheiro principles") and Resolution 1708 (2010) of the Parliamentary Assembly of the Council of Europe on 28th January 2010 on the resolution of property issues of refugees and displaced persons.

Croatian legislator ought to establish a legal framework which will allow for a unified, all-inclusive and justified approach to the issues of deprived holders of tenancy rights (not only of returnees).

Reconstruction

The greatest progress in realizing the rights of returnees in Croatia has been made in the reconstruction of Serb-owned houses of returnees. So far about 147000 houses have been reconstructed, with two thirds of that number belonging to Croat owners. In practice, the procedures for solving the reconstruction requests lasted for several years. In addition, inconsistent and uneven practice in the implementation of the Law on administrative procedure, especially in the first instance, and numerous errors in the procedures for assessing the damage, prolonged the resolution of requests for reconstruction for several years. There are cases where the reconstruction does not start although three or more years have passed since the contract on reconstruction was concluded. Therefore, the definition of terms under which the tasks for the reconstruction would be completed, without any conditions and additional requirements, is one of the basic conditions for the return of refugees.

The reconstruction is not accompanied by adequate investment in these predominantly rural areas that are economically undeveloped and devastated. The mere reconstruction of houses, without a program of economic support to reintegration through the creation of new jobs, including the renovation and construction of necessary infrastructure, cannot ensure the sustainability of return. Because of the non-existence of living conditions for a sustainable return, many owners of the reconstructed houses do not reside permanently in these facilities. By calling upon the constant non-residing in the reconstructed residential objects, the competent State Attorney's Office in the Republic of Croatia are increasingly initiating legal proceedings against the refugees - owners of the restored residential building to return the funds used for the reconstruction with the accompanying statutory interest and fee litigation costs, under the threat of enforcement and thus, the loss of residential property leads the refugees into a hopeless existential and life situation.

The new government of the Republic of Croatia adopted the Government Programme 2011-2015.⁷³ In Section 19 - Human Rights and Civil Liberties in the Chapter Civil and Political Rights and Freedoms puts the rights of national minorities and return of refugees in the first place. The fact is that the new Croatian government in its program, places the issue of refugees in the context of "Civil and political rights and freedoms", and in the first place, is a very encouraging and important sign of the new Government's intention not to solve these issues with ad hoc measures, but through a system, in the context of inalienable civil and political rights and freedoms.

With regard to the issues of reconstruction, in its Programme the Government promises to "ensure the resolution of the remaining claims for the restoration and appeals against negative decisions and suspend the proceedings for the return of funds invested in the reconstruction against the owner who did not sell them. They will find the solution for the reconstruction of houses for which the proceedings have not been completed and the determined damage on them has increased over time... As part of a balanced regional development programme, the Government will create conditions for the sustainable development in the return areas, for which they will propose the necessary legislative and material frame. For this purpose, the reconstruction of material and social infrastructure will continue, and programs for the reconstruction of agriculture, small business and tourism will be implemented. The process of re-electrification in the areas of return will be completed."

Recommendations

It is recommended that the Croatian authorities adopt the changes of the current legal framework as soon as possible and take other measures necessary to accomplish the goals outlined in the Government Programme 2011-2015 in connection with the reconstruction of destroyed or damaged residential objects.

Compensation for damages

The issue of compensation for the destruction of property of Croatian citizens of Serbian nationality by terrorist acts (family houses, commercial buildings, holiday homes, vehicles and agricultural machinery) in the period from 1991-1995, in areas that were under the factual and legal authority of the Republic of Croatia⁷⁴ was attempted to be "solved" with the "pushing under the carpet" method.⁷⁵

⁷³ http://www.mvep.hr/CustomPages/Static/HRV/files/111227-Program_Vlade_2011-2015.pdf

⁷⁴ Estimates of such cases in Croatia range from two to ten thousands. There were such cases in Zadar, Karlovac, Osijek, Dubrovnik and their surroundings, Sisak, Gospić, Karlobag and elsewhere. 650 objects where the owners were of Serbian nationality were mined in the period from 1991-1995 solely in the area of Bjelovar.

⁷⁵ In 1996, the Croatian lawmaker with the amendment to the Civil Obligations Act (Official Gazette 7/96) excluded the provision of Article 180 on the responsibility of the State for the damage caused by the destruction of property/real estate due to acts of violence or terror, and during public demonstrations. Proceedings for the compensation for the damages constituted under Article 180 were discontinued, and "will continue after the enactment of special legislation which would regulate the liability for damage caused by terrorist acts. "In this way, the Croatian government excluded the possibility of the right of prosecution before the courts for damages and any such actions are in the "terminating condition", thus creating a legal vacuum. This means it excludes any possibility of exercising the right to compensation for the destroyed and damaged houses and other property, so that the courts have made decisions to terminate them, explaining them as a lack of

In 2003, the *Act on Liability for Damage Resulting from Terrorist Acts and Public Demonstrations* (Official Gazette 117/03) (hereinafter: ZOŠT) was adopted, which limits the state's liability for the material damage in terms of scope, scale and height, quantity by referring to the Law on reconstruction.

