Third Party Intervention
Organisation for Security and Cooperation in Europe, Mission to Croatia in

Application no. 59532/00
Krstina BLECIC against Croatia

I. Introduction

The termination of the applicant's specially protected tenancy[1] is appropriately viewed against the backdrop of actions by the judiciary and legislature that resulted in the mass termination of specially protected tenancies during and after Croatia's Homeland War. These actions coincided with massive population displacements, primarily of members of national minority groups, predominantly Serbs, from Government controlled to enemy-occupied territories in Croatia as well as outside the country.[2] Hence, the result was a differential negative impact on the basis of national origin given that the effects of the actions to eliminate housing were consolidated prior to significant minority return.

Also germane are post-conflict actions taken by the Government and judiciary to restore rights to former holders of specially protected tenancies in the last region returned to Croatian sovereignty in 1998, the Danube Region. The population displacement from this occupied territory to Government-controlled territory during the conflict was primarily ethnic Croat. The remedial measures taken allowed returnees to reclaim their pre-conflict homes.

As reported to the OSCE Permanent Council by the OSCE Mission to Croatia in its November 2002 Status Report, "many refugees who lived in socially-owned housing with occupancy/tenancy rights are still unable to reclaim their former homes or secure substitute housing. The widespread termination of occupancy/tenancy rights (*stanarsko pravo*) thus continues to impede sustainable return. This applies to thousands of Serbs who fled or were forced to flee during and after the armed conflict."[3]

II. Judicial terminations through application of pre-conflict legislation during the conflict in Government-controlled territories

[1] Also referred to in this text as "occupancy/tenancy right."

[2] The significant population displacements of the war are observable in a comparison of the total population statistics for Croatia from the 1991 and 2001 census. For example, in 1991, Serbs comprised 12.2% of the total population. In 2001, Serbs comprise 4.5% of the total population. *Census Population Statistics*, Republic of Croatia, State Statistics Bureau, Documentation 881, Zagreb, April 1992, page 9; *Census Population Statistics*, Republic of Croatia, State Statistics Bureau, Statistical Report 1166, Zagreb, January 2003, page 23. See also *Situation of Human Rights in the Territory of the Former Yugoslavia*, Fifth Periodic Report on the situation of human rights in the territory of the former Yugoslavia, 17 November 1993) at paragraph 99 (The United Nations Special Rapporteur observed "massive displacement of persons primarily from areas where they constitute a minority. According to UNHCR statistics, as of October 1993, there was a total of 247,000 Croatian and other non-Serbian displaced persons coming from areas under the control of the so-called "Republic of Serbian Krajina" and 254,000 Serbian displaced persons and refugees from the rest of Croatia...")

[3] OSCE Mission to Croatia, Status Report No. 11, 18 November 2002 at p. 15.

Beginning in 1991, specially protected tenancies were terminated extensively in areas that remained under Government control through the initiation of 23,700 individual proceedings in 85 municipalities under the 1985 Housing Act (*Zakon o stambenim odnosima*, Official Gazette nos. 51/1985, 42/1986, 22/1992, 70/1993).[4] The vast majority of the termination proceedings were initiated and completed during the conflict. Seven large cities (Zagreb, Osijek, Zadar, Karlovac, Split, Sisak, and Rijeka) account for two-thirds of all cases.[5] [Please see statistics divided by municipal court attached as Attachment 1].

Of the 23,700 termination proceedings, nearly 91% (21,516) are final, although requests to re-open the final procedure have been lodged in 1,706 of these cases. In addition, approximately 4.0% (860) are ongoing. As indicated by the statistics, judicial termination of specially protected tenancies continues at the present time in the form of original and re-opened proceedings. Execution of final court judgements of termination are also continuing at the present time including the eviction of occupants whose rights have been terminated, thus resulting in new displacement.[6]

Like Croatia as a whole as well as other major cities, Zadar has experienced a significant decline in its pre-conflict minority population.[7] Of the nationwide total of termination proceedings, 1,966 (8.3%) were initiated in the Zadar municipal court, 1,953 of which are final[8] and 13 in which the original proceeding is ongoing. Former tenants have requested to re-open the procedure in 38 cases in which the specially protected tenancy was terminated.[9]

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[4] Source: Ministry of Justice, Administration, and Local Self-Government "Procedures for Terminating Occupancy/Tenancy Rights 1991-2002, dated 17 September 2002; cited in OSCE Mission to Croatia, Status Report No. 11, 18 November 2002, at p. 15.

