REGIONAL LEGAL ASSISTANCE PROGRAMME

Support to the Return of Refugees and Internally Displaced Persons through Legal Aid

A STUDY

on Access to Pertaining Rights and (Re)integration of Displaced Persons in Croatia, Bosnia and Herzegovina and Serbia in 2006

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National Political-Legal Frameworks and Their Implementation in Practice

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INTRODUCTION

This study was elaborated within the Regional Legal Assistance Programme[1] (RLAP), more precisely the project entitled "Support to Return of Refugees/IDPs Through Legal Aid", implemented in the period between 5 October 2005 and 5 October 2006. Under the auspices of the OSCE Mission to Serbia and with the participation of the OSCE Missions to the Republic of Croatia and Bosnia and Herzegovina, the project was implemented by the regional network of twelve non-governmental organizations of the three states.[2] The project was financially supported by the Government of the United States of America.

The project's basic objective was to facilitate access to rights by and local (re)integration of displaced persons through provision of legal aid and permanent monitoring of the status of representative legal cases in specific legal areas. The project monitored the activities aimed at meeting the undertaken obligations and observing the principles of the regional framework for a just and permanent solution of refugee problems, established by signing the Sarajevo Ministerial Declaration on Refugee Return[3] on 31 January 2005.

The study analyzes and considers some issues concerning access to pertaining rights by displaced persons in practice, as well as those concerning the possibility of return and local (re)integration in the territory of the three states, and, in that connection, the existence of political will to establish mechanisms in order to reach the final solution of the problems of refugees and displaced persons and to make the existing legal frameworks effective.

This document is based on information which was collected and processed by the NGOs constituting the Regional Legal Assistance Programme network (the RLAP network), through careful monitoring of specific legal cases. The document does not consider all legal issues and fields relevant for the solution of the problems of refugees and displaced persons in the region, but only those that were subject to monitoring and analysis by the RLAP network.

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[1] The Regional Legal Assistance Programme has been implemented since 2002 with a view to strengthening cooperation between and building and promoting technical and human resource capacities of the non-governmental organizations of Croatia, Bosnia and Herzegovina and Serbia engaged in extending charge-free legal aid and advice to refugees and displaced persons.

[2] The network consists of twelve non-governmental organizations of **Serbia -** the Humanitarian Centre for Integration and Tolerance; the Serbian Democratic Forum; the Balkan Centre for Migration and Humanitarian Activities; PRAXIS; Group 484; **Croatia** – the Serbian Democratic Forum; the Association Gorica; the Civil Rights Project – Vukovar, the Civil Rights Project – Sisak; the Centre for Peace, Legal Advice and Psychosocial Assistance – Vukovar; **Bosnia and Herzegovina** - International Lex; and, finally, the regional project Movimento por la Paz, el Disarme y la Liberdad (MPDL) with offices in all three states.

[3] The Declaration was signed by the ministers in charge of refugees and displaced persons in Bosnia and Herzegovina, Serbia and Montenegro and Croatia, as a result of the successful joint initiative of the OSCE Missions, the UNHCR Offices and the delegations of the European Commission to the three states.

1. INFORMATION ON DISPLACEMENT AND THE SITUATION IN 2006

Croatia

Between 1991 and 1997, around 950,000[4] pre-war Croatian citizens were displaced both within the borders of the Republic of Croatia and outside them. Around 550,000 displaced persons were mainly citizens of Croatian nationality, while the remaining 400,000 were mainly minority Serbs, 330,000 of whom were displaced in Serbia and Montenegro, 40,000 in Bosnia and Herzegovina and 32,000 in Croatian Danube region (the former UNTAES region).

Since the beginning of the intensive return process in 1995, 341,081[5] returnees have been officially registered, of whom 64% mainly account for the majority population, while 36% account for displaced Serbs. According to the data of the Ministry of Maritime Affairs, Tourism, Transport and Development (MMATTD), out of 122,031 officially registered minority population returnees, by early September 2006, 89,428 of them returned from Serbia and Montenegro, 8,997 from Bosnia and Herzegovina, while 23,606 returned from Croatian Danube Region to other parts of Croatia. Estimates, however, show that only 60-65% minority returns can be considered sustainable and that some refugees return again to the country of refuge after returning to Croatia and staying in it for a short while, manly due to the constant difficulties they face regarding access to housing, acquired rights and employment.[6]

According to official statistics, in Croatia there are 2,542 unresolved cases involving expellees of mostly Croatian nationality, 1,650 displaced persons of mainly Serb nationality, 2,594 refugees, and a large number of refugees outside Croatia (most of whom are residing in Serbia, Montenegro, Bosnia and Herzegovina and are wishing to return to Croatia). The exact number of refugees who wish to return to Croatia is not available; the MMATTD assesses, based on the number of return claims, that there are at least 11,694 potential returnees, namely less than 20,000.[7]

Serbia[8]

While in 1996 the number of officially registered refugees from the other republics of the former Socialist Federal Republic of Yugoslavia was 538,000, in early October 2006 it

[4]The Commission of the European Communities (CEC), the Opinion of the European Commission on the Republic of Croatia's Application for EU Membership, 20 April 2004, COM(2004) 257, final text, page 27.
[5] The Ministry of Maritime Affairs, Tourism, Transport and Development: The Return of Expellees and Refugees in Croatia, 7 September 2006
[6] The OSCE Mission to the Republic of Croatia: The 2006 Review – A Report on Croatia's Progress in Meeting International Commitments, 9 June 2006, page 13
[7] The Ministry of Maritime Affairs, Tourism, Transport and Development: The Return of Expellees and Refugees in Croatia, 7 September 2006
[8] The mentioned figures do not include the number of internally displaced persons from Kosovo and Metohija; in the territory of the Republic of Serbia without Kosovo and Metohija, there are 208,000 registered displaced persons from Kosovo and Metohija.

dropped to 106,000.[9] The number of officially registered refugees may be considered preliminary in view of the fact that after the recent review of refugee status there remained another 11,000 pending appeals against first instance decisions on refugee status termination.[10]

According to the statistics of the Commissariat for Refugees of the Republic of Serbia, in the previous period 130,000 refugees returned to the country of origin (60,000 to Croatia and 70,000 to Bosnia and Herzegovina), about 20,000 resettled in third countries, while a large number of them acquired citizenship of the Republic of Serbia. The Commissariat assesses that there are around 350,000 refugees who need assistance in the process of local integration or repatriation, regardless of the official recognition of their refugee status in Serbia.[11]

Bosnia and Herzegovina

According to the last 1991 census, Bosnia and Herzegovina had the population of about 4.3 million people. Between 1992 and 1995 around 2.2 million people left their pre-war homes in Bosnia and Herzegovina, which accounts for over a half of the pre-war domicile population. Out of that number around 1.2 million people sought refugee protection in over 100 countries the world over, while at the same time some 1 million people were displaced within Bosnia and Herzegovina.

The former Federal Republic of Yugoslavia (Serbia and Montenegro) and the Republic of Croatia accepted almost 40% of refugees from Bosnia and Herzegovina (B-H), while the Federal Republic of Germany and Austria offered protection to the largest number of B-H refugees outside the region. These four countries accepted almost 80 % of all people who had left Bosnia and Herzegovina as refugees.

Over 1 million returns to B-H have been registered so far, almost half of which account for minority returns. Returnees, particularly those belonging to minority groups, are mainly the elderly. Since the signature of the Dayton Peace Accords around 50% of refugees and displaced persons have returned. However, field research conducted by some non-governmental organizations from B-H[12] indicates that only a third of the total number of displaced persons and refugees actually returned to their homes.

The largest number of returns took place in the first three years upon the establishment of peace; it accounts for over half of the total number of returns to B-H which have taken place to date. Even today, eleven years upon the establishment of peace, nearly a half of refugees and displaced persons from B-H still live outside their pre-war homes. The

[9] The statement of the Serbian Commissioner for Refugees, Mr. Dragiša Dabetić, at the OSCE Human Dimension Implementation Meeting in Warsaw on 4 October 2006 (HDIM.DEL/113/06)

[10] The Humanitarian Centre for Integration and Tolerance – Novi Sad, a study entitled "Some Legal Problems Concerning the Position and Integration of Refugees in the Republic of Serbia", September 2006

[11] The statement of the Serbian Commissioner for Refugees, Mr. Dragiša Dabetić, at the OSCE Human Dimension Implementation Meeting in Warsaw on 4 October 2006 (HDIM.DEL/113/06).

[12] For instance, the Helsinki Committee for Human Rights in Bosnia and Herzegovina, the Union of Associations of Refugees and Displaced Persons in B-H, etc.