On the occasion of several requests for assessing the constitutionality and legality of ZOŠT the Constitutional Court of the Republic of Croatia, on 19th November, 2008 with its resolution no. U-I-2921/2003 rejected the proposals to institute proceedings to review its compliance with the Constitution. The Constitutional Court has thus deemed that law was in compliance with the Constitution. The decision of the Constitutional Court does not contain any explanation in terms of some essential elements related to the implementation of the European Convention on Human Rights, and which relate to the appropriateness of the "legislative intervention" in the court proceedings that are already underway.

In its report for 2003, The European Court of Human Rights has "noted" that the new Croatian legislation regulates the matter of compensation for damages that remained unregulated following the abolition of Article 180 Civil Obligations Act from 1996. However, the European Court immediately gives a quite explicit critical commentary of the new legislation: *„Legislation addressing this latter issue was finally introduced in 2003. The Court would not speculate on the effect of this legislation on the outcome of stayed proceedings but noted that new conditions had been created with regard to claims and adverted to “the dangers inherent in the use of retrospective legislation which has the effect of influencing the judicial determination of a dispute to which the State is a party, including where the effect is to make pending litigation unwinnable”. Thus, while a prolonged stay constituted a disproportionate limitation on the right of access to a court, the adoption of the new legislation carried the risk of falling foul of the principles laid down by the Court in relation to “legislative intervention” in pending court proceedings.“*

Disputes about the compensation for terrorist acts have a formal-legal "final completion". None of the plaintiffs did (because it became impossible to do so after the change of the legal framework) succeed with their claims. Only the State benefited from the legal validity, which, through courts collected the litigation costs from the plaintiffs. However, the social problem wasn't solved. Croatia, potentially, after the plaintiffs exhaust all domestic legal remedies (and themselves as well), including constitutional claims, is threatened by 381 remonstrance at the European Court of human rights.⁷⁶

The new Croatian government in their Programme 2011-2015 recognized this problem, declaring the following: "The government will allow the change of the legal framework to enable those whose houses were destroyed during the war, in the area outside the ASSC to have the right to reconstruction or compensation ..."

adequate laws. The Croatian Parliament amended the Civil Obligations Act in October 1999 (Official Gazette 112/99) committed the Croatian Government to within 6 months of coming into power of this Act to prepare and propose to bring about a special law that would regulate the issue of damages caused by terrorist acts and that have been caused by members of the Croatian armed and police forces in connection with the performance of military and police services.

⁷⁶ The justification of the Final Proposal of the ZOŠT includes the fact that on the whole territory of the Republic of Croatia a total of 381 such procedures were stopped by the force of the Law on the amendment of the Civil Obligations Act in 1996.

Recommendations

It is recommended that the Croatian authorities adopt the changes to the existing legal framework as soon as possible and take other measures necessary to accomplish the objectives listed in the Government Programme 2011-2015 in connection with the compensation for damages incurred due to terrorist acts or public demonstrations, including the possibility to complete the initiated proceedings for the compensation of damages in accordance with the Article 180 of the Civil Obligations Act pursuant to the material-legal provisions on the compensation of damages which were in force during the period the requests were submitted.

Republic of Serbia

Aid for the victims of war crimes in Sandžak and their families 19 years ago, on 22nd October, 1992, 16 Bosniaks (15 men and one woman) were abducted from a bus on the route Rudo-Priboj in the village Mioče and killed in Višegrad. The kidnapping and the murders were carried out by the unit under the command of the Višegrad Brigade of the Army of the Republic of Srpska, headed by the convicted war criminal Milan Lukić. The families of the victims have not received any compensation from Serbian Government, and many residents of villages near Priboj are still living as refugees in their own country, because their homes were destroyed during the war by the Army of Yugoslavia or the Army of the Republic of Srpska.

Sandzak Civil Society Coordination (Urban In, Sandžak Committee for Human Rights, Cultural Center Damad, Impulse Tutin, Flores Sjenica, New Vision Prijepolje and Women's Initiatives Priboj) and the Center for Practical politics are demanding from Serbian Government to urgently considers the recommendations which the civil sector of Sandžak formulated to help the victims of war crimes and human rights violations during the 1990s. Given the subject that deals with this project, the following stand out:

Recommendations

The state is obliged to compensate the families whose houses were destroyed or damaged during the 1990s in the villages of the municipality Priboj. A large number of these families still has no roof over their heads and live as tenants in Priboj or elsewhere. The houses were destroyed by either the actions of the official armed forces of the former FR Yugoslavia (mainly military), or volunteer units who were also under the command of the Army of FR Yugoslavia.