[5] Notably the Croatian courts processed large numbers of cases for the termination of specially protected tenancy although the Government has previously contended in *Rudan v. Croatia* that "during the aggression on Croatia [ ] regular operation of the courts was impeded."

[6] *E.g*., Ministry of Defense v. Jandro Marinkovic, final decision on termination of specially protected tenancy by Zadar County Court, case number Gz-229/97 dated 3 May 2000, execution procedure case number Ovr-4860/00; Ministry of Defense v. Stevanija Medic, final decision on termination of specially protected tenancy by Zadar County Court, case number Gz-39/97, dated 24 December 1997, execution procedure case number Ovr-1093/98; Ministry of Interior v. Dragomir and Dragica Miljenovic, final decision on termination of specially protected tenancy by Karlovac County Court, case number Gz-1006/99, dated 22 December 1999, execution procedure case number Ovr-518/00-6.

[7] For example, in 1991, Croats accounted for 82.8% and Serbs for 10.3% of Zadar's total population. In 2001, Croats accounted for 92.8% and Serbs for 3.3% of the total population. *Census Population Statistics*, Republic of Croatia, State Statistics Bureau, Documentation 881, Zagreb, April 1992, page 24; *Census Population Statistics*, Republic of Croatia, State Statistics Bureau, Statistical Report 1166, Zagreb, January 2003, page 86.

[8] For these purposes a "final decision" means a final judgement, it does not include execution of the decision.

[9] For six other large cities the statistics are as follows. In Zagreb, 4893 termination proceedings were initiated, of which 3315 are final, 443 are pending, and 200 requests to re-open have been filed. In Osijek, 3086 termination proceedings were initiated, of which 3079 are final, 7 are pending and 553 requests to re-open have been filed. In Karlovac, 1960 termination proceedings were initiated, of which 1920 are final, 40 are pending, and 201 requests to re-open have been filed. In Split, 1852 termination proceedings were initiated, 1763 are final, 89 are pending, and 56 requests to re-open have been filed. In Sisak, 1230 termination proceedings were initiated, of which 1230 are final and 284 requests to re-open have been filed.

Most termination proceedings, as in the case of the applicant, were based upon Article 99 of the Housing Act on the grounds that the tenant's absence of more than 6 months during the conflict was unjustified. Consistent with the decision in the applicant's case, the danger of the war, including individualized threats and forcible eviction, were routinely deemed insufficient justification by local courts for the tenant's absence. While some Croats did have their tenancy terminated in this manner, the overwhelming impact of these terminations involved Serbs (or members of other national minority groups) who departed in large numbers from Government controlled territories, including those who were victims of forcible eviction by military personnel and others.[10]

While the 6-month standard was strictly applied by courts to terminate the tenancies predominantly of Serbs (or members of other national minority groups), other provisions of the Law were liberally construed during the same period so as to maintain the absent tenant's specially protected tenancy. For example, the Supreme Court determined that acquisition of Canadian citizenship by a tenant while working and residing in Canada together with his family for more than 6 years did not justify termination of the specially protected tenancy as the stay in Canada should be considered temporary and within the Act's exception for work abroad. Key to the Supreme Court's decision upholding the tenancy was the constant subjective intent of the tenant to maintain his place of permanent residence in Croatia.[11]

In 1992, the Parliament amended the Housing Act adding participation in enemy activity as a ground for termination of the specially protected tenancy.[12] Application of this provision has resulted in the termination of the specially protected tenancy for women and children who at all times during the conflict remained in the flat, as their right was deemed as derivative of that of the male head of household who may have been absent.[13] In March 1999, the Constitutional Court in a case involving state-owned property determined that this provision could only be constitutionally applied to terminate the specially protected tenancy if there were a prior criminal conviction of the tenant.[14] Government ministries and the State Attorney continue contemporaneously to seek termination on this ground despite the lack of a criminal conviction, including appeals of lower court judgements favorable to the tenant that rely on the Constitutional Court decision, and eviction of those whose rights were previously terminated in a final decision on this basis. Failure by state bodies to follow the Constitutional Court's

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In Rijeka, 1058 termination proceedings were initiated, of which 987 are final, 71 are pending, and 26 requests to re-open have been filed.