Ministry for Human Rights and Refugees assesses that around half a million persons who left B-H between 1992 and 1995 still live outside B-H and are registered as refugees from B-H. Almost 100,000 refugees from B-H and over 180,000 displaced persons in B-H still seek a permanent solution, particularly through return.

2. ACCESS TO RIGHTS AND THE POSSIBILITY OF (RE)INTEGRATION OF DISPLACED PERSONS[13]

2.1. The restitution of (private) property

Croatia

The restitution of temporarily occupied housing units in private ownership has almost been completed. According to the data of the MMATTD, in early September 2006, of 19,280 cases of occupied houses there remained only 18 to be solved.[14] However, the official government figures do not include the cases of occupied property claimed by owners in court proceedings, the cases addressed to the State Attorney's Offices, or the cases of unclaimed property. Thus, for example, in late April 2006 the OSCE Mission to the Republic of Croatia registered 219 cases of occupied houses owned by displaced Serbs.[15]

The RLAP network member organizations monitored some 40 cases of occupied property between January and September 2006, from which it is to be concluded that the number of cases pending solution is several times bigger than that stated by the MMATTD. Of all cases monitored by the RLAP network, there was one case of restitution of private property to the original owner in Benkovac.[16] In administrative and court proceedings involving the restitution of private property to the original owner, the interest of temporary occupant is still placed above the interest of the owner[17] and the repossession of property is conditioned by provision of the housing to temporary user.

Administrative mechanisms for the restitution of illegally taken agricultural land and business premises have not been established, so that owners have only one option to resort to – to institute lengthy proceedings. It is obvious from the above that the state failed to ensure the rule of law in its territory and access to rights on equal footing for all citizens and without discrimination, by placing an excessive burden upon one category of citizens in view of the fact that there is no charge-free legal aid system, that those citizens

[13] This chapter addresses the issue of access to rights only within those legal areas that were subject to individual and joint monitoring by the non-governmental organizations members of the Regional Legal Assistance Programme.
[14] The Ministry of Maritime Affairs, Tourism, Transport and Development: The Return of Expellees and Refugees in Croatia, 7 September 2006
[15] The OSCE Mission to the Republic of Croatia: The 2006 Review - A Report on Croatia's Progress in Meeting International Commitments, 9 June 2006, page 15
[16] The information of the Humanitarian Centre for Integration and Tolerance of Novi Sad; the case of S.S. et al., concluded by the enforceable decision of the Benkovac Municipal Court of 6 March 2006, later confirmed by the decision of the Zadar County Court of 17 July 2006
[17] A practice based on paragraph 3 of Article 17 of the Law on Areas of Special State Concern

have low incomes or no income at all, the costs involved for instituting proceedings, as well as the fact that the majority of owners still live outside the country of origin.

According to the MMATTD, there were only 6 pending cases of occupied agricultural land in wider area of Benkovac, at the end of June 2006.[18] At the same time, the Serbian Democratic Forum reported as many as 125 cases of illegally occupied agricultural land in the same region.[19] At the beginning of June 2006, the OSCE Mission to Croatia was aware of some 20 cases of illegally occupied agricultural land and business premises.[20] All stated above is supporting the opinion that the state must offer adequate mechanisms for resolving all identified problems and that it must actively participate in the resolution of those problems, irrespective of the fact how their complexity or scope are presented on the basis of the available statistical data.

Moreover, the government has not established any administrative mechanisms regulating the restitution of movable property of displaced persons, placed under the Republic of Croatia's temporary administration. Neither was this question considered within the Sarajevo process. In other words, the authorities were legally bound to appoint a commission to make an inventory of the movable property found in abandoned real assets in the private ownership of displaced persons or in the flats of occupancy/tenancy right holders[21], and to prevent the destruction of or damage to such movable property. It has been noticed that the unavailability of such movable property inventories potentially leads to difficulties in presenting evidence in court proceedings and that it discourages owners as injured parties from claiming their property before a court of law.

Bosnia and Herzegovina

In BiH, laws on cessation of the application of the laws on use of the abandoned property that are effective at the entity level represent the legal basis for return of property to pre-war owners, possessors or holders of tenancy rights.

The provisions of these laws are applicable to immovable property, including business premises in private ownership, houses in private ownership and flats in private ownership, as well as the flats of occupancy/tenancy right holders ("flats"), which were abandoned after 30 April 1991, regardless of whether the immovable property or the flat in question was proclaimed abandoned or not. The only condition is that the owner, occupant or user of the immovable property was dispossessed of that property or that the occupancy/tenancy right holder was dispossessed of the flat.

[18] The Centre for Peace, Legal Advice and Psychosocial Assistance – Vukovar, an intervention of the representative of the MMATTD at the round table "Challenges in Solving Refugee Problems in the Republic of Croatia – the Implementation of the Sarajevo Ministerial Declaration on Refugee Return", Zagreb, 20 June 2006

[19] Data of the Serbian Democratic Forum - Zagreb

[20] The OSCE Mission to the Republic of Croatia: The 2006 Review - A Report on Croatia's Progress in Meeting International Commitments, 9 June 2006, page 15

[21] The Law on Temporary Take-over and Administration of Property (*The Official Journal* 73/95, 7/96, 100/97), the Law on Temporary Occupancy of Flats (*The Official Journal*, 66/91, 76/93)

Almost 200,000 housing units were returned to their owners in B-H. In spite of the high rate of execution of the positive decisions, local authorities still tend to hamper in a variety of ways the execution of decisions on property return.

Although in B-H the deadlines for the restitution of flats expired, there is still a small number of pending cases. In a large number of municipalities all cases were solved. According to some estimates, there are less than 1% of pending cases of the total number of submitted claims. These cases are mainly related to the flats which were subject to exchange or to the so-called "military apartments"[22] in the Federation of Bosnia and Herzegovina.

It is well-known that a certain number of persons from both entities submitted no claims for the restitution of occupancy/tenancy rights within the set time limit. Data on their number vary from one B-H municipality to another. Roughly speaking, we are talking about some 3% of the total number of pre-war occupancy/tenancy right holders. If an occupancy/tenancy right holder failed to submit a claim for return of the apartment within the prescribed deadline, it is considered that his occupancy/tenancy right was terminated *ex lege*, whereby the possibility to repossess the flat permanently ceased.[23]

Amendments to the Law on Revoking the Law on Abandoned Flats (FB-H) and to the Law on Revoking the Law on Abandoned Property Return (RS), applying to the return of military apartments, were adopted in July 2003 in the Federation of Bosnia and Herzegovina (FB-H) and in November 2003 in the Republic of Srpska (RS). The amendments stipulate that the right to repossess a flat will not be applicable to occupancy/tenancy right holders who enjoyed that right in the flats owned by the Defence Ministry and that such persons will not be considered refugees if they remained in the professional military service in any armed forces outside Bosnia and Herzegovina after 14 December 1995. In addition, occupancy/tenancy right holders of the mentioned status will not be considered refugees nor will they have the right to repossess an apartment, if they acquired some new occupancy/tenancy right or a corresponding right[24] from the former JNA housing stock or the newly established housing stocks of the armed forces of the states which emerged in the former SFRY territory.

[22] Flats in the ownership of the former Yugoslav People's Army (JNA)

[23] In the "Overview of Access to Rights", MARRI- Stability Pact for South Eastern Europe (item 12), document for Bosnia and Herzegovina, written by Jens Schwab, 2004, (unpublished), it is noted, among other things, that in the New Strategy Direction, OSCE demands the establishment of "…legal procedures applying to the persons who have not submitted a claim for the restitution of their socially-owned flats within the prescribed deadlines…" This has not been done in B-H to date. Individual attempts to repossess flats in proceedings before B-H courts have yielded no results since the courts invoked prescribed deadlines for submitting a claim, i.e. the deadlines regulated by property laws as *lex specialis*. This problem still persists.

[24] The repossession of the so-called military flats in B-H (particularly in the Federation of B-H), is today probably the most serious property issue which has not been completely solved, as it involves a relatively large number of people. Still, there are some significant decisions in this connection, namely the Decision on Admissibility and Merits in Case CH-97-110 of the B-H Human Rights Chamber of 11 February 2000; and the Decision on Admissibility in Case CH-96-3 of the B-H Human Rights Chamber.

