



Organization for Security and Co-operation in Europe

OSCE Mission to Croatia

April 2005

Access to housing for refugees

On the 31st January 2005, the Ministerial Conference on Regional Return in Sarajevo adopted a Trilateral Declaration (Croatia, Serbia and Montenegro, Bosnia and Herzegovina) aiming at **finalizing the process of refugee return** at the regional level, by the end of 2006.

Access to housing constitutes one of the main pre-conditions for return. It will certainly be at the core of the individual *Road maps* that will be developed by the three countries in compliance with the Trilateral Declaration.

Almost a decade after the end of the 1991-1995 war, more than 200,000 Croatian Serbs are still displaced in Serbia and Montenegro and Bosnia and Herzegovina. For Croatia, the specific commitment to provide a just and durable solution relates to several needs:

- a) to provide housing to the largest remaining refugee category, i.e. to former occupancy tenancy rights holders who used to live in socially-owned apartments and who were deprived of those acquired rights during or after the war; this category comprises up to 30,000 households;
- b) to guarantee the physical repossession of the remaining 1,000 occupied private properties to their legitimate owners;
- c) to provide reconstruction assistance to the eligible beneficiaries who recently filed their claims, mainly from the neighboring countries.

Based on the findings of field observations throughout Croatia, the Mission has drafted two separate Special Reports on refugee-related housing issues. The first report analyses the status of the property repossession process at the end of 2004; the second one discusses the implementation of the housing care programs for former OTR holders.

Both reports describe progress made by the Croatian Government regarding these two important return-related issues; they also identify the remaining obstacles and their impact on the sustainable return of Croatian Serb refugees.



Organization for Security and Co-operation in Europe

Mission to Croatia

Headquarters

April 2005

Background Report

Property repossession

Situation and perspectives

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Introduction

In the aftermath of the 1995 Operation “Storm”, more than 19,000 private properties of Croatian Serbs were left vacant when their owners fled to the neighbouring countries. After the Croatian State took over the administration in the liberated areas, these properties were allocated, under a Law on temporary use of properties adopted later the same year, with the purpose of providing housing to Bosnian Croat refugees, Croatian Internally Displaced Persons and Croatian settlers from other parts of the country.

Through the adoption of the so-called “Return Programme” in June 1998, the Croatian Parliament recognized the rights of Croatian Serb refugees to return and claim their occupied properties. The programme established a repossession scheme based on Municipal Housing Commissions which proved to be unsatisfactory and to seriously undermine the rights of the owners. Since the adoption in the 2002 of Amendments to the Law on Areas of Special State Concern, the repossession process has received a more consistent boost under the centralized guidance of the Directorate of Expellees Returnees and Refugees of the Ministry of Maritime Affairs, Tourism, Transport and Development (Ministry). Since 2001 the Croatian Government has committed itself several times to the complete restitution of the remaining occupied properties to the legitimate owners and

has set several deadlines for its completion, the last of which expired on the 31 December 2004¹.

The pace of repossession of the remaining occupied private properties of Croatian Serb refugees and IDPs has increased in the course of 2004.

The total number of occupied properties, which were allocated for temporary use through the so called 1995 Law on Temporary Take over and Administration of Specified Property, dropped from **3,500** to around **1,100** in twelve months. This represents the highest pace of property repossession in one single year since 1998.

The two political deadlines for the repossession of property enshrined in December 2003 post-electoral *Agreement on Co-operation between the Future Government of the Republic of Croatia and the Representatives of the Serb Independent Democratic Party in the Croatian Parliament* contributed to an overall speed up of the process at the national level. In addition, the Government made a self-imposed commitment to resolve all cases of illegal occupancy of residential property by the 30 June 2004, which was to a great extent achieved.

However, in July 2004, the Mission anticipated in its 30 July 2004 Spot Report [see “Spot Report on the Return of Illegally Occupied Residential Properties”] that the second deadline for the resolution of all the pending property repossession cases by the 31 December 2004 would prove to be problematic. This has later been confirmed in practice.

In January 2005, the President and Vice-President of the Serb Independent Democratic Party (SDSS) voiced concerns in public that the return of private property had not been completed in 2004 in accordance with the Agreement, and that repossession of 1.200 Croatian Serb occupied properties was still outstanding. The SDSS MPs also criticized the work of the Commission for Return of Expellees and Returnees and the Return of Property, which was established by the Government in March 2004 to co-ordinate the efforts of the State administration and the judiciary in the field of property repossession.