The Republic of Serbia has to change the laws governing the administrative reparations to the victims of civil war. The Law on rights of Civil War Invalids is discriminatory and prevents compensations for damages to victims or families of the victims killed by the Yugoslav Army and the Army of the Republic of Srpska. The other two laws governing this matter - the Law on Basic Rights of veterans, invalids and families of the fallen soldiers and the Law on Rights of Veterans, Disabled Veterans and their families give military victims more rights in comparison to civil and enhance the discrimination between the victims of war. The whole field covered by these three laws must be completely reformed and adapted to international conventions and other international obligations assumed by the Republic of Serbia.

SARAJEVO PROCESS

Joint regional multi-year program devised by countries of Dayton Agreement for the purpose of securing lasting solutions for the most vulnerable refugees and internally displaced persons envisaged housing solutions for almost 27,000 households in four countries i.e. 74,000 beneficiaries in total, which included aid for:

- around 7,000 households at the place of origin for the return of around 20,000 persons,
- around 20.000 households at the location after displacement i.e. for local integration of around 53,000 persons and
- housing in social security institutions for around 500 persons.

For the purpose of realization of this joint regional project almost 600 mil EUR must be secured, with participation of countries of this region in amount of around 83 mil or 15%. These contributions from the countries of this region are composed of means that each country must provide for completion of the project, mostly in the form of non-financial contribution (drafting project documentation, allocation of land for construction sites, license issuance expenses, administration, etc). Remaining 85% in amount of approximately 500 mil EUR are lacking and must be secured through international donations.

For this purpose, on April 24th 2012, International Donors Conference for Durable Solutions for Refugees and Displaced Persons was held in Sarajevo. Conference was organized, upon the invitation from Bosnia and Herzegovina, in close cooperation with Governments of Montenegro, Republic of Croatia and Republic of Serbia, as well as with UN High Commissioner for Refugees, European Commission, European Organization for Security and

Cooperation, US Government and Council of Europe Development Bank⁷⁷ Representatives of 41 countries have gathered together to promise their support for the joint Regional Program. Total of 260,505,000 EUR was registered in the form of firmly promised donations for the Regional Housing Program, which are to be distributed over a five-year period of program realization. All donors have expressed their strong intent to continue providing help even after their governments' current budget cycle, until the completion of the Regional Housing Program.

Joint multi-annual Regional program for durable solutions for vulnerable refugees and displaced persons which includes the Regional Housing Program will be conducted concurrently in all four partner countries during the period of five years, starting with Fall 2012.

Having in mind that Ministers of Foreign Affairs of the four partner countries have *reaffirmed their countries' full commitment to the protection of the rights of refugees and internally displaced persons*, more concrete and efficient steps in that direction can be expected, as well as that the approach to refugee issues will not be reduced to a humanitarian level and that realization of the Regional Housing Program will close or put those issues i.e. refugee rights under the carpet.

Recommendations

All-inclusive solutions for displaced persons in the region (1991-1995) should be sought in keeping with international norms, human right standards and international legal obligations.

Igman Initiative accentuates the importance of results of the donors conference held on April 24th 2012 in Sarajevo as a part of the process of finding durable solutions for refugee issues on the territory of West Balkans.

At the same time, signatory countries' responsibility to create conditions for efficient enforcement of agreed solutions in keeping with given obligations was also emphasized.

Countries must provide all relevant information to the end users of the regional program, both in the country of origin and in the host country, in order to accurately and timely inform refugees and internally displaced persons about conditions and procedures for the realization of durable solutions.

Deadlines for submission of applications for housing solutions in all countries of this region must stay open until the completion of the regional program.

Civil society organizations with years of commitment to finding solutions of displaced persons should take up the important role as partners in monitoring of application and contribution to the realization of joint regional program.

⁷⁷ Statement of the Ministry for Human Rights and Refugees in Bosnia and Herzegovina, published on <http://mhrr.evlada.ba/Saopcenja/?id=2872>

IV. Pension and Disability Insurance

Rights from the pension and disability insurance are among the most important of acquired rights, both because of the scope and the fact that they are practically the only source of livelihood of the elderly. Multi-annual vacuum in the establishment of relations in the field of social security between the countries of the Dayton Agreement has deepened the existential problems of many people, particularly refugees and displaced persons. Many citizens who are entitled to a pension in one of the countries of former Yugoslavia receive it in a lower amount than the amount of the actual retirement pension earned. The reasons lay mainly the difficulty of proving the length of employment and insurance contributions due to lack of proper documentation (job history record books, M-4 forms), or ignoring their evidence in proceedings of exercising the right to a pension.