2.2. The reconstruction of destroyed and damaged housing units in private ownership

Croatia

Ever since the reconstruction process started in Croatia, 141,160 destroyed or damaged houses and flats have been reconstructed. In the last couple of years, most reconstruction beneficiaries (some 80%) have been displaced citizens of Serb nationality.[25] According to the official figures of the MMATTD, in early September 2006 there remained 2,410 outstanding requests for reconstruction assistance. However, these figures do not include or reflect pending second instance cases, the number of which was 14,787 in 2006, including 800 repeated appeals.[26]

The RLAP network intensively and comprehensively monitored the disposal of pending cases by the first instance and the second instance authorities, when it comes to exercising the right to reconstruction assistance. The network noted numerous problems in the work of the competent administrative authorities[27], as well as shortcomings in the implementation of the principles and provisions of the Law on General Administrative Procedure in establishing the right to reconstruction, particularly in observing the principles of legality, efficiency, hearing the parties, cost-effectiveness, extending assistance to the lay party, observing deadlines for passing decisions, and the obligation to notify a party of the reasons for not passing a decision within a legal time limit.

The network did not register a single case which a first instance authority competent for acting upon reconstruction requests concluded within 30 days under the provisions of the Law on Reconstruction. First instance proceedings normally last for over a year, in some cases three to four years, and sometimes even more.[28]

Decisions in second instance proceedings are not passed within a reasonable time limit[29] either (the law stipulates that these decisions should be passed within two months of the day of appeal[30] at the latest). The network also noted the non-observance of the legal

[25] The Ministry of Maritime Affairs, Tourism, Transport and Development: The Return of Expellees and Refugees in Croatia, 7 September 2006

[26] The Ombudsman of the Republic of Croatia: the 2005 Work Report, page 51

[27] The County State Administration Offices – the Services for Spatial management, Environmental Protection, Construction and Property Rights Issues as the first instance authorities, and the Office for the Reconstruction of Family Houses as the second instance authority

[28] An illustration of this is the case of J.B. who submitted a request for the reconstruction of her family house in Vukovar on 15 July 1998, which was denied in a first instance decision in 2003. Despite two interventions to expedite the appeal procedures, they have lasted for three years already, which means that the procedure as a whole has lasted for eight years now (the Centre for Peace, Legal Advice and Psychosocial Assistance – Vukovar).

[29] For instance, the pending cases of G.M., reconstruction in Krnjak – the appeal submitted on 15 May 2001; R.M., reconstruction in Časma – the appeal submitted on 24 March 2003; S.M., reconstruction in Slatina – the appeal submitted on 12 September 2003; Lj.S. reconstruction in Orahovica – the appeal submitted on 2 October 2003; K.Dz., reconstruction in Okučani – the appeal submitted on 22 December 2003, etc. (the Humanitarian Centre for Integration and Tolerance – Novi Sad)

[30] Article 247 paragraph 1 of the Law on General Administrative Procedure

provision under which the official in charge of the proceedings is obliged to notify the party in writing, within 8 days upon the expiry of the deadline for passing a decision, of the reasons for which the decision has not been passed and of the action to be undertaken in order to pass it.[31] In addition, the first instance authorities competent for the reconstruction of family houses more often than not ignore the written requests of the persons applying for reconstruction to expedite the proceedings.

Second instance adjudications point at the low professional quality of the first instance proceedings in adjudicating reconstruction requests. Serious mistakes are made in re-establishing the facts which are relevant for deciding upon requests and which were incompletely or wrongly established in the previous proceedings. Apart from that, the competent authorities do not observe the rules of procedure and as a consequence the enacting terms of the challenged decision are unclear or contrary to the rationale. This is why the legal provisions regulating supplementary proceedings[32] are often applied, in order to overcome the noticed shortcomings, which prolongs the second instance proceedings.

There are numerous cases of appeals lodged due to superficial or incorrect assessment of the degree of damage inflicted on housing facilities. Thus, for instance, in a number of analyzed cases it turned out that during investigation the competent County commission for the inventory and assessment of war damage misidentified damaged facilities and owners.[33]

One of the most frequent reasons for lodging an appeal against first instance decisions is the beneficiary's dissatisfaction with the assessment of damage to housing facilities, as established by competent commissions, particularly in the case of the third or fourth degree of damage, which determines whether reconstruction will be organized and implemented by the owner (facilities with the first, second and third degree of damage) or by the competent ministry (facilities with the fourth, fifth and sixth degree of damage). When the second instance authority allows such an appeal, in the decision overruling the first instance decision it actually points to the need for the first instance authority to supplement the proceedings, which means that the competent commission should reassess the degree of damage. Competent commissions are normally very slow in responding to such requests.

The Law on Reconstruction stipulates that only those applicants who resided in the facility – subject of the reconstruction request, until the beginning of armed conflicts in 1991, should be eligible for reconstruction assistance. Therefore, reconstruction requests had to contain, among other things, proof of the applicant's permanent residence address in a particular region until the outbreak of armed conflicts. The competent County

[31] The provision of Article 296 of the Law on General Administrative Procedure
[32] Article 242 paragraph 1 of the Law on General Administrative Procedure
[33] An illustration of this is the case of C.I. in Udbina Municipality (the Association Gorica – Korenica); and the case of O.M., the place of Crno Vrelo in Slunj Municipality (the Serbian Democratic Forum – Belgrade).

Reconstruction Office is obliged to acquire this proof.[34] By monitoring different cases, the network noticed that in a number of them the authority in charge of reconstruction requested that the applicant should acquire proof of residence on his own, which is in contravention of the relevant provision of the Law on Reconstruction, as well as of the principle of cost-effectiveness in administrative procedure[35].

The network also noticed that applicants encountered various problems in proving facts related to their pre-war residence. Furthermore, there were cases of different standards applied in evaluating residence certificates as a means of evidence in reconstruction request procedures. In other words, these certificates are sometimes considered less and sometimes more credible in relation to other means of evidence. Some analyzed cases indicate that regardless of whether a residence certificate is considered to have a higher quality of evidence in relation to other means of evidence or whether some other means of evidence is considered to have a higher quality of evidence in relation to a residence certificate, the result is the same – dismissing the reconstruction request.[36] Under the principle of free evaluation of evidence, the authority in charge of the procedure is not bound by a selection of means of evidence, i.e. in principle all means of evidence are of equal quality (e.g. the residence certificate, testimonies of parties or witnesses, other documents indicating that the applicant did or did not reside in the facility – subject of the reconstruction request, i.e. that the applicant did or did not permanently reside in the facility in order to satisfy his/her housing needs, etc.). In the rationale of the decision on (non)recognition of the reconstruction right, the competent authority is, however, under the obligation to exhaustively list specific reasons and circumstances which served as a basis for giving priority to one particular piece of evidence and considering it more credible than others, which was rarely the case in practice.

The RLAP network registered at least one more case[37] in which the competent County Offices for Reconstruction requests that the applicant should submit a certificate of no criminal record for himself and the members of his family listed in the reconstruction

[34] Article 16 paragraph 2, item 8 of the Law on Reconstruction

[35] Article 13 of the Law on General Administrative Procedure: "The procedure should be conducted fast and with minimum costs and time consumption for the party and other persons involved in the procedure, nevertheless in such a manner so as to acquire all that is necessary for the regular establishment of facts and adoption of a legally-based and correct decision."

[36] An illustration of this is the case of B.J., reconstruction in Vukovar, in which the Vukovar-Srijem County Reconstruction Office was of the opinion that the certificate proving that the beneficiary did not reside in the facility – subject of the reconstruction request, until the outbreak of armed conflicts in that region, was a more credible means of evidence than the testimonies of the witnesses heard in the proceedings, who claimed that the applicant resided in the facility in question until the beginning of armed conflicts in the region, and based on such evaluation of evidence dismissed the applicant's reconstruction request. Quite the opposite is the case of M.K. from K.; under the decision of Croatia's Constitutional Court (U-III/3837/2004) dismissing the applicant's constitutional complaint, the residence certificate was not evaluated as a credible means of evidence in relation to other means of evidence, so that the applicant's reconstruction request was dismissed. The Civil Rights Project – Sisak has 3 registered cases in which neither the party's identity card nor the residence certificate issued by the Ministry of the Interior were considered admissible evidence proving that the party resided in the house in question, as a result of which the reconstruction requests were denied.

[37] The Šibenik-Knin County Reconstruction Office in the case of M.B., reconstruction request in the place of Baljka (the Humanitarian Centre for Integration and Tolerance – Novi Sad)

request, which, in fact, is the obligation of the competent office under the Law on Reconstruction[38]. Under the Law on Reconstruction[39] acquiring this proof is necessary since a person who received an enforceable sentence for the criminal offence described in Article 3 paragraph 1 of the Law on General Abolition, is not eligible for reconstruction. The request to acquire a certificate of no criminal record for the applicant's family members violates the provision of the Law on Reconstruction[40] in view of the fact that limiting the applicant's rights to reconstruction due to the mentioned criminal offence is not applicable to his family members as well.