The main findings of the Report are the following:

- The process has experienced a peak of resolved cases in the summer of 2004 in coincidence with the 30 June deadline and a progressive decrease towards the end of the year;
- The repossession continues to depend on the availability of housing to the temporary occupants, mostly Bosnian Croats, and is often hampered by judicial action of the temporary occupants;

¹ The December 2003 *Agreement on Co-operation between the Future Government of the Republic of Croatia and the Representatives of the Serb Independent Democratic Party in the Croatian Parliament* (Agreement) stipulated two deadlines for the restitution of the private properties still occupied: 30 June 2004 for the illegally occupied properties and 31 December 2004 for all the remaining occupied properties.

- Repossession in up to half of the cases takes place through the purchase of the occupied properties by the State through the Agency on Mediation of Real-estate Transaction (APN) or other contractual agreements facilitated by the State. As result the impact of repossession on sustainable return is very limited;
- The Government continues to provide housing also to ineligible temporary occupants having access to their undamaged or reconstructed pre-war properties in neighbouring countries. This contributes to impoverish the available housing stock to the detriment of temporary occupants really eligible for housing;
- Physical repossession is hindered by systematic looting or devastation of the properties by the departing temporary occupants and others. The solutions proposed by the Ministry in order to compensate owners of properties looted by departing occupants need to become operational;
- A limited number of municipalities of Central and Southern Croatia represent most of the remaining cases.

This report aims to assess the qualitative aspects of the repossession process such as the provision of alternative housing to temporary occupants, the ongoing deliberate looting and devastation of properties by departing occupants, the incidence of claims for investments filed by occupants, as well as various judicial impediments which still seem to hamper the successful completion of the process.

1) Allocation of alternative housing to the remaining temporary occupants

Repossession continues to depend on the provision of alternative housing to the eligible temporary occupants, mostly Bosnian Croats. This pre-condition, which had been formulated first in the above mentioned 1995 Law as well as the 1998 *Return Programme*, was confirmed by the 2002 Amendments to the Law on Areas of Special State Concern (LAASC).

Alternative housing (referred to as *housing care* in the Law), is being provided in the form of five options³, defined in the Law.

³ The article 7 Par. 2 of the LASSC foresees that alternative housing (housing care) can be provided in the following forms:

- by the allocation for lease of a state-owned family house or apartment,
- by the allocation for lease of a state-owned damaged family house and the allocation of building material,
- by the allocation of a state-owned construction plot and the building material for the construction of a family house containing several housing units. The decision on the manner of construction and financing of such facilities shall be passed by the Ministry.
- by the allocation of a state-owned construction plot and the building material for the construction of a family house, or
- by the allocation of building material for repair, reconstruction or construction of a family house or apartment.

When alternative housing is provided in the form of allocation of building material, the timeframe is being prolonged by circumstances such as: 1) the slow and inconsistent pace of delivery of building material; 2) the limited construction season which allows constant works only in some areas of Southern Croatia; 3) the lack of stringent checks by the Ministry of the respect of the deadlines for moving out of occupied property stated in the Law⁴; 4) delays as regards the provision infrastructure/utilities in the newly constructed settlements which is the responsibility of local authorities.

The overall pace has also been delayed by the poor condition of the housing stock available for temporary occupants. The Ministry has continued in the reporting period to provide alternative housing to occupants that have been previously declared ineligible for housing care⁵. Moreover, the results of different surveys of State-owned apartments conducted in municipalities in the war affected areas undertaken in order to assess the available housing stock to be used for alternative housing, have not been made public.

The repossession of the remaining 1,124 occupied properties, out of which only 804 are claimed by their owners, will depend mainly on the purchase of additional 300 houses by the State as well as the pace of construction works in those municipalities with a higher number of occupied properties such as Knin, Obrovac, Gracac, Gvozd and Sunja.

2) Looting/devastation of occupied properties and its impact on sustainable return

Field observations confirm that looting and deliberate devastation of properties, often through removal of integral parts by temporary occupants prior to their departure, takes place in 30 to 55 percent of the monitored repossessions.

A redress for owners of properties deliberately looted is currently being contemplated by the Government. According to the intention of the Ministry, owners of repossessed devastated properties will have the possibility of receiving organized repair assistance by the Ministry, or cash payment, through the signature of an extra-judicial settlement with the State Attorney Office.

⁴ According to art.18 of the LASSC a temporary user who has obtained the right to housing care in the form of allocation of building material shall be obliged to vacate the property he occupies within 90 days since the delivery of the last shipment of building material. The Mission is aware of several cases where temporary occupants still refuse to vacate properties more than one year after the last shipment of building material has taken place.