By concluding bilateral agreements on social security, after years of vacuum between the countries of the Dayton Agreement conditions for solving many problems in the field of pension and disability insurance of citizens were created. Initiatives to conclude new agreements on social security between the Republic of Croatia and the Republic of Serbia, the Republic of Croatia and the Republic of Montenegro, the Republic of Bosnia and Herzegovina and the Republic of Montenegro are in progress.

Although the bilateral agreements on social security were concluded, citizens of the Dayton Agreement states who accomplished the insurance years of service or at least a part of it in another state, still face the following problems in exercising the rights for pension and disability insurance and:

- Most of the insured persons have a problem of obtaining the documents necessary for the exercise of the right to retire, many of which were destroyed or disappeared during the war conflicts. In addition, the widespread practice of the authorities to ask citizens to obtain various documents on the facts on which those or other agencies or services keep official records of and by law are required to obtain them ex officio;
- The cross-border procedure for acting on the request for the exercise the rights from the pension and disability insurance is too long. Cooperation between authorities in connection is not always at such a level that allows the efficient implementation of the concluded agreements on social security;
- Although the law obliges the authorities to ensure assistance to the parties in the proceedings and stipulates precise deadlines for carrying out the activities in the proceedings, in practice the assistance is often absent, and the legal deadlines are exceeded several times, etc.

Problems in the application of some bilateral agreements

The problem of the payment of pension benefits earned before the war and the payment of pension benefits earned according to the Agreement on social insurance between BiH and Serbia (FR Yugoslavia) from 2004,⁷⁸ is that they have not been paid out, and are still the subject of judicial proceedings in Bosnia and Herzegovina. It must be emphasized that the majority of pensioners received pensions from Serbia during the war and the postwar period

⁷⁸ Official Gazette of the SCG – International Agreements 10/2004

until the aforementioned agreement, which in certain periods were lower, higher or at certain times equal to the pension benefits they would have received from the funds in which they earned their pension. In May 2011, by signing the amended agreement on social insurance between the BiH and Serbia, the injustice committed at the expense of the pensioners, or the reduction of their pensions in order to settle the debts between PDI Funds from two different countries for the fund was corrected.

The agreement on social security between Bosnia and Herzegovina and the Republic of Croatia (entered into force on 1st November, 2001) envisaged that the Bosnian-Herzegovinian pensioners who have residence in the Republic of Croatia have the right to health care at the expense of the Bosnia and Herzegovina health insurance carrier. The representatives of state authorities of Bosnia and Herzegovina and the Republic of Croatia, when considering the onset of the implementation of the agreement, agreed that within two months from the entry into force of the agreement, they would finish the applications for health insurance for all retirees of one country residing in another country.

In accordance with this agreement, the holders of health insurance in the Federation of BiH, registered all pensioners, but after several years of implementation and issuing of calculations by the Croatian Health Insurance Institute, they faced the problem of huge debts that they could not pay. The point is that a large number of pensioners, who were registered by the Federation of B&H, earned their pension and, prior to moving to Croatia, their last residence was in the Republic of Srpska. Therefore, the holders of health insurance in the Federation, took these retirees of the insurance in Croatia, after which the same were left without health care in Croatia, and the obligations of cantonal health insurance bureaus who have registered these retirees to health insurance, arising from this, remained unpaid because they were not recognized by cantonal bureaus.

The problem is that there is a conflict of jurisdiction between the entities, i.e., it cannot be determined which health insurance carrier is responsible for providing health care for certain retirees who, although they fulfill all the conditions, cannot exercise their right for that reason. Specifically, it is about pensioners who are entitled to a pension in the Republic of Srpska, and had fled during the war to the territory of the Federation of Bosnia and Herzegovina and then to Croatia, or directly from the Republic of Srpska to Croatia, to whom a pension fund of the Federation pays pensions and transfers to Croatia, all in accordance with the The Agreement on Mutual Rights and. Obligations in the Implementation of Pension and Disability Insurance. This Agreement was concluded between the entity pension funds, and it was found that, from the date of signing the Agreement, all the pensioner would be registered according to the area in which they reside at the moment, regardless of where they earned retirement. On that occasion, the health care of retirees was omitted, Leaving the most retirees, who achieved tenure and were insured in the area of the Republic of Srpska, where the PIO / MIO of the Federation established the right to retirement pensions and transfers, without secured health care.

The problem lies in the existence of the 10 cantonal health insurance bureaus and the two central records at the Federal Bureau PIO / MIO, one in Sarajevo and one in Mostar, making the task of distributing the evidence on such retirees by bureaus impossible. Federal Bureau of health insurance, a liaison body in accordance with the Agreement on social insurance between BiH and Croatia representing all the cantonal health insurance institutes only for

the disputed cases of conflict of jurisdiction between the entities, for the period 2001 - 2006, owns the amount of 7.084,480,87 KM. Besides from the insurance holder who were up until 2006 entitled to the right to health care, there is a large number of retirees residing in Croatia, who have never realized the right to health care in Croatia, although they meet the requirements in accordance with the Agreement on social insurance between BiH and Croatia.⁷⁹

Unlike Croatia, regarding which the problem in implementing the Agreement on Social insurance is most prominent, there were no similar problems when it comes to other countries in the region. Besides from a few sporadic problems in the implementation of agreements on social insurance in the individual cases, there were no major problems in the implementation of the agreement.