In some of the analyzed cases the reconstruction offices of Zadar, Lika-Senj, Šibenik-Knin and Bjelovar-Bilogora Counties requested the applicant to submit a photocopy of a Croatian citizenship certificate and a valid Croatian identity card for himself and all members of his family. This, however, is not prescribed by the Law on Reconstruction and it makes the reconstruction right conditional on Croatian citizenship.[41] The 2000 Amendments to the Law on Reconstruction were aimed at, *inter alia*, enabling even those owners or co-owners of the houses destroyed or damaged in war, who were not Croatian citizens but had residence in the Republic of Croatia in 1991, to return to Croatia.[42] Furthermore, the reconstruction of a destroyed or damaged house is one of the basic conditions for the physical return of refugees who live abroad and for issuing a residence certificate and an identity card with the address of the reconstructed family house.

There were also cases in which some County Reconstruction Offices requested, as a condition for exercising the right to reconstruction that the applicant and members of his family should submit a certificate on their refugee status in the state in which they currently reside.[43] The competent offices explain these unlawful actions by the fact that when a refugee acquires foreign citizenship, e.g. of the Republic of Serbia, and is issued an identity card in the country of new citizenship, he/she is integrated in another state and has a new residence in it. The Law on Reconstruction envisages that the persons eligible for reconstruction are the owners or co-owners of the residential buildings destroyed or damaged in war, protected lessees in the flats in those buildings, and the owners of other

[38] Under Article 16 paragraph 6 of the Law on Reconstruction, the competent county reconstruction office is obliged *ex officio* to acquire proof that the applicant did not receive an enforceable sentence or that no charges were pressed against him for the criminal offence described in Article 3 paragraph 1 of the Law on General Abolition (T*he Official Journal* 80/96).

[39] Article 5 paragraph 2 of the Law on Reconstruction

[40] Article 5 paragraph 4 of the Law on Reconstruction

[41] E.g. in the case of R.J., reconstruction in Knin, in which the Šibenik-Knin County Reconstruction Office dismissed the reconstruction request in the first instance, as the applicant did not have Croatian citizenship. In the case of M.V., reconstruction in Bjelovar, the Bjelovar-Bilogora County Reconstruction Office dismissed the reconstruction request in the first instance as the applicant did not have Croatian citizenship. In the appeal procedures the appeal was successful since the applicant had received Croatian citizenship in the meantime (the Humanitarian Centre for Integration and Tolerance- Novi Sad).

[42] Article 4 paragraph 2 of the Law on Reconstruction

[43] E.g. the cases of reconstruction requests dismissed by the Karlovac County State Administration Office – the Service for Spatial Management, Environmental Protection, Construction and Property Rights Issues – the Slunj Branch Office and the Lika-Senj County State Administration Office – the Service for Spatial Management, Environmental Protection, Construction and Property Rights Issues, where the applicant has the Serbian identity card, i.e. if he/she does not have refugee status in Serbia (the Humanitarian Centre for Integration and Tolerance – Novi Sad)

destroyed or damaged material goods, who are Croatian citizens, as well as the persons who had residence in the Republic of Croatia in 1991[44], regardless of their present residence or refugee status recognized to them in another state. Such conduct of the competent authorities could have an adverse effect on the return process in view of the fact that the person who has submitted a reconstruction request has at the same time expressed a wish and intent to return to and permanently settle in the country of origin.

Bosnia and Herzegovina

Ever since the signature of the Dayton Peace Accords some 260,000 housing units have been reconstructed, out of which over 170,000 through donations.

In Bosnia and Herzegovina the right to reconstruction is regulated by the Law on Refugees from B-H and Displaced Persons in B-H.[45] There are also entity laws confirming and regulating the right to reconstruction. The law does not envisage any deadline by which reconstruction requests should be submitted in B-H.

The cost of reconstruction of the remaining destroyed and damaged housing stock is estimated, according to the degree of damage established in the field, at around 2.5 billion KM or around 1.25 billion euros.

On 25 June 2004, the Ministry for Human Rights and Refugees issued an appeal inviting refugees from B-H, displaced persons in B-H and returnees to apply for reconstruction and return to B-H.

The RLAP network noticed omissions when it comes to informing the citizens of the reconstruction projects in the places where potential returnees possess damaged or destroyed real assets and where they have had residence before the armed conflicts in B-H. Public announcements are posted on notice-boards of B-H municipalities and publicized at least in one daily newspaper of each entity. However, the announcements are available only for displaced persons in B-H, but not for the majority of refugees residing in other states –particularly in Serbia and Croatia. In that sense, the RLAP network noted omissions in keeping the refugees informed of public appeals to apply for reconstruction in B-H, which has resulted in their missing the deadlines for application and inability to return.

[44] Article 4 paragraph 1 of the Law on Reconstruction
[45] *The Official Gazette of B-H*, No. 23/99; 21/03; 33/03

2.3. Access to housing care and "property"[46] rights by former holders of occupancy/tenancy rights to socially-owned flats

Croatia

The rights arising from the former institute of occupancy/tenancy right in the Republic of Croatia do not have the legal status of acquired property rights for former occupancy/tenancy rights holders, whose occupancy/tenancy rights were terminated during their displacement.[47] Unlike in Bosnia and Herzegovina, the facts of armed conflicts, direct or indirect pressures to leave or the existence of a well-founded fear were not accepted as legally relevant for recognizing the justifiability of the absence of an occupancy/tenancy rights holder from the flat to which he/she had that right. The question of potential pecuniary or other kind of compensation for displaced occupancy/tenancy right holders has remained one of the open issues in the implementation of the process initiated by the signing of the Sarajevo Declaration. The legal and political framework and mechanisms for resolution of this issue in the Republic of Croatia have not been established.

The network member organizations were intensively monitoring the status of at least 8 cases related to the terminated occupancy/tenancy rights, which are at different stages of judicial proceedings. Out of five cases involving lawsuits for terminated occupancy/tenancy rights, three are before the Supreme Court of the Republic of Croatia in the procedure of judicial review, while in two,[48] first instance decisions are still pending.

In two cases[49], in which the occupancy/tenancy rights were never revoked from displaced persons by virtue of a court decision and in which parties requested to enter into lease agreements for the apartments concerned, positive practice of the Constitutional Court of the Republic of Croatia was observed. In two of its decisions[50], the Constitutional Court took a stand that the time limit for the conclusion of the Agreement on Lease of Apartments, set out in the Law on Lease of Apartments, is not a preclusive time limit. In other words, first instance courts had first taken an opposite stand and on those grounds they refused claims for the conclusion of lease agreements filed by displaced holders of occupancy/tenancy rights. First instance courts were of the opinion that plaintiffs had occupancy/tenancy rights on the effective date of the Law on Lease of Apartments, but they lost that right by unjustifiably missing the time limit for entering into lease

[46] Former holders of occupancy/tenancy rights to socially-owned flats were recognized as holders of property rights in Bosnia and Herzegovina, but that was not the case in Croatia. Therefore, this issue is dealt with in Chapter 2.3. Access to housing care and "property" rights by former holders of occupancy/tenancy rights to socially-owned flats, in order to draw a distinction relative to issues of the restitution of property that was privately owned before displacement, which are dealt with in Chapter 2.1.

[47] This affects around 30,000 households or around 100,000 persons.

[48] Before Municipal Courts in Split and Rijeka

[49] The case of S.K. tried before the Municipal Court in Vinkovci and the case of V.U. tried before the Municipal Court in Virovitica (the Civil Rights Project - Vukovar and PRAXIS – Belgrade)

[50] Decisions of the Constitutional Court of the Republic of Croatia no. U–III- 2300/2003 of 2 February 2006 and no. U III – 1037/2002 of 20 October 2005.

agreements. On the basis of these judgements of the Constitutional Courts, County (second instance) courts started to reverse the judgements of Municipal (first instance) courts and to refer cases back to them for reconsideration. On the example of one of the two monitored cases, the RLAP network has observed the acceptance of the practice of County courts and the mentioned stand of the Constitutional Court by the first instance court. To be precise, the Municipal Court in Vinkovci, pronounced a judgement in a retrial on the annulment of a lease agreement that was concluded between the respondent, the town of Vinkovci, and the user, and ordered the town of Vinkovci to enter into a lease agreement for the flat with the plaintiff, a displaced holder of the occupancy/tenancy right.[51] This precedent has opened a possibility for all former occupancy/tenancy right holders, whose rights were never cancelled by virtue of final judgements, to repossess their flats by taking legal action for entering the contract on lease.