⁵ This mainly refers to: a) occupants whose private houses have meanwhile been reconstructed by the State and who should therefore leave the property; b) occupants whose decision on temporary use has been cancelled and who did not leave the property, despite being ordered to do so by the Ministry; c) occupants who received alternative housing from the Ministry but still refuse to vacate the property. The Ministry considers that they have been simply provided with temporary accommodation until the conditions are ripe for the return to their original properties.

Nevertheless, the new scheme is still to be put in place and a Government Conclusion envisaging the main procedural steps is still to be adopted. Meanwhile looting continues to seriously hamper the repossession process throughout Croatia⁶.

3) Physical repossession by owners remains limited

A significant number of owners continue to prefer to sell their properties to the State and remain in their country of refuge. Several spot checks in different municipalities of Central and Southern Croatia confirm that up to 70 percent of repossession cases in these areas have been resolved through purchase of the occupied property by the State. As a consequence, owners who physically repossessed their properties and are permanently or temporarily living in them only account for around 30 percent of the monitored cases in those areas.

Several reasons motivate owners of occupied properties to sell their houses to the State, including: 1) the prolonged lack of access to their properties and adjustment to life at the location of temporary refuge; 2) the poor conditions and the devastation of their properties after the occupants vacate them; 3) a certain pressure exercised by some APN officials through public awareness efforts such as posters displayed in several municipalities inviting owners to sell their properties for fast cash payment; 4) the possibility of receiving fair payment for their properties located in socially and economically depressed areas.

Since November 2004, numerous cases of allegedly fraudulent sales of Serb properties to the APN, through falsified powers of attorney and without the consent of the owners, have been reported to the mission and in the media. The Police and the Office for the Suppression of Corruption and Organized Crime (USKOK) have launched investigations in order to assess the criminal responsibility of private real-estate mediators and APN officials in the fraudulent transactions. The Mission has advocated a more pro-active approach of the State including assistance to victimized owners to take legal action seeking the annulment of the fraudulent purchase contracts. The APN estimates that up to 40 Serb owners have lost their properties through transactions based on falsified powers of attorney. The Mission has various indications that the total number of victimized owners that have been deprived of their properties through their fraudulent sale could be higher.

4) Judicial aspects of the repossession process

Owners of occupied properties often seek judicial remedies to their repossession claims through private lawsuits filed in accordance with the Croatian ownership legislation. The

⁶ The Croatian criminal law does not prescribe "Looting" as a criminal offence per se. However, acts commonly referred to as "Looting" can in some cases be prosecuted under the more general offences of "Theft" and "Malicious Mischief". In contrast, the Bosnian Penal Codes prescribe looting as an *ex officio* punishable criminal offence. The 2002 Amendments to the Law on Areas of Special State Concern foresee the possibility for the State Attorney to initiate civil proceedings against temporary occupants who refuse to refund the damage inflicted to the facility during the time of the occupation.

2002 Amendments to the Law on Areas of Special State Concern also foresee the possibility for the Government to refer a repossession case to the State Attorney Office in order to initiate eviction proceedings against occupants who do not fulfil (or have ceased to fulfil) with the eligibility criteria for alternative housing stated in the same law.

a. State Attorney Lawsuits - Most Cases Resolved Without Court Decision.

According to information provided by the Chief State Attorney, approximately 100 repossession claims raised by municipal state attorneys under the LASSC in local courts remained pending as of early December 2004. These cases were referred to the state attorneys by the Ministry after the occupants failed to vacate after the administrative process. The majority of these cases are pending in courts in central Croatia (Karlovac and Sisak area) and in southern Croatia (Benkovac, Knin, Zadar and Sibenik). The mere filing of a repossession lawsuit by local state attorneys had a significant impact on the rate at which temporary users vacated occupied housing.