[10] For further discussion, see *Situation of Human Rights in the Territory of the Former Yugoslavia*, Fifth Periodic Report on the situation of human rights in the territory of the former Yugoslavia, 17 November 1993) at paragraphs 99, 124-130.

[11] Supreme Court Rev-87/1996-2 dated 14 February 1996.

[12] The Constitutional Court upheld this law as facially constitutional upon request for abstract review. U-I-116/1992 dated 24 June 1992.

[13] For further discussion of summary termination proceedings against "enemies of the state", see *Situation of Human Rights in the Territory of the Former Yugoslavia*, Fifth Periodic Report on the situation of human rights in the territory of the former Yugoslavia, 17 November 1993) at paragraph 127.

[14] U-III-326/1995 dated 24 February 1999 (departure and stay in Serbia during the conflict not sufficient basis for civil court to determine that tenants had engaged in enemy activity).

interpretation has resulted in that Court issuing two additional decisions on the same issue.[15]

III. Legislative Termination – New Legislation Adopted After Military Operation in 1995 Liberated Formerly Occupied Territories

After "Operation Storm" in August 1995 liberated most of the occupied territory of Croatia, an event accompanied by the mass departure of non-Croats from these areas, the Parliament in late September 1995 adopted the Law on the Lease of Flats in the Liberated Territories (*Zakon o najmu stanova na oslobodjenim podrucjima*, Official Gazette nos. 73/1995, repealed 101/1998).[16] This law *inter alia* automatically terminated the specially protected tenancy of tenants who were absent from their flats for more than 90 days and provided for the leasing of such flats to other persons.[17] This legislation significantly increased the speed with which such terminations could be accomplished under the otherwise applicable Housing Act, in that it reduced the allowable absence period by half and eliminated the requirement for an individual judicial proceeding. While the impact of this legislative termination is more difficult to gauge given the absence of any individualized procedure, it is estimated that some thousands of families, primarily of the Serb minority, had their specially protected tenancies terminated in this manner within the three-month period after the military operation liberated the formerly occupied territories.

During the same period that the Parliament provided for the expedited termination of the specially protected tenancies of absent tenants, it significantly expanded the possibilities for privatization for the current occupants of flats in which the former tenancy had been cancelled. The privatization process began in 1991 with the adoption of the Specially Protected Tenancies (Sale to Occupier) Act (*Zakon prodaji stanova no kojima postoji stanarsko pravo*, Official Gazette nos. 27/1991, 33/92, 43/1992 – consolidated text, 69/92, 25/93, 48/93, 2/94, 44/94, 47/94, 58/95, 11/96, 11/97, 68/98, 96/99, 120/2000).[18]

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[15] U-III-457/2000 dated 13 December 2000 (Official Gazette 131/2000); U-III-435/2000 from 15 May 2000 (Official Gazette 56/2000).

[16] A request for an abstract review of the constitutionality of this legislation has been pending without decision in the Croatian Constitutional Court since December 1997. U-I-1270/1997, receipt by Constitutional Court acknowledged by letter dated 10 December 1997. The law was repealed in 1998 at the insistence of the international community. The repeal however, had no practical effect as the termination of specially protected tenancies had already been accomplished.

[17] Article 2 of the Law further provided that the owner could at its discretion determine whether to lease to family members of the tenant residing in the apartment or some other apartment.

[18] This Court has previously discussed the Specially Protected Tenancies (Sale to Occupier) Act in its inadmissibility decision issued in *Soric v. Croatia*, application no. 43447/98 (16 March 2000); see also *Strunjak v. Croatia*, application no 46934/99 (5 October 2000). In contrast to the instant application, the applicant in *Soric* was claiming the violation of Convention rights as related to a privately-owned flat. In its decision rejecting the application, this Court noted that the applicant constantly remained in possession of the flat he had occupied for over sixty years and "that possession ***has not been threatened by the sole enactment of the new legislation. On the contrary, the new legislation [ ] strongly protects the applicant's possession of the flat."*** This Court distinguished the position of users of privately-owned and publicly-owned flats stating "The Court observes that the applicant has always been in a position significantly different from the one of persons whose right to purchase the flats on which they previously held a specially protected tenancy is recognized by the Specially Protected Tenancy (Sale to Occupiers)