In one case, legal aid was provided to a party[52] for filing a complaint with the Constitutional Court of the Republic of Croatia against the judgement of the County Court in Osijek of February 2006. That judgement of the County Court confirmed the judgement of the Municipal Court in Osijek of 2003, by virtue of which the occupancy/tenancy rights of the party concerned were terminated. This case is interesting because, on the strength of the judgement of the Municipal Court in Osijek of 2002, the party is again physically in the possession of her flat from which she was earlier forcibly evicted. Pending the final decision of the Constitutional Court, the party will not be forcibly evicted from the flat concerned, which confirms the compliance with the decision of the State Attorney's Office of the Republic of Croatia of October 2005 on the moratorium on the execution of evictions of former occupancy/tenancy right holders who still reside in state-owned flats.

The Government of the Republic of Croatia has adopted two housing schemes for former occupancy/tenancy rights holders who have filed claims for return. The first scheme is governed by the Law on Areas of Special State Concern of 2000/2002 and it covers the former war-affected areas, while the other one is regulated by Government Conclusions of 2003 and 2006[53] and it covers the areas outside the former war-affected areas, that is, outside the areas of special state concern (ASSC). Despite the fact that a considerable amount of time has elapsed since the adoption of both schemes, before October 2006, only a few cases of provision of housing care to refugee and IDP Serbs, former occupancy/tenancy right holders, whose rights were terminated by virtue of a court decision or by the force of Law[54], were registered. According to the data of the

[51] The case of S.K, the judgement of the Municipal Court in Vinkovci of 7 June 2006 (the Civil Rights Project - Vukovar and PRAXIS – Belgrade)
[52] The case of S.J. from Osijek (the Centre for Peace, Legal Advice and Psychosocial Assistance -Vukovar)
[53] The Conclusion on housing care for returnees who do not own a house or a flat, and who used to live in socially-owned flats (former occupancy/tenancy right holders) from the areas of the Republic of Croatia, which are outside the areas of special state concern of June 2003 (*The Official Journal*, no. 100/03) and the Conclusion on the Implementation of the Housing Care Programme with respect to flats outside the areas of special state concern of August 2006 (*The Official Journal*, no. 96/06).
[54] The Law on Lease of Apartments in the Liberated Areas (*The Official Journal*, no. 73/95)

MMATTD of September 2006[55], a total of 8,921 applications for housing care by former occupancy/tenancy right holders are still unresolved, and that requires the securing of not more than 7,000 housing units. According to the MMATTD, 2,953 families of former occupancy/tenancy right holders have been provided with housing care in the ASSC, mostly in reconstructed flats in the territory of the town of Vukovar, while another 1,428 applications are still pending of users who are already temporarily residing in flats, and 3,068 applications of users for whom the housing facilities for accommodation are to be secured. By analyzing data gathered by the RLAP network it can be concluded that housing care for former occupancy/tenancy right holders in the ASSC, with the exception of the town of Vukovar, is still at its initial stage. Thus, for instance, in the areas of the Karlovac and Sisak-Moslavina counties, the cases of providing housing care to just one person in Hrvatska Kostajnica and one in Glina were recorded; to five persons in Vojnić; and to two persons in Petrinja.[56] From the available statistics it is not possible to precisely determine the number of persons provided with housing care, who resided outside the Republic of Croatia at the time of filing the application.

The Law on Areas of Special State Concern and the Rulebook on the Order of Priority of Housing Care in the ASSC[57] of 25 September 2002 provide for five categories of persons[58] who have priority in housing care in the ASSC. Although former occupancy/tenancy right holders are ranked as the lowest priority category for housing care, the Constitutional Court of the Republic of Croatia, in its Decision[59] took a stand that there may be no competition for precedence in obtaining housing care among persons belonging to different categories; instead, this competition is taking place exclusively among persons belonging to the same category, based on the criteria laid down by the Rulebook on the Order of Priority. The network has been continuously noting that County Offices responsible for housing care issues[60] are not guided by the mentioned Decision of the Constitutional Court and that former occupancy/tenancy rights holders are placed at the bottom of the priority list of persons with the right to priority in housing care. Furthermore, the process of determining housing care priority lists is non-transparent, because the information on the method for determining the score for drawing up priority lists, as well as the order of priorities, are not publicly available.

The network has registered an example of unequal treatment by competent government agencies deciding on the ranking on the priority list in the cases of persons who are in the same position. Thus, for instance, in the territory of the Municipality of Vojnić, in a

[55] The Ministry of Maritime Affairs, Transport, Tourism and Development: Return of Expellees and Refugees to Croatia, 7 September 2006.
[56] Data from the Civil Rights Project - Sisak
[57] *The Official Journal*, no. 116/02
[58] 1. Temporary users of another person's property reclaimed by the owner for possession and use; 2. Other temporary users of another person's property; 3. Persons accommodated in expellee settlements and other forms of organized accommodation; 4. persons returning to their former place of residence or settling in areas of special state concern; 5. users of flats on which occupancy/tenancy right was terminated pursuant to the Law on Lease of Apartments in the Liberated Areas, published in *The Official Journal*, no. 73/95.
[59] Decision U-II/3255/2004 of 10 November 2004
[60] Regional (County) Offices of the Directorate for Expellees, Returnees and Refugees

sizeable number of cases, it was observed that the houses purchased by the APN and which are state-owned are allocated for use to persons who have already exercised the right to housing care in other state-owned housing units or who own their own housing units; or these are displaced persons who have restored their property in Bosnia and Herzegovina, or who have sold it, or who own property in Croatia, which is all in contravention of the provision of Article 38 of the Law on the ASSC.[61]

In contacts with some local self-government units in the Sisak-Moslavina and Karlovac counties, it was observed that the competent regional offices do not obtain opinions of local self-governments in the process of deciding on housing care, so in this manner, despite the interest of certain units, for instance Vojnić Municipality, local communities are prevented from issuing their opinions on priorities in providing housing care. Such conduct of competent regional offices is in contravention of the provision of Article 19 of the Law on the ASSC.[62]

The network member organizations also recorded interesting responses from the MMATTD – the Directorate for Expellees, Returnees and Refugees, in which as a response to appeals against the silence of administration, that is, the failure to issue a decision on the right to housing care in the ASSC in the time limits prescribed by the Law on General Administrative Procedure, the "opinion" of the MMATTD is presented that there is no basis for lodging an appeal, since it is a legal matter which is governed by the Law on the ASSC.[63] It is necessary to mention here that the Law on the ASSC has laid down the right and prescribed the requirements for housing care, but it does not govern the procedure for issuing decisions on filed applications, which is governed by the Law on General Administrative Procedure.

Before the expiry of the time limit for the filing of applications of housing care by former holders of occupancy/tenancy rights in the areas outside the ASSC, on 30 September 2005, a total of 4,425 applications were filed. According to the data of the MMATTD, out of the total number of applicants, 2,046 reside in Serbia and Montenegro, 667 in Bosnia and Herzegovina, 1,157 in Croatia, and 195 in other countries.[64] "Intensive" implementation of the housing scheme outside the ASSC started in late 2005. Until early September 2006, 2,200 applicants were invited to regional offices of the Directorate for Expellees, Returnees and Refugees for the purpose of examining their applications and determining their eligibility for housing care outside the ASSC. Around 700 applicants responded, while in 189 cases the right was granted and approvals for housing care were issued. Fifty flats were purchased in Zagreb, Osijek, Karlovac and Rijeka for the needs of provision of the housing care to 50 families. The RLAP network does not have the information on how many lease agreements were concluded with applicants outside the

[61] The Civil Rights Project – Sisak has information on 30-odd such cases
[62] Information from the Civil Rights Project - Sisak
[63] For instance, the case of M.B., a displaced person from Vinkovci, residing in Vukovar, a communication by the MMATTD of 13 June 2006 (the Centre for Peace, Legal Advice and Psychosocial Assistance – Vukovar)
[64] The Ministry of Maritime Affairs, Transport, Tourism and Development: Return of Expellees and Refugees to Croatia, 7 September 2006.

ASSC, in how many apartments people moved, and how many granted applications involve applicants with refugee status, who reside outside the Republic of Croatia.

The applicants that were invited to regional offices were offered three possible time limits for housing care: 6 months, one year or two years. However, in the Conclusion on the Implementation of the Programme for Housing Care with respect to flats outside the areas of special state concern of August 2006 the Government has fixed 2011 as a deadline for successive construction, purchase of flats and housing care!?

The problem of non-compliance with the time limits prescribed by the Law on General Administrative Procedure was also observed in the procedures for examining applications for housing care outside the ASSC. The main legal question which has remained open, and which is related to the examination of the applications concerned, is a fact that the objective right of the applicants is regulated by virtue of the Conclusion, rather than a law, which constitutes the only legal framework for establishing one's objective right. This calls into question the existence of legal certainty and effective remedies, as well as the possibility of judicial protection.