As reported by the State Attorney, approximately 680 occupants left the premises they were occupying once a court claim was filed i.e. prior to the issuance of a court order for eviction. Repossession by owners was routinely delayed until housing care was provided to occupants. The Ministry provided most “illegal” occupants, theoretically non eligible, with housing care, either temporary or permanent, although only “legal” occupants have been granted the right to be provided with housing prior to their vacating others’ property under the LASSC. This is a means of appeasement vis-à-vis the local Croat population to avoid protest against return of property to Serb owners, but this practice slows repossession.

b. State Attorney Lawsuits – Court Ordered Evictions Rare

Field reports indicate that state attorneys and courts are reluctant to execute eviction orders against temporary users, in most cases waiting for housing to be secured for the occupants, because compelled execution is seen to raise public attention and resistance⁷. According to the State Attorney, a total of 12 cases in which municipal state attorneys sought repossession are currently pending in anticipation of eviction.

c. Owners Unknown. As previously reported, an additional complicating factor related to some repossession procedures is that municipal state attorneys lack information about either the identity or whereabouts of the owner of occupied property. If the repossession action is completed, the issue becomes to whom the property should be handed over. This has arisen in several cases, for example in Dubrovnik and Split Counties. Some municipal state attorneys, for example in Knin, have decided to address this question through seeking court appointment of a temporary representative in accordance with the Law on Social Welfare to stand in the role of the owner. One

⁷ Some municipal state attorneys have informed the Mission that they lack funds to pay the court costs associated with enforcement of eviction orders obtained in repossession lawsuits under the LASSC, another factor contributing to the lack of enforcement even when eviction orders are issued. At least one state attorney reported that in December 2004 and again in January 2005 she requested funds from the Ministry for this purpose, requests to which she received no response. As a result, this municipal state attorney suggests that owners pay the eviction-related court costs indicating that the state attorney will try to reimburse the funds at a later date from its budget.

foreseeable problem is that properties repossessed in this manner could be auctioned for purposes of paying the fees associated with the work of the temporary representative. Furthermore, this type of representative, widely used in the judicial termination of occupancy/tenancy rights [OTR] in the early to mid 1990s, did little to protect the interests of former OTR holders.

d. Claims for Investments by Users against Owners. As previously reported, owners who are unable to repossess their property due to judicial delays in ousting occupants, continue to face court auction to pay compensation to occupants for “investments” in the property, including investments solely for business purposes. The judiciary’s handling of these claims demonstrates a continuing gap in the legal framework applicable to the return of private property that constitutes a legal obstacle to return.

In one of the most recent example, the Korenica Municipal Court ordered for 24 February 2005 to sell a Serb property in order to recover approximately €30,000 the court awarded to the occupant – a Croat settler from Istria - who used the property (rent-free) as a pizzeria business for more than eight years⁸. Although the owner has been seeking repossession for more than 6 years, the court only ordered the occupant to be evicted two hours prior to the auction. The Mission has received reports of similar cases throughout Croatia, the next pending auction of Serb property is scheduled for the 14 April in Daruvar in Western Slavonia in light of the owner’s failure to pay approximately €5,000 of compensation to the occupant for investments made into the property without his consent.

Most courts also join repossession dispute and investment claims, with the result that the factually simple repossession claim is delayed by the more factually complicated and lengthy investments claim, thus providing the user with an advantage in pressing the investment claim. The Constitutional Court has determined that investment claims filed by temporary users can be decided in a procedure separate from the repossession claims filed by the owners, as these claims can be ruled separately and indeed need not be decided in a unified procedure.⁹ However, trial practice in the local courts continues contrary to the Constitutional Court’s decision.

⁸ The Court auction was eventually delayed in light of a revision claim filed by the owner’s wife.

⁹ U-III-1936/2001 from 29 September 2004.

APPENDIX

Municipalities with highest No. of occupied property as of 9 February 2005

County	Municipality	No. of occupied property Feb 2005
Sibenksko kninska	Knin	328
Zadarska	Benkovac	116
Zadarska	Obrovac	88
Karlovacka	Vojnic	62
Zadarska	Gracac	58
Sibensko kninska	Kistanje	51
Sisacko moslavacka	Sunja	41
Sisacko moslavacka	Donji Kukuruzari	39
Karlovacka	Karlovac	29
Sisacko moslavacka	Gvozd	22

Occupied property in Croatia as of 4 January 2005

County	No. of occupied property Feb 2005
Sibensko kninska	430
Zadarska	303
Sisacko moslavacka	115
Karlovacka	109
Licko senjska	83
Dubrovačko neretvanska	23
Splitsko dalmatinska	21
Bjelovarsko bilogorska	17
Brodsko posavska	10
Viroviticko podravska	3
Istarska	3
Primorsko goranska	2
Pozesko slavonska	2
Zagrebacka	1
Krapinsko zagorska	1
Vukovarsko srijemska	1
TOTAL CROATIA	1,124



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Background Report

Housing solutions

For former holders of occupancy / tenancy rights (OTR)

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Introduction

Former occupancy/tenancy rights (OTR) holders, i.e. former occupants of socially-owned flats, remain the largest category of refugees and internally displaced persons in need of a permanent housing solution in Croatia. This problem affects potentially up to 30,000 households (about 100,000 persons), almost exclusively Croatian Serbs.