After almost nine years since the enforcement of the Agreement on Social Insurance, concluded between the former Federal Republic of Yugoslavia and the Republic of Croatia, which is in practice since May 1st, 2003, we can, from the perspective of civil society, gather the following experiences in its application:⁸⁰

- Requests are refused often enough, by the competent Croatian insurance carrier, for the entitlement to a disability pension, when the procedure was initiated and medical records collected by competent physicians and Disability Commission in Serbia, who determined the claimant's loss of working capacity (lately, a huge number of requests were rejected, every fourth or fifth applicant who seeks for legal aid from the NGOs is recognized the right to a disability pension, while others are rejected with the explanation that they have no disability). A substantial number of claimants died from serious diseases, and after their death the authorities would issue the decision according to which it is determined that they have no loss of working ability;
- Serbian insurance carrier does not perform re-calculation of pensions for persons who have been acknowledged the right to retire before 1st May, 2003, when the Treaty entered into force, counting in the years of employment accomplished with the Croatian insurance carrier as a condition for eligibility, and after the entry into force of this Agreement, continued payment of pension at a certain level on advance payment basis, rather than the actual base of the right holder, which he paid to the Croatian insurance carrier, although according to the provisions of Article 39 Paragraph 1 and 4 of the Agreement, regardless of the legal validity of the resolution rendered before the entry into force of the Agreement, either ex officio or at the request of the parties, an insurance carrier should do the re-calculation of pensions, using data on the amount of income and actual payment of contributions according to which the applicant is given the right to retire prior to the entry into force of the Agreement, on the basis of the advance payments;
- People who haven't canceled their residency in the country in which they became eligible for retirement (and on that basis and cancellation of rights to health care)

⁷⁹ In its report on BiH, ECRI (Fourth Monitoring Cycle) on 7th December, 2010, notes that health insurance is covered with several separate pension funds in BiH: One in every Canton of the Federation, one in the Republic of Srpska and one in Brčko District. In order to overcome the difficulties faced by insurers in access to health care, especially returnees who had to switch from one to another Entity, the Inter-Entity Agreement on Health Insurance was signed. However, it is not fully implemented throughout the territory of BiH. ECRI is "deeply concerned that some persons in BiH have no health insurance at all. This particular concerns Roma and minority returnees..."

⁸⁰ According to the data of the Information of the Ministry of civil affairs of the Republic of Bosna and Herzegovina.

may not exercise the rights of health care in the state in which they now have a permanent or long-term residence (persons who are still having the status of refugee or displaced persons). In practice these are insurmountable obstacles for a large number of these persons, because these are predominantly elderly and sick persons, who because of their illness are unable to travel to their former places of residence in order to cancel these services, or have someone in their place of their former residence who would, through authorization perform the necessary steps and obtain these documents on their behalf.

Civic organizations point out that, because the solutions in the existing provision of Article 5 Paragraph 3 of the Agreement, which stipulates that the provision of Paragraph 1 of this article according to which pensions, wages, and other expenditures, except for the unemployment benefits, according to the legislation of one Contracting State, cannot be diminished, set aside, suspended or pawned, for the fact that the beneficiary has a residence in the territory of the other state party, unless otherwise specified in this Agreement... does not apply to contributions based on the remaining work capacity, the lowest pension and protection allowance and all other charges on the basis of pension insurance, which are realized on the basis of property census", to a large number of Croatian pensioners, who have permanent and short-term residence in the Republic of Serbia, the pensions were significantly lower.

For example, a Croatian retirees who have the right to a Croatian pension with fifteen years of service and qualify for the lowest pension, if they have residence the in the Republic of Croatia, receive about 115 to 120 Euros per month, however, if they have permanent or short-term residence in the Republic of Serbia, and if for that reason his right for the minimum pension annulled, for the same years of service they receive only 25 to a maximum of 30 Euros. Also, persons who are entitled to the care and assistance, persons granted the right to other supplementary payments as well as people older than 50 years with an impaired ability to work over 50%, and on that basis have certain financial benefits until they fulfill the conditions for retirement, cannot exercise those rights during temporary or permanent residence in the Republic of Serbia. All rights prescribed in the aforementioned Article 5 Paragraph 3 can be exercised by people who have accomplished these rights with the competent insurance carrier in Croatia, and who have a permanent or temporary residence in the territory of Bosnia and Herzegovina, under the Agreement on social insurance between BiH and Croatia.