A specific problem is posed by the fact that the bodies responsible for deciding on the right to housing care are taking their decisions in the form of notices on the recommendation concerning the right to housing care. These notices do not contain instructions on legal remedies available to parties that are not satisfied with a negative recommendation concerning the right to housing care, which is in a way understandable, since the notice on the recommendation does not constitute a legal deed against which administrative proceedings could be conducted.[65] By deciding on the right to housing care in the form of a notice on the recommendation concerning the right to housing care, discontented parties lose every possibility for effective legal protection, and they are also denied the right of appeal. In other words, under the Law on Administrative Litigation, administrative litigation may be instituted only against an administrative deed, and it is an act by which government agencies and organization, in the execution of public powers, decide on the right or obligation of individuals or organizations in an administrative matter.[66]

Serbia

One's own housing, as indicated in the National Strategy of the Government of the Republic of Serbia for Resolving the Problems of Refugees and Internally Displaced Persons, is the most important precondition for local integration of refugees. A majority of refugees living in Serbia do not possess their own housing. Namely, only 18% of refugees and a mere 7.6% of IDPs in the Republic of Serbia have their own housing.[67]

[65] Pursuant to Decision of the Administrative Court of the Republic of Croatia no. Us-12265/97, of 10 December 1999, the Notice of the Office for Expellees and Refugees...is not an administrative enactment
[66] Article 6 of the Law on Administrative Litigation
[67] The National Strategy of the Government of the Republic of Serbia for Resolving the Problems of Refugees and Internally Displaced Persons

The Strategy for durable solutions to the housing issue of refugees and IDPs envisages the possibility of raising funds for that purpose through international donations, the state and local community funds and resources contributed by refugees and IDPs themselves. So far, around 3,000 housing units have been secured for refugees in Serbia, of which more than 85% of the total value of the mentioned real estate was financed out of donations. Out of the total number of secured housing units, a significant part are housing units built with active participation of refugees, either through self-help construction or combined construction.

The National Strategy provides for different models for ensuring durable housing for refugees and IDPs:
- The first model envisages leasing (renting) of a state-owned family house or flat;
- The second model envisages allocation of construction land and/or building material for the construction of a family house;
- The third model envisages the extension of long-term housing loans on favourable terms collateralized by mortgages on the constructed flats;
- The fourth model envisages the use of the existing option for accommodation in the social welfare system, particularly through the adaptation of collective centres and other public facilities into homes for the elderly, and the construction of new and expansion of the existing specialized institutions for the most vulnerable and the handicapped.

The intention of the proposed amendments to the Law on Refugees is to regulate the issue of resolving housing problems of refugees who have opted for local integration as a durable solution.

The proposed amendments to the mentioned Law envisage the following manners for meeting the housing needs of refugees:
- allocation of state-owned housing units for use over a specified period of time;
- lease of state-owned housing units over a specified period of time;
- purchase of state-owned housing units;
- provision of financial assistance;[68]
- extension of earmarked loans;
- through various donor programmes.

With respect to the proposed obligation of refugees to co-finance the purchase of flats, while taking into account agreements concluded with donors, the intention of the lawmakers was to point to the need for solidarity among refugees in the fulfilment of their housing needs.

Having in mind very limited resources for the fulfilment of housing needs of refugees in Serbia, it is necessary to establish detailed criteria for determining priorities in the fulfilment of needs for housing care, so that the assistance is provided to those who need it the most.

[68] For improving housing conditions, procurement of building material for the commenced construction, purchase of rural houses with small individual holdings

Bosnia and Herzegovina

In Bosnia and Herzegovina apply entity laws on the cessation of the application of laws on the use of abandoned property, which constitute a legal basis for the restitution of property in B-H to pre-war owners, occupants or occupancy/tenancy right holders.

The provisions of these laws apply to immovable property, including privately-owned business premises, privately-owned houses and privately-owned apartments, as well as apartments to which there is an occupancy/tenancy right, but which were abandoned after 30 April 1991, irrespective of whether a privately-owned property or flat was proclaimed abandoned. The only condition is that the owner, occupant or user of the real estate was dispossessed of the real estate or that the holder of the occupancy/tenancy right was dispossessed of the flat. In Bosnia and Herzegovina, rights were recognized to individuals and almost all housing units returned, including apartments to which there was an occupancy/tenancy right, and private property. The only open issue involves flats that were owned by the former Yugoslav People's Army (JNA), the so-called "military apartments".

The RLAP network monitored the status of at least three cases related to the restitution of military apartments. In two cases, proceedings for repossession of military apartments in the territory of the Entity of the Federation of Bosnia and Herzegovina are still in progress and not all available legal remedies have been exhausted, nor has a complaint been lodged with the Constitutional Court of Bosnia and Herzegovina.[69] In one case, the parties have a positive decision of the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC) on the restitution of an occupancy/tenancy right to a military flat, and there is also a conclusion on the execution of that decision. The conclusion on the execution was suspended, that is, challenged by the owner of the flat, the Ministry of Defence of Bosnia and Herzegovina. In early 2006, an appeal was lodged with the newly established Commission for Real Property Claims of Displaced Persons and Refugees.[70] In relation to the repossession of military flats, a higher interest of parties in the outcome of filed requests for review of negative decisions of the former CRPC by the newly established CRPC was noticed.

Also monitored were at least three representative cases in which parties sent claims for restitution of occupancy/tenancy rights to the competent body in Banja Luka by mail, but these claims were never registered by the competent body. Proceedings for resolving these cases are still in progress.

[69] The cases of International Lex – Banja Luka
[70] The case of the Balkan Centre for Migration and Humanitarian Activities - Belgrade

2.4. Acquired rights and compensation for damage

Croatia

Convalidation

The entry into force of the Law on Convalidation[71], in 1997, has enabled persons who realized working years in the parts of the Republic of Croatia which were under the protection or administration of the United Nations[72] to file claims for validation of working years for pension benefits by the Croatia's Republican Fund for Pension and Disability Insurance of Workers, at present the Croatian Pension Insurance Fund (HZMO). Although not provided for by the Law on Convalidation, the time limit for the submission of relevant claims expired on 10 April 1999, pursuant to the provision of the Decree on the Implementation of the Law on Convalidation for administrative areas of labour, employment, pension and disability insurance.[73] The Decree stipulates as a requirement for convalidation of working years for pension benefits the possession of the status of a contributor registered in the relevant records of the bodies of pension and disability insurance, which were active in the United Nations protected or controlled areas.

Despite the fact that a large number of displaced persons, due to subjective or objective circumstances, missed the time limit for the filing of working years convalidation claims, the Republic of Croatia has not allowed an extension of the time limit for the filing of claims. The issue of extension of the time limit for the filing of convalidation claims is one of the open issues discussed within the Sarajevo process. This issue has also been highlighted as a short-term priority in the Accession Partnership process with the European Union. Specifically, the Decision of the European Council of 20 February 2006 sets out, as one of the political priorities of the Accession Partnership, "Reopen the possibility for convalidation claims and review all applications made since expiry of previous deadline."[74]

By monitoring cases in progress, the RLAP network has observed a non-standardized practice in the work of the competent administrative bodies with respect to the application of the principle of hearing witnesses as a means of evidence in administrative procedures in those cases where written documentation on working years for pension benefits is either unavailable or destroyed. The most frequent reasons for negative decisions on submitted working years convalidation claims is lack of relevant written

[71] *The Official Journal*, no. 104/97
[72] During the military conflict, areas controlled by the local Serb para-authorities, the former Republic of Serbian Krajina
[73] *The Official Journal*, no. 51/98
[74] Official Journal of the European Union: Council Decision of 20 February 2006 on the principles, priorities and conditions contained in the Accession Partnership with Croatia and repealing Decision 2004/648/EC (2006/145/EC); 3.1. Short term priorities, Political Criteria, Regional Issues and International Obligations, 25 February 2006

evidence, non-recognition of the contents of the employment records booklet, participation in paramilitary units and the missed deadline.

The time spent in paramilitary units is not subject to convalidation. In practice, many cases were registered which involve non-recognition of the total number of working years for pension benefits to those who spent a certain period in paramilitary units, including those working years for pension benefits, which the person concerned did not realize as a member of paramilitary units. Although the practice of the Administrative Court has so far been negative for parties with respect to this issue, a fairly large number of individual cases are still pending before the Administrative Court.