The law initially required that privatization applicants have the status of specially protected tenant.[19] However, amendments adopted in July 1995 allowed privatization by persons who had Government permission to temporarily occupy the flats if the previous specially protected tenancy had been terminated.[20] The amendments also imposed stricter requirements for privatization by holders of a specially protected tenancy in state-owned flats, requiring *inter alia* physical presence at the time of application and disqualifying tenants who *inter alia* participated in enemy activity, evaded military service, or left Croatia or went to the occupied territories and had not used the flat for more than six months.[21]

IV. Government and Judicial Resurrection of former Specially Protected Tenancy Rights in the Danube Region

The Danube Region, which was an occupied territory until 1996 and under United Nations Administration until January 1998, experienced a mass population displacement, primarily of ethnic Croats, during the conflict. The vast majority of these displaced persons did not begin to return to the area until after the end of the UN administration. While the legal construct or status of special protected tenancy ended in the Danube Region as in all areas of Croatia effective November 1996 by operation of the Leases Act (*Zakon o najmu stanova,* Official Gazette no. 91/1996, 48/98, 66/98), the two methods of termination of specially protected tenancies described above were not applied in this area. To the contrary, actions by the judiciary and the Government served to preserve the legal interests of former holders of special tenancies that had been displaced from the Danube Region.

In December 1999, the Government issued the Decree on the Allocation and Administration of Flats in the Areas of Special State Concern (*Uredba o raspolaganju i upravljanju stanovima na podrucjima posebne drzavne skrbi*, Official Gazette no.129/99). Article 3 of the Decree allowed former holders of a specially protected tenancy in the Danube Region, including those who had returned or would return in the future as well as those who had remained in the area, to privatize under the terms of the Leases Act. If these former tenants had missed the deadline in the Specially Protected Tenancies (Sale to Occupier) Act to privatize, as was true in most cases particularly for

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Act. While such persons were holders of a specially protected tenancy in regard of publicly-owned flats [ ] the applicant had been *ab initio* a lessee of a privately-owned flat, where his position was dependent on the will of the owner." The Court went on to note that permitting occupants of privately-owned flats would expose the private owners to "a compulsory obligation to sell their flats," there was no such threat to private ownership involved in the privatization of publicly-owned flats."

[19] Article 1. Initially excluded from the privatization process were all flats previously administered by federal bodies which were declared to be state-owned property.

[20] Article 1a extended this entitlement to disabled veterans of the Homeland War and immediate and extended family members of killed, imprisoned or missing Homeland War defenders.

[21] Article 50a. In 1997, the Constitutional Court invalidated several of the additional requirements for privatization of state-owned flats as contrary to the Constitution. U-I-697/95, dated 29 January 1997 (Official Gazette 11/1997).

Croat returnees, the Decree provided that the former tenants were eligible to enter into a protected lease.[22]

Relying on evidence of a former specially protected tenancy as well as the 1999 Decree, local courts recognized the legal interest of such former tenants as superior to that of current occupants for purposes of ordering forcible eviction of the occupants and restoration of possession to the former tenant. In many cases, the current occupants were displaced Serbs from other parts of Croatia including those whose occupancy rights had been terminated.[23]

Other local courts relied on other legal grounds to determine that the interest of former tenants in their pre-conflict home was superior to that of the current occupants. Some courts found that the former tenant, but for the intervening extraordinary war circumstances, would have privatized the flat, and thus could be considered as a constructive owner on the basis of the Law on Ownership and other proprietary rights (*Zakon o vlasnistvu i drugim stvarnim pravima* Official Gazette nos. 91/96, 137/99, 22/2000, 73/2000, 114/01) who had a right to claim repossession from the current occupant.[24]

Still other local courts found that the former tenant was a constructive protected lessee under the 1996 Leases Act, which status would have been obtained but for the extraordinary war circumstances, and as such had a stronger right to possess the apartment than the current occupant.[25]

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[22] In March 2003, the Government adopted the Decree on Conditions for the Purchase of a State-Owned Family House or Apartment in the Areas of Special State Concern (*Uredba o ovjetima za kupnju obiteljske kuce ili stana u drzavnom vlasnistvu na podrucjima od posebne drzavne skrbi*, Official Gazette 48/2003). Pursuant to this Decree, former tenants (including Croat returnees and minority remainees) in the Danube Region who were eligible for a protected lease in their pre-conflict home as a result of the 1999 Decree will be able to privatize the flats under favorable financial conditions. In contrast, most of those eligible to privatize in the other regions of the Areas of Special State Concern will be Croats who were allocated apartments for the first time after the liberation of the formerly occupied areas and termination of the specially protected tenancy of the pre-conflict tenants, primarily Serbs (or members of other national minority groups). Few if any minority returnees will benefit from this provision.