From 2000 to 2003, the Government designed various solutions for so-called *housing care* to be provided by the State for those former OTR holders who want to return to Croatia, and do not own or co-own residential property in the successor states of the former Republic of Yugoslavia (SFRY).

To date, these programs have not had any significant practical impact on the availability of housing for this segment of the population. In the main urban centres of Croatia, i.e. outside the war-affected areas (referred to as Areas of Special State Concern /ASSC) where 80 percent of the potential beneficiaries resided, even the processing of applications had not started by January 2005. Inside the ASSC, i.e. in the mainly rural war-affected areas, only few applicants had received housing. This raises serious

concerns over the further return of Croatian Serbs, for which the solution of the housing issue is a key.

In 2004 the Mission and its main international partners (EC Delegation, UNHCR, US Embassy) worked intensively with the Government toward a speedier implementation of the programmes.

While repossession of occupied Serb properties is expected to be completed in 2005 (1,124 houses still occupied, out of which 804 claimed by their owners) and the reconstruction of destroyed Serb and other properties in 2006 (12,200 requests for State reconstruction assistance based on new applications are still to be processed in addition to 8,200 houses to be reconstructed in the course of 2005), the practical implementation of the Government's commitment to provide housing solutions to former OTR holders remains one of the key concerns of the Mission in 2005.

1) Background

Occupancy/tenancy rights (*stanarsko pravo*) in so-called socially owned¹⁰ flats constituted a significant percentage of housing in urban areas of Croatia during the period of the former Yugoslavia¹¹.

- A significant portion of the Croatian Serb population living in **urban areas controlled by the Government throughout the conflict** left their OTR apartments before and during the armed conflict or were forcefully evicted by members of the armed forces and others. OTR were subsequently terminated through court proceedings initiated by the owner ('provider') of the apartment (generally a ministry, a municipality, or a socially owned company) which were mainly held *in absentia*¹². In 1996, shortly after the war, a Law was passed which cancelled OTR as a legal institute. According to the Ministry of Justice, a total of 23,700 court proceedings were initiated and mostly completed for the

¹⁰ In contrast to former OTR holders of socially owned flats, OTR holders who used to live in *private property* that was confiscated or nationalized by the State in the 1940s were not eligible to privatize their former OTR apartments during the 1990s, but were eligible for the status of protected lessee. This category of former OTR holders is not eligible for housing care. The European Court of Human Rights (ECHR) in 2000 refused to review an application challenging the Croatian law regulating the transformation of OTR in private property, finding no violation of the right to home, right to property, or right to be free of discrimination with regard to Convention protected rights. The ECHR distinguished the position of OTR holders in socially owned flats from that of OTR holders in private property. *Soric v. Croatia*, Application no. 4344/98, decision dated 16 March 2000.

¹¹ Occupancy/tenancy rights ceased to exist as legal institute in 1996 with the coming into force of *the Law on Lease of Apartments (Official Gazette, no.91/96, 48/98, 66/98)* which granted the status of protected lessees to the individual tenants of those apartments and provided the possibility of purchase of the same for those tenants that satisfied certain conditions.

¹² The most common legal basis for the court termination of OTR was the prolonged 'unjustified' absence of the occupant from the apartment for more than six months based on Article 99 of the Law on Housing Relations. In a smaller number of cases OTR have also been cancelled on the grounds that the OTR holder participated in 'enemy activities' based on Article 102a of the Law on Housing Relations. However the Constitutional Court determined in a series of decisions starting in 1999 that OTR could only be constitutionally terminated through application of Art. 102a if the OTR was **criminally convicted**.

cancellation of OTRs as of autumn 2002. Some court proceedings related to state-initiated terminations are ongoing¹³.

- **In war-affected areas that were regained from Serb control through Croatian military operations in 1995**, now referred to as Areas of Special State Concern, OTR were cancelled *ex lege* upon the expiration of a short deadline (90 days) after the coming into force of *the Law on Lease of Apartments in the Liberated Areas (NN 73/95)* on 27 September 1995. Since the circumstances prevented refugees to return and claim their former OTR apartments within such a short timeframe, several thousand households lost their OTR without court procedures.
- A third procedure was applied in the **Croatian Danube Region of Eastern Slavonia** which was peacefully returned to Croatian Government control in January 1998 after the completion of the United Nations Transitional Administration in Eastern Slavonia (UNTAES). Former OTR holders from the Danube Region have been living in a legal limbo since their acquired rights have not been cancelled, but they have not universally been granted the status of a so-called *protected lessees* as foreseen by the law and as it happened to former OTR holders from other parts of Croatia who eventually managed to privatize their former socially owned apartments¹⁴.