Recommendations

It is recommended that the competent authorities in the countries signatories of the Dayton Agreement as soon as possible discuss the implementation of bilateral agreements on social security, particularly the communication mechanisms of the liaison bodies as well as procedures for resolution of requests to exercise the right to a pension, in order to speed up procedures of the resolution of these requirements and to facilitate the process of proving (obtaining documentation) the facts relevant to exercise the right to pension and disability insurance (for example, obtaining the certificate of the cancellation of residence or cancelation of health insurance with regional offices in which they were insured).

We invite the competent authorities in the countries of the Dayton Agreement to look at options for upgrading the mechanisms for a more efficient implementation of bilateral agreements on social security as well as recognition of decisions and documents that were collected and obtained by the competent insurance carrier where the parties have their permanent or temporary residence, and where they submitted applications and requests.

We invite the competent authorities in the countries of the Dayton Agreement to study the options to improve the position of the most vulnerable pensioners with changes to the existing bilateral agreements on social security, providing the exercise of rights based on the remaining work capacity, minimum pensions, the additions to pension, right to the care and assistance as well as all other rights arising from the pension insurance regardless of the place of their permanent or temporary residence in any of the signatory countries of bilateral agreements, as well as the manner in which it was resolved by the Agreement on social security concluded between the Republic of Croatia and Bosnia and Herzegovina.

Authorities in Bosnia and Herzegovina are encouraged to fully implement the inter-entity Agreement on health insurance ensuring that no person would experience discrimination regarding access to health insurance, especially those belonging to vulnerable groups such as minority returnees, and the Roma.

The most common problems refugees from Croatia and citizens who accomplished a part of the service in Croatia face in practice in this area are:

- Problems related to identifying and providing evidence of insurance

There are numerous problems related to the lack of records of pension insurance at the Croatian Pension Insurance Institute as well as problems and obstacles regarding the proofs of the years of service. The records that are missing are for long periods of time (even 1/3 and more) of the realized employment - pension service, due to which the insured person - the applicant with the request to exercise their right to a pension is being denied, because this period of working experience is not recognized for the pension, although it is a period before the 1991 when in accordance with the positive regulations it was not possible to pay the net wages without the payment of different contributions, including contributions to pension insurance. In particular, this applies to insured persons who have worked within the

jurisdiction of the branch office of the Croatian Pension Insurance Institute in Gospić, where one can rarely meet a person with unrecorded years of service in their pension insurance (a person who has no "gaps" in the insurance period).

When these problems are discovered, and they are easily detected by obtaining a certificate of service pension of the Regional offices or the Central Service of the CPII, then the process of finding proof and confirming the service pension is a long and arduous experience, with a very uncertain outcome. The burden of proof falls on the party applying for the grant of a pension, not on the bodies responsible for maintaining the records of the insurance period.

- The problem of due and unpaid pensions

During the 1990s, about 50,000 pension beneficiaries, who have remained on the territories under UN or who fled, lost their pensions because their payments were suspended by unilateral act of the pension fund of the Republic of Croatia because of the termination payment operations due to war conditions, between the Republic of Croatia and those areas in the Republic of Croatia that were under the management or protection of the United Nations. In Croatia, there has been a change in official attitude concerning the obligations to pay due but unpaid pensions – from the acknowledgment of the right to payment of accrued and unpaid pensions to the denial of the right, after the *Act on Convalidation* in late September, 1997.

Although the administrative and judicial bodies in Croatia recognize that the disruption of payment operations and the suspension of the pension payments was due to war conflicts, in regards to the issue of payments that are due and unpaid pensions in practice a statutory provision is applicable under which the right to payment of accrued and unpaid pensions is obsolete if the suspension was due to circumstances caused by the pension beneficiary.⁸¹ According to the *Pension Insurance Act* the obsolescence of due and unpaid pension disbursement is only possible if the beneficiary caused the circumstances that further caused the suspension of payments. However, considering that the suspension of pension payments was due to war conflicts, and not the circumstances caused by the income beneficiary, then it wasn't the case of legal limitation of the right to payment of due and unpaid pensions.

The Croatian Pension Insurance Institute has, however, acknowledged the right for earned but not paid pensions to the parties for a period of three years back if the claims were submitted by 1st January, 1999. If the claims were submitted after that date, the insured parties were paid the residual pension for the previous twelve months.