Bosnia and Herzegovina

Compensation for Damage – the Republic of Srpska (RS)

The most important piece of legislation in RS with regard to the subject of compensation for damages is the Law on the Exercise of the Right to Compensation for Material and Non-material Damage inflicted in the period of war operations from 20 May 1992 to 19 June 1996.[75] This Law governs the procedure, requirements, criteria and manners of compensation for damage to persons to whom the right to compensation for material and non-material damage has been recognized by virtue of final court decisions, as well as to persons with respect to whose claims the proceedings for compensation of damage, the procedures for reaching out-of-court settlements and the proceedings for regulating the compensation for damage to companies and other legal entities in the period of war operations from 20 May 1992 to 19 June 1996, have not been concluded by final decisions. Accordingly, this piece of legislation covers not only ongoing judicial proceedings initiated by previously filed claims, but also the obligations to compensate damage established by enforceable court judgements.

Such legal arrangements give rise to serous dilemmas about fundamental principles of the legal order, because in the adjudicated court matters we have a situation of interference of the executive branch with the judicial branch of power, since the accepted legal arrangements obviously change the contents of court judgements in matters involving claims for damages, in which the respondent (the Republic of Srpska) has been put under an obligation to pay damages in cash. In such a manner, the constitutional standard of the division of power, which prevents arbitrary interference of one branch with the other, is directly violated. Furthermore, such an approach seriously calls into question the equality of citizens before the law, since there is an obvious difference in the position of the injured parties in whose favour enforceable judgements were executed, relative to those injured parties to whom the controversial Law will be applied. The issue of financial ability of the debtor is a very serious problem, but it is difficult to imagine that this problem can be solved by not observing the fundamental legal standards.

In the existing judicial proceedings in which final decisions have not been pronounced, the procedure of out-of-court settlement is carried out by the RS Public Attorney's

[75] *The RS Official Gazette*, no. 103/05

Office. The point of the institute of out-of-court settlement is for the opposing parties to arrive at a solution, through negotiations and by reaching a compromise, which will result in the conclusion of the out-of-court settlement procedure and the termination of the dispute. Nevertheless, since the Republic of Srpska in its legislation precisely regulates the amounts of compensation for damage, for the loss of a close relative, compensation for non-material damage for sustained physical pain and anguish because of diminished vital activities, disfiguration or fear, the institute of settlement essentially becomes pointless, and settlement is reduced to consent to the predetermined conditions of the respondent.

Under the above cited Law, the compensation for war damage will be made by issuing bonds with maturities of up to 50 years. The established obligations would cover only the principal, without interest. Such legislative arrangement seriously calls into question fundamental principles of property rights protection.

Compensation for Damages – the Federation of Bosnia and Herzegovina (FBIH)

Under the explicit provision of the Law on Establishing and Realizing Claims Arisen during the State of War and the State of Immediate War Threat,[76] the right to claims for damages pertains to legal and natural persons for the damage inflicted in terms of the provisions of the Law on Contracts and Torts, the Law on Defence, the Law on the Manner of Securing Foreign Exchange for the Defence Budget, the Law on the Defence of the Croatian Republic of Herzeg-Bosnia, the Decree on the Criteria for Assignment of Individuals and Material Resources for the Needs of HVO and other Defence-Related Needs. All claims have been converted into the FBIH public debt under the provisions of the above mentioned regulation.

In case law, despite judgements in favour of plaintiffs, which put the state under an obligation to provide compensation for damage by invoking the provision of law on tort liability, it often happens that court judgements cannot be executed because of the lack of budget resources. Such conduct is in contravention of the provisions of the B-H Constitution and Article 6 of the European Convention on Human Rights, since the fair trial principle includes the right to enforcement of the final court decision, the right to access to courts as well as the right to an effective legal remedy.

The existing legal framework in B-H, in the part that governs the issue of staying the execution of court decisions, has not been harmonized with the relevant international standards, which mandates its urgent rescission or replacement by new laws. The practice of the Constitutional Court follows the applicable international standards, which can serve as a guideline for required changes in the B-H legislation at different levels. It is necessary to initiate the process of law amendment, with special emphasis on the provisions which should ensure the respect for the right to peaceful enjoyment of property and the fair trial principle. Efficient execution of court decisions should not be

[76] *The FBIH Official Journal*, no. 43/01

called into question due to the lack of budget resources. The inconsistent legislation calls into question the equality of B-H citizens before the law.

Irrespective of the number of regulations in individual states who have governed the infliction of, liability and compensation for war damage, the following universal characteristics are evident:
a) endeavours on the part of the lawmaker to reduce to the minimum the material burden on the state,
b) difficulties in producing evidence in the course of judicial proceedings,
c) making the execution of enforceable court decisions in closed cases more difficult, which results in a relatively low number of those citizens who managed to realize their claims for compensation for damage caused by war operations (damage to or destruction of property, injury to one's physical or mental integrity, compensation for the loss of a loved one) on the basis of the existing practice and legal regulations.

2.5. Annulment of contracts concluded under duress and/or in contravention of the provisions of civil law

Croatia

A specific problem is posed by the cases of housing units owned by displaced persons, which have been purchased by the State Agency for Real Estate Transactions (APN) on the basis of falsified powers of attorney which the owners allegedly gave to private real-estate mediators. The official investigation has confirmed at least 42 cases of illegal sales of private houses to the APN.[77] The RLAP network member organizations monitored the status of at least four judicial proceedings[78] initiated by injured parties - displaced persons by filing a complaint for annulment of contracts on purchase concluded with the APN. One of those cases was decided in favour of the plaintiff, but the judgement is still not enforceable, since the State Attorney's Office of the Republic of Croatia has lodged an appeal. Furthermore, the RLAP network has the unofficial information that another six court cases were decided in favour of injured parties by mid-October 2006, of which at least in one the court decision is enforceable.[79]

A separate issue is the annulment of contracts on purchase or contracts on exchange of property concluded under duress or contrary to the provisions of civil and international law between persons displaced on the territories of two states. The network monitored representative cases reflecting problems of recognition and execution of enforceable decisions of courts of Bosnia and Herzegovina in the Republic of Croatia.

[77] The OSCE Mission to the Republic of Croatia: The 2006 Review – A Report on Croatia's Progress in Meeting International Commitments, 9 June 2006, page 16.
[78] The Civil Rights Project – Vukovar, the case of LJ.P., the Municipal Court in Bjelovar, and three cases of PRAXIS - Belgrade
[79] Oral information provided to the Centre for Peace, Legal Advice and Psychosocial Assistance - Vukovar of 20 October 2006 from the President of the Association for Civic Alternatives and Ethnic Relations – Vukovar, an organization which provides assistance to injured parties in a sizeable number of judicial proceedings.

Bosnia and Herzegovina

The practice shows that in Bosnia and Herzegovina contracts on purchase or contracts on exchange of property concluded under duress or contrary to the provisions of civil and international law have the status of voidable contracts. In other words, if one contracting party institutes proceedings for the termination of the contracts in question, the courts in Bosnia and Herzegovina declare them null and void in almost all cases, provided that the plaintiff has not entered into further legal transactions with the property which is both in his possession and subject to annulment of the contract. Although the execution of those judgements in which both properties are located in the territory of Bosnia and Herzegovina is not questionable, the problem arises in those cases where the subject matter of the contracts are properties in two different states, e.g. in Bosnia- Herzegovina and the Republic of Croatia. For the contracting parties to a legal transaction with property located in the territory of Croatia the problem is the recognition and execution of final decisions of courts from Bosnia and Herzegovina in the Republic of Croatia. This puts the owner from the Republic of Croatia in the position in which he loses property in both states.

The RLAP network has monitored at least three court cases for annulment of such contracts, concluded between owners of properties in two states, which are still in progress before courts in Bosnia and Herzegovina.[80]

2.6. Issues related to the status of refugees and returnees

Bosnia and Herzegovina

The RLAP network member organizations have noticed the problem related to the regulation of the status of those persons who fled the territory of Kosovo and Metohija and found refuge in B-H.
The right to an identification document for displaced persons from Serbia and Montenegro whose last permanent residence was in Kosovo and Metohija is regulated by the Guideline for the Extension of Temporary Reception Status in Bosnia and Herzegovina. However, the conditions necessary to establish the status from which the right to be issued an identification document derives have not been fully created. Therefore, it is necessary to update records, complete re-registration and status determination procedures, and issue identification documents.

Serbia

The bulk of the problems associated with status-related issues of refugees and expellees in Serbia arose during the registration exercise and refugee status review procedure completed in January 2005.

[80] Cases of International Lex – Banja Luka

Judging by a large number of appeals[81] against first instance decisions on the termination of refugee status, and by the fact that the review procedure has not yet been fully completed, which results in the inability to precisely determine the number of persons officially recognized as refugees in the Republic of Serbia, it is possible to conclude that the entire review procedure has not been thoroughly implemented, and that databases which were used were not reliable. Through their work on the provision of legal aid to refugees, the RLAP network member organizations have established that the non-existence of reliable databases is one of the most common reasons for the issuance of obviously unfounded decisions on the termination of refugee status, which puts refugees into an extremely vulnerable position and leads to violations of some of their fundamental human rights.