The issue of occupancy tenancy rights has been treated differently in the successor States to the former socialist Republic of Yugoslavia. Of most relevance here is Bosnia-Herzegovina (BiH), which also suffered a refugee and IDP crisis, and where OTR were not cancelled. Many individuals and families fled from BiH to Croatia, including those who lived in OTR apartments. Former OTR holders were allowed to repossess their (usually occupied) OTR flats in BiH and to privatize them for a symbolic price. This was not limited to those who want to return and live in these flats. Several thousand Bosnian Croat households who settled in Croatia have also profited from this regulation. They usually privatized their flats in BiH and sold them for a higher price, which allowed them to invest these earnings in a new home in Croatia or elsewhere. Others rent their flats out and thus receive additional earnings.

¹³ In July 2004, the European Court of Human Rights in *Blecic v. Croatia* found that Croatia acted in compliance with the European Convention on Human Rights when the court terminated an individual's OTR because she did not return to her flat within six months during the period of active armed conflict. The ECHR found that Blecic's OTR flat was her home and protected from impermissible interference, but ultimately determined that Croatia's permanent deprivation of her home was not disproportionate and lay within its margin of appreciation. Hence the ECHR concluded that the termination did not violate the Convention guarantees of right to home and peaceful enjoyment of possessions. In December 2004, the ECHR granted the applicant's request for review of its July decision by a Grand Chamber. A final decision in this case is expected in 2005 or 2006.

¹⁴ The March 2003 Decree on the conditions for purchase of State owned apartments in the ASSC should theoretically allow the lessees of the State owned apartments in the Danube Region to privatize the same under the condition that previously they are offered a lease contract by the Directorate for Expellees, Returnees and Refugees. Nevertheless this has happened only in regard to a very limited portion of cases since most of the State owned apartments have still not been registered under the competent State body.

The timely and transparent provision of adequate housing to the refugee category of former OTR holders remains a short term priority in the European Partnership Agreement between the European Union and Croatia. It will certainly become a core benchmark of the envisaged *road maps* for eventually closing the refugee file at the end of 2006¹⁵. Therefore enhanced efforts are expected from the side of the Croatian Government, aiming at creating all necessary preconditions for the implementation of this important commitment.

2) Government plans for housing solutions for former OTR holders

Two limited options for redress have been introduced in the Croatian legal and administrative system for those whose OTR were terminated and who want to return.

- Inside the so called Areas of Special State Concern (ASSC):

The July 2000 and July 2002 Amendments to the Law on Areas of Special State Concern (ALASSC) and the October 2002 *Rulebook* on the Order of Priority of Housing Care in the Areas of Special State Concern provide for State housing for several categories of beneficiaries¹⁶ as well as for those who used to live in the war-torn areas and who wish to return. In the *Rulebook*, former OTR holders are for the first time mentioned as beneficiaries for housing care in an official Government document, but are ranked both in the Law and the *Rulebook* as the lowest priority beneficiaries of housing assistance¹⁷.

- Outside the Areas of Special State Concern (i.e. in urban centres that during the war remained under the control of the Government, encompassing the places of residence of the former 30,000 OTR holders):

In July 2003, the Government adopted a Conclusion on Housing Care for former OTR holders from the Areas outside the Areas of Special State Concern. It allows eligible former OTR holders from the urban areas of Croatia to apply for the lease of State owned apartments under the same financial conditions as those inside the ASSC (approximately

¹⁵ A meeting of the ministers responsible for refugee issues in the three countries, initiated in 2004 by the OSCE missions, the EC delegations and the UNHCR in Croatia, BiH and SaM, was held on 31 January 2005 in Sarajevo. The next ministerial meeting will be held before 27 April in Zagreb and the three countries have confirmed their intention to finalise their individual roadmaps by that time.

¹⁶ Occupants of (Serb) houses, inhabitants of collective accommodation in former refugee camps, 'settlers' who want to settle down in the ASSC.