[23] *E.g.*, Case number P-1149/99, dated 7 November 2000 (Municipal Court Vukovar), aff'd Gz-874/99-3, dated 14 December 2000 (County Court Vukovar): Case number P-81/00, dated 11 December 2001 (Municipal Court Vukovar), aff'd Gz-285/02-3, dated 11 February 2002 (County Court Vukovar).

[24] *E.g.*, Case number P-641/99, dated 15 October 1999 (Municipal Court Vukovar), aff'd Gz-1118/99, dated 29 November 1999 (County Court Vukovar); Case number P-1358, dated 22 February 2000, (Municipal Court Vukovar), aff'd Gz-498/00-3, dated 6 June 2002 (County Court Vukovar); Case number P-263/99, dated 21 July 1999 (Municipal Court Vukovar), aff'd Gz-874/99-3, dated 23 September 1999 (County Court Vukovar).

[25] *E.g.*, Case number P-342/98-5, dated 9 September 1998 (Municipal Court Vukovar); Case number P-247/99-5, dated 21 May 1999 (Municipal Court Vukovar), aff'd Gz-870/99-3, dated 23 September 1999 (County Court Vukovar); Case number P-154/00-3, dated 31 August 2000 (Municipal Court Vukovar), aff'd Gz-1330/00-3, dated 5 October 2000 (County Court Vukovar); Case number P-791/00, dated 3 october 2000 (Municipal Court Vukovar), aff'd Gz-1422/00-3, dated 13 November 2000 (County Court Vukovar).

The remedial actions by both the Government and the local courts demonstrate ready acceptance that the general dangers of the war provided sufficient justification for absence from a specially protected tenancy flat in the formerly occupied Danube Region. Showings of individualized danger were not required. Forfeiture by displaced persons, mainly Croats, of their legal interest in their home was not deemed appropriate simply because of their failure to meet legal deadlines. As noted in the discussion above of judicial and legislative terminations of specially protected tenancies, the same standard was not applied to displaced persons, mainly Serbs, from Government-controlled and liberated territories.

V. Contemporaneous Civil Remedies for Repossession of Specially Protected Tenancy Property were Ineffective.

The classic civil remedy in Croatia for protection of peaceful enjoyment of possession is the initiation of a civil action for repossession. However, as demonstrated by this Court's recitation of the facts underlying the application in *Rudan v. Croatia*, recourse to this domestic civil remedy for the repossession of occupied specially protected tenancy property during the conflict was ineffective. As noted by this Court in *Rudan*, the State Attorney initiated a complaint and the local court granted termination of the specially protected tenancy in state-owned property despite a pre-existing judicial order for re-instatement into possession of the Rudan family. The ineffectiveness of civil remedies is similarly demonstrated by the facts underlying the application in *Cvijetic v. Croatia*,[26] where despite a final court order of eviction from 1995, the applicant regained possession of her apartment only in 2002 when the occupant voluntarily vacated. Although the applicant paid the cost of three separate eviction procedures, a financial burden beyond the means of many, the court order was never executed over the course of 6 years. Similar attempts by other tenants to use civil remedies or criminal sanctions as a means to contemporaneously safeguard their legal interests were equally ineffective.[27] In extreme circumstances such as those surrounding the mass termination of specially protected tenancies, the failure to contemporaneously use civil remedies that were not effective in fact should not be deemed fatal to the former tenant's legal interest.

VI. Termination of Specially Protected Tenancies has Negatively Effected Minority Return

In June 1998, the Parliament adopted "The Program for the Return and Accommodation of Displaced Persons, Refugees and Resettled Persons [hereinafter "Return Program"] (*Program povratka i zbrinjavanja prognanika, izbjeglica i raseljenih osoba,* Official Gazette no. 92/1998). The Return Program set forth procedures for the return of persons and regulation of their citizenship and residence status as well as procedures for applying for reconstruction of devastated property and the repossession of private property that was occupied pursuant to Government permission. Although an earlier agreement from

[26] Application no. 71549/01, admissibility decision dated 3 April 2003.