Pensions are an acquired and inalienable right. Since there were no legal conditions for the obsolescence of due but unpaid pensions or the application of the provision that the beneficiary can use only one pension of their choice, due to interruption of payments due to

⁸¹ Regarding the answer to the question whether the overdue receivables of the (unpaid) pensions were subject to the statute of limitation during the period in which they could not be paid, the regulation taken from the SFRY Civil Obligations Act (which had been in force until a new Law has been passed, in March 2005.), Article 383., is referred to. (Insurmountable obstacles): "Obsolescence will not be active for the entire time during which the creditor is unable to demand fulfillment of obligations by Court due to insurmountable obstacles." This regulation leads to the conclusion that the statute of limitations for the recipients of pensions did not run up until, after "Storm", the situation in the former SAO Krajina had been normalized (restoration of communication, payments, The Croatian Institute for Pension Insurance and others). For those recipients of pensions that relocated to B&H and Serbia as refugees the "insurmountable obstacles lasted up until payment, the possibility of acquiring Croatian documents, etc. between Croatia and Serbia and Croatia and Bosnia had been normalized.

war,⁸² it is necessary to ensure the equal position of these pensioners in relation to other Croatian pensioners by providing mechanisms for the payment of accrued and unpaid pensions.

- Convalidation of employment insurance

For many refugees the problem of employment insurance convalidation accomplished on the territories of Croatia that were under the protection or administration of the United Nations in the period from 1991-1995 remains unresolved. The proposed legal framework for addressing the convalidation issue is not adequate to the complexity of the problem, especially due to high demands regarding the proving of contributions for insurance in respect to the proceedings of proof prescribed by the Croatian laws (*Pension Insurance Act* and the *General Administrative Procedure Act*).

With this in mind we recollect one statement given by the State Secretary of the Ministry of labour and social welfare Vera Babić, in "Jutarnji List" on 24th July, 2002: "To everyone who worked in the so-called. RSK, the Republic of Croatia will recognize years of service and all rights that arise from it because the documentation of the pension and health funds is well preserved and there will be no problems in recognition of service." However, in practice there were major problems with the recognition of insurance as the most competent bodies most often emphasize that there is no documentation, and the applicants should submit relevant material evidence. Moreover, in practice, the requirements for the provision of evidence to determine the state of affairs are often extended, so job history record books or original school student logs or certified medical records booklet are not deemed as relevant evidence so further written evidence needs to be provided .

The stipulation of the obligation of submitting a large number of documents i.e. imposing excessive burden of proof is not in accordance with the standards of international humanitarian law, given the nature and causes of migration, require states to simplify procedures and facilitate the conditions of access to rights of refugees, among other things, determining the minimum most necessary documents for evidence. However, the very *Pension Insurance Act* in Article 99, Paragraph 2 stipulates that the category of an insured party as the the years of retirement, when it is impossible to obtain the data due to circumstances caused by the recent war, may be proven by witness statements.⁸³ Also, the *General Administrative Procedure Act* in Article 70 stipulates that if for the establishment of certain facts there are no other evidence to establish such facts statements of the party may be taken as evidence.⁸⁴ Therefore, all citizens who have worked in war zones should be able to realize their rights and convalidate years of service under the same conditions in order to exercise the rights arising from labor relations and pension as all other citizens in an uncomplicated and simplified bureaucratic procedure.

⁸² Income from the so-called "Parafunds" of SAO Krajina does not relieve the Croatian Pension Insurance Institute payments due but unpaid pensions to its holders. It is possible to search for the solution in the direction of taking into account in the calculation the payments of the so-called "Parafund" SAO Krajina and the payment of arrears due and unpaid pensions, to determine the real value of these payments, and pays the holders the difference between the pension that would be received from the Croatian Pension Insurance Fund and the income from the so-called "Parafund" SAO Krajina.

⁸³ Accordingly, in Article 110 Paragraph 4 of the *Pension Insurance Act* expressly stipulates that for determining the facts on the pension seniority, wages, base security and other facts affecting the acquisition and establishment of the right to pension witness statements may not be the only source of evidence, except in the case mentioned in Article 99 Paragraph 2 and 3 of this Law.

⁸⁴ Official Gazette 47/09

Recommendations

The Government of the Republic of Croatia is encouraged to, in accordance with the intentions expressed in its Programme 2011-2015, as soon as possible put special focus on resolving the remaining refugee issues, such as program of the recognition of acquired pension rights: "In this regard, the Government will pursue an active policy, as with representatives of the refugees and the countries in which they are located, and with international organizations...

The deadline for the convalidation of employment service will remain open; the processes of resolving the requests for convalidation will be monitored, with the obligation dealing with the identified obstacles and problems. The Government will consider the problem of those citizens who, even though they regularly paid contributions to the pension funds, did not receive pensions for a certain period of time, and will consider the manner of compensation in consultation with the injured parties."

The competent authorities in the Republic of Croatia should consider the possibility of a special law to resolve the issue of the revision of the calculation of unpaid pensions to insured parties who in time of war, with no fault of their own, did not receive or could not receive their pensions. Since this is, especially in these recessionary times, a large amount, the payment of revised pensions would be possible (and allowed) to regulate in the form of periodical payments, by issuing state bonds or any other way acceptable to both sides.