¹⁷ In accordance with the 2002 Law on the Areas of Special State Concern *housing care* can take the following five forms:

- 1) allocation for lease of a state-owned family house or apartment;
- 2) allocation for lease of a state-owned damaged family house and the allocation of building material;
- 3) allocation of a state-owned construction plot and the building material for the construction of a family house containing several housing units. The decision on the manner of construction and financing of such facilities shall be passed by the Ministry;
- 4) by the allocation of a state-owned construction plot and the building material for the construction of a family house;
- 5) by the allocation of building material for repair, reconstruction or construction of a family house or apartment.

1.5 HRK per square meter) *or* to purchase them under favourable conditions, however less favourable than inside the ASSC¹⁸.

Applicants for both *housing care* options inside and outside the ASSC need to provide proof that they once held OTR in a socially owned apartment and that they do not own or co-own any other residential property in the territory of the former SFRY.

The application procedure is different inside and outside ASSC: no deadline is foreseen for application inside the ASSC. Outside the ASSC, the application deadline was initially set to expire on the 31 December 2004. After the Mission and its international partners and the Representatives of the Serb minority in the Parliament suggested the extension of the deadline because of the delays in the start of the related public information campaign and application process, it was extended by the Government for an additional six months until the 30 June 2005. The extension will certainly provide more time to apply for those who were not well informed about their rights, were lacking necessary documentation, expected a solution of the OTR problem similar to the one promoted by the international community in BiH or were simply undecided whether or not to apply¹⁹.

3) Government information campaign

A Government information campaign for the two housing schemes, facilitated by the UNHCR, was initially announced in December 2003 but started only in October 2004. In Serbia and Bosnia, it featured appearances by the Assistant Minister for Maritime Affairs Transport Tourism and Development (Ministry) in different electronic media. The campaign inside Croatia so far was limited to sporadic reports on national electronic and printed media and isolated appearances of some municipal officials in the local media outlets in return areas.

At the beginning of March 2005, only 2,336 applications (out of a potential of 23,700 beneficiaries) had been submitted for housing solutions outside the ASSC. The low number could largely be ascribed to the delay of the information campaign²⁰. The Mission observed that some local officials of the Ministry were discouraging potential applicants from filing housing care applications and were requesting additional unnecessary documentation in order to prove their eligibility. This appears to be contrary to the Law on General Administrative Procedure.

¹⁸ The purchase option refers to the Law on Subsidized Housing Construction which actually had been adopted for the solution of the housing problem of young families with sufficient income. Beneficiaries need to be credit-worthy for a (favourable) loan scheme, which is quite unlikely for this category of impoverished and job-less refugees. The purchase price amounts to more than 60 per cent of the market price (60 percent of the market price in Zagreb at present amounts to 900 – 1,000 Euros per square meter).

¹⁹ The Mission observed that many potential beneficiaries, particularly those still displaced in Serbia & Montenegro, were afraid that by applying for housing care they would give up legal proceedings which they may have initiated in regard to their terminated rights.

²⁰ The respective figure for inside the ASSC is misleading since it mainly does not refer to displaced former OTR holders who lost access to their flats, but various other categories of beneficiaries as well, therefore it is not being provided.

As to out-of-country applications, most of the potential beneficiaries prefer to file their applications through UNHCR rather than Croatian Consular and Diplomatic Offices²¹.

4) The physical implementation of the housing care options:

The physical allocation of state housing to eligible applicants depends to a great extent upon the *housing stock* available to the State, and also requires *construction/purchase* of new flats by the State.

- Available stock of flats *inside* the ASSC:

Field surveys of state-owned apartments conducted by the State in several municipalities in the ASSC in 2004, in order to assess the available housing stock that could be partially offered to eligible applicants, indicate that significant bureaucratic obstacles hinder the allocation of State-owned apartments. Such obstacles include, among others, the impossibility for the competent Ministry to access many of the state-owned apartments since they formally belong to other State bodies or are in practice controlled by local self-government bodies. Mission observations indicate that the identification of the housing stock to be possibly allocated to the eligible housing care applicants is at a very initial stage.

- Construction of flats *outside* the ASSC:

In the urban areas of Croatia where 23,700 OTRs were terminated through court proceedings, housing needs to be made available through the construction of apartments under a subsidized housing program.

In 2004, none of the 400 flats planned for construction in the State budget for that year were actually constructed or purchased by the Government. The 2005 State budget foresees funds for the construction or purchase of about 800 flats²².

The process of construction of apartments requires lengthy administrative preparations between State and municipal bodies which have not yet started. The active co-operation of the relevant municipalities is necessary since they need to provide construction land plots and to adjust their zoning plans accordingly. Mission observations indicate that the level of information of responsible Government and municipal officials in regard to the necessary steps for the construction of State-owned apartments remains insufficient.