[27] For further discussion of forcible evictions and ineffectiveness of contemporaneous civil remedies, see *Situation of Human Rights in the Territory of the Former Yugoslavia*, Fifth Periodic Report on the situation of human rights in the territory of the former Yugoslavia, 17 November 1993) at paragraphs 124-132.

1997 provided for return within Croatia,[28] the Return Program marked the first formal procedures for return of refugees from outside Croatia. Refugees and displaced persons whose specially protected tenancies had been terminated either by court decision or by law during their absence were considered as having no property in Croatia. They thus had no home to which to return. The Return Program did not provide for present recognition of the tenant's past specially protected tenancy, providing instead that "where possible" permanent housing should be provided by Government authorities.

Under Amendments to the Law on Areas of Special State Concern (*Zakon o podrucjima od posebne drzavne skrbi*, Official Gazette no. 44/96, 57/96, 124/97, 78/99, 73/00, 127/00, 94/01, 88/02, consolidated text 26/03) adopted in 2000, former tenants whose specially protected tenancy had been terminated were eligible to apply in those geographic areas as were all other persons who had no property for "housing care." However, as persons without property, they were afforded the lowest priority for being provided housing.[29]

VII. Other Contemporaneous Property-Related Legislation had a Disproportionate Negative Impact on the Basis of National Origin

In the immediate post-conflict period, the Parliament adopted a series of property-related laws, in addition to that related to the termination of specially protected tenancies, that individually and taken as a whole had a disproportionate negative impact on Croatia's Serb minority. At approximately the same time, the Parliament adopted the Law on the Temporary Takeover and Administration of Specified Property (*Zakon o privremenom preuzimanju i upravljanju odredjenom imovinom*, Official Gazette 73/1995, 7/1996, 100/97) under which the Government allocated private property for use by displaced persons and refugees as well as settlers.[30] At the present time, approximately 6000 homes allocated under that law remain in the possession of occupants.[31] In January 1996, Parliament amended the Civil Obligations Act (*Zakon o obveznim odnosima*, Official Gazette no. 53/981, 73/91, 7/96, 112/99) staying all court proceedings concerning actions for damages resulting from terrorist acts pending the enactment of new legislation, amendments that were at issue in this Court's judgement in *Kutic v. Croatia* and later admissibility decisions. The 1996 Reconstruction Law (*Zakon o obnovi*, Official Gazette

[28] Agreement of the Working Group on Operational Procedures of Return (*Sporazum Radne Skupine o Operativnim Postupcima Povratka*, from 27 March 1997, Official Gazette no. 92/1998)

[29] Rulebook on the Order of Priority of Housing Care in the Areas of Special State Concern (*Pravilnik o redu prvenstva stambenog zbrinjavanja na podrujima posebne drzavne skrbi*, Official Gazette 116/2002)

[30] Although this law was repealed in 1998 (Official Gazette 101/1998), the repeal did not repeal the occupancy permission granted to individuals pursuant to the Law.

[31] Under a series of rules, regulations and laws related to private property adopted between 1995 and 2003, including July 2002 amendments to the Law on the Areas of Special State Concern, the occupants of such property have a legal preference over the owner. Only when eligible occupants are provided with housing, can the owner recover the property. Between 1995 and the present, owners have received no compensation for the use of their property. While the 2002 amendments promised such compensation, the Government only recently determined the amount of compensation (Official Gazette no. 68/2003, dated 22 April 2003) and payments have not yet begun. That compensation is, however, limited to the period after 31 October 2002.

no. 24/96, 54/96, 87/96, 57/00) explicitly excluded property destroyed by terrorist acts from the Government-financed program of reconstruction.

VIII. Specially Protected Tenancy and Croatia's Accession to the Council of Europe

The termination of specially protected tenancies was repeatedly cited in the reports that were part of the monitoring process by the Council of Europe's Parliamentary Assembly that began after Croatia's accession in 1996.[32] At the conclusion of that process, the Parliamentary Assembly specified that the Croatian authorities should adopt as a priority matter "a thorough reform of the legislation governing property issues throughout the country [ ] including the issue of occupancy/tenancy rights."[33] The Committee of Ministers in 2001 stated that it