The return of a refugee to his/her country of origin is the most frequently cited reason for termination of refugee status. Under international instruments for refugee protection[82], one of the reasons for termination of refugee status is, *inter alia*, the fact that the person has re-availed himself/herself of the protection of the country of his/her nationality. Although a vast majority of recognized refugees in the Republic of Serbia have obtained a certificate of citizenship and/or personal documents from the country of origin in the meantime, if any arbitrariness in the actions of competent authorities is to be ruled out, that fact should not by itself, automatically and without taking into consideration all relevant circumstances, serve as a sole basis for the termination of refugee status. In other words, international principles for determining whether a person has availed himself/herself of the protection of the country of his/her nationality take into account the expressed intent and voluntary nature of that act as the basic criterion, while a considerable number of refugees from the Republic of Croatia, currently residing in the Republic of Serbia, did not obtain the documents of the country of origin with an intention to avail themselves of the protection of the authorities of the Republic of Croatia, but in order to meet a requirement for access to certain rights, either in the country of origin or in the country of refuge.

In the course of 2005 and 2006, the RLAP network member organizations from Serbia were engaged in the drafting of appeals and complaints against negative decisions issued after the completion of the refugee registration exercise in the Republic of Serbia. Appeals proceedings have not yet been concluded in many cases, while many proceedings are also conducted before the Supreme Court of Serbia. The monitoring of cases in the previous period indicates the practice of Serbia's Supreme Court to quash the decisions of second instance bodies, as a rule.[83] It explains the quashing of those decisions by reasons of a formal-legal nature, that is, by the fact that lower-instance bodies did not abide by the rules of administrative procedure in deciding on the right. In the rationales of its judgements, as a reason for quashing second instance decisions, the Supreme Court most often states that those decisions were issued in summary procedures, while instructing the first instance body[84] and the sued second instance body that it was

[81] Around 11,000
[82] Art. 1 C (1) of the 1951 Convention relating to the Status of Refugees
[83] The Ministry of the Interior of the Republic of Serbia
[84] The Commissariat for Refugees of the Republic of Serbia

not possible to issue decisions in summary procedures, and that refugees should have been enabled to take part in the procedure and provide explanations about the facts and circumstances relevant to the issuance of a decision.

After the completion of the refugee registration exercise and the refugee status review procedure many problems have arisen in relation to access to certain rights on the basis of the fact that a person has refugee status:
- the problem of exercising the right to health care in certain local self-governments;
- the problem of losing the possibility to file an application for the grant of citizenship of the Republic of Serbia on privileged terms prescribed for refugees, in those cases where the decision on the withdrawal of refugee status has become final.

A number of persons whose refugee status has been confirmed in the review procedure are facing the problem in some local self-governments of obtaining identification documents, that is, new refugee cards, because they do not have, or are unable to obtain, a personal identification number (JMBG), which then becomes the reason for denial of the right to health care.

The existing practice in the decision-making procedures for the confirmation of refugee status indicates arbitrariness in the actions of government bodies in the issuance of decisions, which means decision-making without interviewing the person concerned and without including detailed rationales, which take into account the circumstances of each individual case, in their decisions.

A telling example of such practice is the case of R.Ž. from Sisak. Mr. R.Ž.'s refugee status was terminated by virtue of a decision by the Commissariat for Refugees of the Republic of Serbia dated 28 January 2005, with a rationale that "the aforesaid person failed to report changes that have occurred since he/she was recognized as a refugee – expellee, because he/she has returned to the state of his/her residence". Against the issued decision R.Ž. lodged an appeal with the commissioner for refugees of the municipality of Voždovac on 24 June 2005, because the said decision had been served on him on 21 June 2005 (the decision prescribes a time limit for an appeal, which is 15 days from the day of receipt of the decision). At the same time, the statement that R.Ž. has not returned to the state of his permanent residence is corroborated by the information that the Civil Rights Project from Sisak, as a RLAP network member organization, represents R.Ž.'s father in the litigation for the repossession of illegally occupied property and business premises in Sisak, the Republic of Croatia, and the said property is at the same address at which R.Ž. had permanent residence in the Republic of Croatia before the war. The litigation was instituted in 1999 and has not yet been concluded.

2.7. Issues related to exercising refugees rights to local integration

Croatia

The main problem related to local integration of refugees is posed by the lack of a relevant legal framework for the exercise of that right. In addition, a specific problem is also posed by the lack of transparency in the procedures for deciding on the termination of refugee status in the Republic of Croatia.

Serbia

Serbia adopted the National Strategy for Resolving the Problems of Refugees and Internally Displaced Persons as late as 2002, almost 11 years after the large scale refugee phenomenon had emerged in its territory. The Strategy, *inter alia*, describes the present situation, defines objectives and elaborates measures and activities which the Government of the Republic of Serbia and other competent state institutions are obliged to undertake in relation to the integration of refugees in Serbia. Four years after the adoption of the National Strategy, it is possible to note just a minor breakthrough in the accomplishment of its objectives and implementation of measures and activities aimed at local integration of refugees. One of significant reasons for slow implementation of the Strategy is related to the fact that it has, almost entirely, relied on international sources of financing.

Naturalization of refugees in Serbia has been facilitated after the adoption of amendments to the Law on Yugoslav Citizenship of 2001, which provided for the right of refugees to dual citizenship, that is, to be granted the citizenship of Serbia and to keep the citizenship of the other former SFRY republic which they fled or from which they were expelled. The Law on Citizenship of the Republic of Serbia[85] of 2004 also incorporates the provision on dual citizenship. Big problems in applying for the grant of the Republic of Serbia's citizenship are faced by refugees whose refugee status in the Republic of Serbia was terminated by virtue of a final decision, and they have not obtained personal documents issued by the country of origin in the meantime. In order to submit an application for the grant of the Republic of Serbia's citizenship they first have to obtain new documents of the country of origin, which is an objective problem for some of them.

In order for the process of local integration of refugees to be effectively implemented, it is necessary to establish inter-ministerial coordination among relevant ministries in resolving numerous remaining issues and problems related to the integration of refugees in Serbia. Specifically, due to the lack of coordination of activities and the lack of inter-ministerial cooperation, refugees are faced with numerous problems including:
- the exercise of the right to health care;
- the resolution of status-related issues;
- the exercise of full freedom of movement;
- the settlement of certain relationships associated with property rights;
- employment and the exercise of rights arising from employment;

[85] *The Official Gazette of the Republic of Serbia*, no. 135/2004 of 29 December 2004

- the exercise of rights arising from social security and pension and disability insurance;
- the exercise of rights in the field of education and protection of children …

A drastic example from practice – the case of expellee D.O. from Dabašnica, Donji Lapac Municipality, Croatia – points to all the seriousness of the situation that refugees in Serbia could be facing due to the mentioned deficiencies. Expellee D.O., who found temporary shelter in Bački Gračac, was denied the right to adequate and, due to the nature of his disease, timely medical assistance, which has called into question even his right to life because of his seriously deteriorated health. To be precise, D.O suffers from cancer and he has been undergoing medical treatment for quite some time now. After his surgery, doctors prescribed radiotherapy (radiation therapy) in the Sremska Kamenica Institute. The mentioned health care institution refused to give him radiation therapy, unless he himself covers the expenses of that treatment, with an explanation that he has no personal identification number in his refugee card. Neither a new refugee card, nor a valid health-insurance card, was enough for charge-free treatment. Due to his serious disease, the refugee could not travel to Croatia to obtain a JMBG certificate, and at that time it was not possible to obtain such a certificate in Croatia through an attorney in fact. This problem could not be solved in the manner set out in an interpretation issued at one point by the Ministry of Health of the Republic of Serbia on the manner of issuing referral slips and prescriptions to persons who do not have personal identification numbers. A solution was found in the termination of refugee status, urgent grant of the Republic of Serbia's citizenship, assignment of JMBG, registration with the National Employment Service and, provision of health care on that basis. However, the lengthy process of finding the solution has caused exceptional and undue hardship for the mentioned person, which can be considered to be both cruel and inhumane treatment.

Bosnia and Herzegovina

Local integration of refugees is rendered more difficult by the lack of provisions in the applicable regulations on the acquisition of B-H citizenship on privileged terms through naturalization. Despite the Agreement on Dual Citizenship, the legislation, and especially practice, preventing access to citizenship have not yet been harmonized.

Although the right to choice of another place of residence has been confirmed in entity laws as well, the integration of displaced persons is rendered more difficult by the lack of bylaws governing access to this right.