It is recommended that the competent authorities should, by amending the legal framework in the area of convalidation of insurance, apply the benefits in the procedure of determining proof of insurance as prescribed by Article 99 Paragraph 2 Act on Pension Insurance, and provide for all the citizens who have worked in war zones to realize their rights and convalidate years of service in order to achieve their rights in labor relations and pension under the same conditions as all other citizens by an uncomplicated and simplified bureaucratic procedure.

Denied labour rights

In Bosnia and Herzegovina there are thousands of workers who had an established employment status in the Republic of Croatia and that have lost their status in the period from 1991-1995. The most common reasons cited for the layoffs were - a state of war, the application of the law on foreigners, redundancy, bankrupt businesses, termination of the employer, voluntarily leaving a job, sick leave etc. Sudden firings, in addition to the loss of job, resulted in the loss of the severance package, in the loss of rights to health protection, the rights to disability benefits, etc.⁸⁵

⁸⁵ There are two registered associations of displaced workers from the Republic of Croatia in Bosnia and Herzegovina. One is the association of "Ugor" which supplied a list of the 4.871 names of the members of the association. According to the association "Ugor" the average seniority of the dismissed workers is 20 years, and that this experience was gained mainly in construction companies. Another association is the Republic association of disabled workers and refugees from Croatia with the citizenship of BiH and the Republic of Srpska.

Although there were several conclusions of the Presidency and the Parliamentary Assembly of the B&H and the Council of Ministers of the BiH, so far they never managed to make significant progress in solving the problem of dismissed workers in the Republic of Croatia, since the attitude of the Croatian side towards this issue was that it should be resolved individually by the competent courts. The Plan of measures that should be taken to address this problem was designed and adopted in 2008. Most of the envisaged measures have not been realized and no cooperation with the authorities and bodies of the Republic of Croatia was established.⁸⁶

Pursuant to the Decision of the Council of Ministers of Bosnia and Herzegovina from August 2010 (Official Gazette of BiH 79/10), and on the basis of the previous initiative of the Parliamentary Assembly of Bosnia and Herzegovina, separate funds were allocated in the amount of 100.000,00 KM for the association "Ugor" from the Federation and 100,000,00 KM for the association from the Republic of Srpska (a total of 200.000 KM). The funds were envisaged as support to and participation for the payment of fees for filing individual complaints and costs of procedures.

In this way a general problem that included thousands of citizens was reduced to individual claims for exercising labour rights of workers laid off in the period from 1991-1995. We can already conclude that the proceedings will take years, and that a good portion of the claims is actually out-dated and that it concerns facts in a tumultuous period that would be difficult to prove.

Instead of filing individual complaints, it may be more useful to negotiate with the Republic of Croatia for the purposes of purchasing of additional service or to try to reach an agreement with a neighbouring country on the flat-rate compensation or solving the problems for all registered workers. After all, court costs, the total duration of the dispute and the engagement of administrative and judicial capacities costs much more than to try and find a solution for this problem bilaterally.

Recommendation

It is recommended that the Republic of Croatia and the Republic of Bosnia and Herzegovina solve the problem of illegally dismissed workers urgently and on a bilateral basis.

⁸⁶ The Plan envisaged:

- to conduct an analysis of the state with numeric indicators
- to conduct an analysis of the legal regulations of the Republic of Croatia which were in power in the period from 1991–1995 and the analysis of the international legal regulations which may have been violated
- to start an initiative towards the Republic of Croatia with the aim of solving these issues
- ask for the involvement of the representatives of the international community in this problem (OSCE, European Commission, The Council of Europe, The Council for Regional cooperation)
- to include the lower administrative levels in the resolution of this problem (entities and cantons)

Final Recommendations

The Igman Initiative strongly supports the regional process known as the "Sarajevo Process", among other things, by monitoring the situation in the field of status and property rights of citizens, particularly refugees and displaced persons in the countries of the Dayton Agreement, as well as with its recommendations and further project activities.

In order to eliminate a variety of discriminatory and legal barriers in the realization and protection of human rights of refugees and human rights in general, and to create preconditions for the rule of law and application of international legal standards, civic society should also continue to exert the internal pressure regarding procedures in the institutions of the legal and political system, continue with joint activities of lobbying, advocacy and other campaigns on specific issues, and continue to exert external pressure, through various initiatives and lobbying and advocacy campaigns at the European level, with constant insistence on the active role of the international community. For this purpose it is necessary to strengthen the regional cooperation of NGOs.

It is necessary to intensify the inter-state cooperation in the region in order to achieve a fair, comprehensive and lasting solution for the problems of refugees. The mechanisms for monitoring, mediation, conditionality and assistance from the international community to accelerate finding solutions to the problems of refugees and close the issue of refugees by promoting and strengthening the rule of law in the region, are still necessary.

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