"considers that the process for the return of refugees and displaced persons requires further progress. In order to create conditions for sustainable return, it would seem useful that the Croatian authorities should develop a more coherent legislative framework in this field, in order to back up its stated political support of return, particularly of Croatian Serbs. Such a framework, which should be in compliance with international standards, should cover issues such as the repossession of occupied property, and the resolution of lost occupancy and tenancy rights, through for example the return of apartments, allocation of other housing, or appropriate compensation. In order for such legislation to be effective, however, it is important that the authorities take steps to ensure proper implementation of legislation by all levels of administration, on an equal basis for all, and particularly the returning Croatian Serb community. To date, approximately 90,000 of the

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[32] "In the urban areas of former Yugoslavia, the right to occupy a socially owned apartment (occupancy or tenancy right) was the main form of real property**.** This right could be acquired by an individual who fulfilled certain conditions prescribed by law and had virtually all characteristics of a private property right except the right to sell. The European Court of Human Rights has held that the right of a tenant to occupy socially owned property is protected by the ECHR (article 8).

'Through discriminatory legislation passed during the war, including unreasonably short deadlines for applications to preserve tenancy rights, holders of such rights who fled their homes have been deprived of their right to live there, without any further notice, hearing or a possibility to appeal. The properties were declared abandoned and the government granted other individuals the right to occupy them. In cases where such properties were privatized, the current tenancy right holder was granted the right to purchase the property. Former tenancy rights holders who attempted to challenge the sale of apartments they used to live in were told by Croatian courts that they could not do so since they had permanently lost their tenancy rights and thus had no legal standing in the proceedings. Thus, these persons have had no effective remedy either to reclaim the apartments they formerly occupied or to be provided with substitute accommodation of comparable location, size and value, or to receive fair compensation.

'The resolution of the tenancy rights issue is seen by the international community as a determining factor for the return of refugees and displaced persons, since many of them do not have any other property in Croatia." Honouring of Obligations and Commitments by Croatia, Doc. 8353, 23 March 1999, Report, Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, Rapporteurs: Mr. J. Jaskiernia and Mrs. M. Stoyanova, Section III, Chapter 2.I.D.iv.

[33] Resolution 1223 (2000), Honouring of obligations and commitments by Croatia, 26 September 2000, Parliamentary Assembly , Section 3.i.e.

Croatian Serbs who left the country have been registered as having returned since 1995, and many of these people face difficulties on property-related issues."[34]

In addition, the Advisory Committee on the Framework Convention for the Protection of National Minorities noted in 2001 that

"The Advisory Committee also supports the efforts to address the persisting problems that are rooted in laws that were applicable during and immediately after the conflict. In this connection, the Advisory Committee considers that the impact that the loss of occupancy rights has had on persons belonging to a national minority merits particular attention."[35]

In its resolutions, the Parliamentary Assembly made repeated recommendations that the Government "seek and follow the advice of Council of Europe legal experts in resolving the problem of the right to occupy formerly socially owned property claimed by refugees, displaced persons and returnees."[36]

IX. Margin of Appreciation in Design of Remedy in Event this Court Finds Violation

The OSCE Mission to Croatia is cognizant that a finding of a violation in this case would have potentially significant financial consequences for the respondent State given the large numbers of persons similarly effected. The margin of appreciation granted to states in the design of remedies would certainly allow for consideration of this factor. However, the burden of any financial consequences must be assessed in light of the State's own approach to providing housing benefits. For example, the State has chosen to provide housing in the Areas of Special State Concern without regard to the beneficiaries' financial means, despite the suggestion of the international community to limit this financial burden to only that category of persons who have inadequate financial means.[37]

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[34] Honouring of obligations and commitments by Croatia, Recommendation 1473 (2000), Doc. 9204, 18 September 2001, Reply from the Committee of Ministers adopted at the 763rd meeting of the Ministers' Deputies (12 September 2001) at paragraph 16.

[35] Opinion on Croatia, adopted on 6 April 2001

[36] Recommendation 1406 (1999), Return of Refugees and Displaced Persons to Their Homes in Croatia, Parliamentary Assembly, 29 April 1999 (14th sitting), Section 10.i.g.; Resolution 1223 (2000), Honouring of obligations and commitments by Croatia, 26 September 2000, Parliamentary Assembly, Section 3.i.e.

[37] See OSCE Mission to Croatia, Status Report No. 11, 18 November 2002 at page 13 ("The underlying principle of property repossession remains as under the 1998 Return Programme, that is, *prior* to the repossession of property by owners, temporary occupants must be provided accommodation, regardless of whether the occupants have sufficient financial means to care for themselves."