²¹ As of 23 November 2004 only 10 applications had been filed through the Croatian Consular and Diplomatic Offices in Serbia. UNHCR reports that the Croatian Consulate in Banja Luka has refused to accept certain applications which had not been filed on A3 format although the same had been previously provided to the UNHCR by the Ministry of Maritime Affairs Tourism Transport and Development.

²²The Government intends to allocate 44 M HRK (around 6 M €) in the State Budget for 2005 that would allow the first down payment for the construction/purchase of around 800 apartments to be allocated to eligible applicants of the housing care program in the urban areas of Croatia.

5) The administrative processing of applications

The administrative processing and physical allocation of housing has partially started only inside the ASSC. The majority of beneficiaries however are not refugees or other persons currently displaced but mainly households who still reside in their apartments but lack an official document legalizing their stay or lease contract as well as others not belonging to the above mentioned category. In Vukovar the above described phenomenon refers to about 70 per cent of the cases reported by the authorities as resolved.

Outside the ASSC, the area with the bulk of war and post war terminations, the processing of applications has started in February 2005 but housing has not been provided yet.

In addition, the Ministry continues to indicate that it will start to fully concentrate its efforts on the housing for former OTR holders only when the property repossession process has been completed, which is likely to take place in the course of 2005.

The Mission together with its international partners has highlighted the need to provide housing to a first number of eligible beneficiaries well before the expiration of the application deadline on the 30 June 2005. This should reinforce the trust in the programme among potential beneficiaries who are sceptical after the previous delays.

6) Ongoing evictions of former OTR holders – first - time displacement

The state has within recent years implemented some evictions based on final decisions of termination,²³ while other evictions remain pending and subject to execution at any time.²⁴ The Mission is continuing to monitor such court-ordered evictions mainly affecting Croatian Serb families, many of these former OTR holders still reside in apartments belonging to the Ministry of Defence or other state bodies.

In the course of 2004, the Mission and its international partners proposed to the Government to adopt a moratorium on the execution of those evictions until potential evictees are provided with housing by the State provided that they are eligible to receive it. This suggestion has been accepted by the Ministry of Maritime Affairs Tourism Transport and Development and the Ministry of Defence in January 2005.

Conclusion

- The two housing programmes for refugees and displaced persons who used to live in socially owned apartments with occupancy tenancy rights will only be successful if the Government implements them in a forceful and affirmative way. Very little

²³ See e.g., *Ministry of Defense v. Jandro Marinkovic*, Zadar, P-1987/95 (evicted 30 September 2003).

²⁴ See e.g. *Ministry of Defense v. Stevanija Medic*, Zadar, P-255/96, *Ministry of Defense v. Djuro Saric*, Split, P-750/99, *Ministry of Interior v. Stevan Babic*, Split, P-5/94. While there appears to be an informal abatement of evictions by the Ministry of Defense, tenants facing eviction are advised to apply for housing under the 2003 housing programme described above, although no housing has yet been made available.

time is available until the current application deadline for the most important programme outside the ASSC expires on 30 June 2005.

- A timely provision of housing for a limited number of former OTR holders under both schemes within the first months of 2005 would certainly contribute to re-establish any trust in the intentions of the Government, and would encourage more potential beneficiaries to apply. This would also contribute to further dissolving the negative attitude displayed by many potential beneficiaries, NGOs of the Croatian Serb refugees in SaM and BiH, and as well partially by the Serbian Government.
- To overcome the numerous administrative and financial obstacles on the way to the physical implementation of the programs, resolute political will is necessary. Objective difficulties such as financial constraints, lack of housing²⁷, co-ordination problems with municipalities and other state bodies involved in the programmes and the poor quality of the available State-owned housing stock partially explain the very slow pace of the implementation of both housing care schemes during 2004. The allocation of housing to former OTR holders requires extensive preparatory efforts especially in urban areas where apartments are to be constructed.
- The delays in the implementation of the housing schemes, financial constraints and administrative shortcomings will certainly lead to a prolongation of the final deadline for the implementation of the program outside the ASSC, which was initially set for 2006. It cannot be excluded that the delays in providing information will also necessitate a further extension of the application deadline for the large number of potential beneficiaries who used to reside outside the current ASSC.

²⁷ One need to keep in mind, however, that the provision of alternative housing to most occupants of Serb properties - regardless of their ability to provide for themselves - as well as the provision of housing in some occasions even to people which are ineligible for State provided *housing care*, has additionally impoverished the available housing stock.