



Center for Peace, Legal Advice
and Psychosocial Assistance

UNIVERSAL PERIODIC REVIEW OF CROATIA NGO Stakeholder's submission

April 2010

I Information on the Center for Peace, Legal Advice and Psychosocial Assistance – Vukovar

Center for Peace, Legal Advice and Psychosocial Assistance is local, nongovernmental, non-political, non-partisan, nonprofit, humanitarian association that works on protection and promotion of human rights, development of democracy and interethnic relations in the Republic of Croatia. The Center was established on and works since 1 August 1996.

Main activities of the Center:

- Provision of free legal advices and free legal aid,
- Reporting on and analyzing human rights situation, with special attention paid to the rights of refugees, displaced persons and persons belonging to national minorities in the Republic of Croatia,
- Provision of informative and technical support to citizens, civil initiatives and economy development initiatives,
- Campaigning and advocacy,
- Monitoring of the work of courts of law and state administration bodies,
- Organization of conferences, seminars, trainings, workshops, roundtables and public discussions,
- Cooperation with relevant governmental and nongovernmental organizations in the Republic of Croatia as well as foreign and international nongovernmental organizations, and international organizations.

Beneficiaries of the Center's services are all citizens regardless of their gender, culture, mental or physical abilities, ethnicity or religion, etc.

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II Submission of Information under the Universal Periodic Review of Croatia

(1) The Center for Peace, Legal Advice and Psychosocial Assistance – Vukovar produced this submission as a contribution to the process of conducting the Universal Periodic Review of Croatia in 2010. **This submission focuses on the position of minority population of Croatia being displaced throughout and outside the country during 1990-s armed conflict in former Yugoslavia. By considering human rights situation of minority refugee/IDP population the submission makes, in some of key aspects, references to the general state of human rights in the country, including respect for international and national standards in areas of protection of national and/or ethnic minorities, non-discrimination, access to justice etc.** This submission does not represent a comprehensive overview of the human rights situation of targeted population and does not aim to elaborate on all of relevant information in this regard. It summarizes and is based on a number of reports, studies and policy papers produced and published between 2006 and 2010 by the Center for Peace – Vukovar, individually or in cooperation with other national and international partners. These documents are available at the Center for Peace – Vukovar web-site: www.center4peace.org

The Republic of Croatia is a party to key international human rights treaties adopted by UN and the Council of Europe. National legislation is to the wide extent harmonized with international human rights standards and Croatian authorities constantly claim their dedication to protection and respect for human rights of all of its citizens. However, practical applications of international human rights standards remain problematic in practice in many aspects – particularly in regard to respect and access to acquired rights of minority refugee/IDP population, including creation of (pre)conditions for sustainable return to Croatia for those interested in this option.

(2) Armed conflicts and hostile atmosphere in 1991 – 1997 period resulted in displacement of around 950.000 residents of Croatia. According to the European Commission 550.000 displaced citizens were ethnic Croats and around 400.000 were mostly persons belonging to ethnic Serb minority out of which 370.000 fled to Serbia and Montenegro, 40.000 to Bosnia and Herzegovina, and 32.000 to Croatian Danube region (former UNTAES region). In July 2008 Croatian Government reported that the return of ethnic Croats was mostly completed, while the Republic of Croatia is still facing the return of exiled ethnic Serbs who were residing in Serbia and Montenegro for whom the reconstruction of houses continues and other return preconditions were being ensured. Organization for Security and Cooperation in Europe (OSCE) Mission to Croatia estimated, in 2006, that only 60-65% of minority returns can be considered sustainable and that certain number of refugees after returning to and staying in Croatia for a short period, returns to the country of their exile mostly for persistent difficulties in the approach to the housing, acquired rights and employment. An independent 2007 UNHCR ordered study assessment point at even more defeating results of the sustainability of minority returns – out of 120,000 registered Serb (minority) returns, it was estimated that between 46,000 and 54,000 registered returnees were living permanently in the country, of who 42,000 to 49,000 were residing in their place of origin.

(3) An initiative of the three OSCE Missions, the UNHCR offices, and European Commission delegations resulted in adoption of Sarajevo Ministerial Declaration on regional refugee return that has been signed by the Republic of Croatia, Bosnia and Herzegovina, and Serbia and Montenegro. Signatory states have agreed to develop national strategies that would be consolidated into the regional strategic framework for resolution of remained refugee issues by the end of 2006. The strategies should have created legal and political presumptions for

return or local integration of refugees depending on their individual decisions. Declaration foreseen deadline, however, was not respected, regional strategic framework was not created and the process initiated by signing of the Declaration was blocked. Representatives of the Republic of Croatia have many times, during 2008, emphasized that the process, as to the Republic of Croatia, is completed since Croatia produced and implemented national strategy.

(4) The issues of the restitution of private houses owned by exiled and displaced Serbs have been resolved to a large extent but not entirely. Over the past four years the authorities continued applying discriminatory practice against exiled and displaced Serbs whose housing units were temporarily occupied by displaced or at that time even not displaced persons belonging to majority population, a practice in contravention to the provisions and principles of *the Law on Ownership and Other Proprietary Rights*. The issue of the compensation for prolonged usage of the occupied properties that was to be paid to the owners by the state still exists. The European Court for Human Rights decided on the violation of property rights in favour of the owners in several cases (e.g. *Kunic vs. Croatia* and *Radanovic vs. Croatia*).

(5) 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. The authorities were legally bound (*the Law on Temporary Take-over and Administration of Property* and *the Law on Temporary Occupancy of Flats*) 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, 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.

(6) Recognition of acquired (property) rights to purchase apartments under favourable conditions and facilitation of free and not preconditioned deciding of displaced former tenancy rights holders on their return to the Republic of Croatia remains problematic. In the only case of court termination of a tenancy right that has been examined before the European Court of Human Rights, the Grand Chamber of the Court brought a decision of incompetence since the final decision on this particular tenancy right termination was passed before *the European Convention for Protection of Human Rights and Fundamental Freedoms* came into power in the Republic of Croatia. (institute *rationae temporis*). For that reason, it seems that the possibility for the tenancy rights termination cases to be considered before the European Court for Human Rights remains potentially actual for a very few former tenancy rights holders whose tenancy rights were terminated after the Convention came into power in the Republic of Croatia. However, based on one individual address, the CHR has, among other, in its Views from 30 March 2009, concluded that was a violation of *Article 17 in conjunction with Article 2, paragraph 1 of the International Covenant on Civil and Political Rights* in this particular case. In 1990-s exiled and displaced former occupancy / tenancy rights holders (specially protected lessees of socially owned flats) were terminated their tenancy rights in two ways: in legal proceedings for the termination of tenancy rights due to the vacancy of their apartments in the period longer than 6 months, in many cases by in absentia verdicts and without beneficiaries' knowledge, or as they failed to return to the apartments they had lived in within 90 days from the moment the *Law on Leasing Apartments on the Liberated Territory* came into force on 27 September 1995. In the first way, tenancy rights were terminated in the areas that were controlled by Croatian authorities during armed conflict, while in the other way tenancy rights were terminated in the areas controlled by local Serbs until 1995. The total number of cases where tenancy rights were cancelled is estimated at 29,800, out of which 23,800 on the territory controlled by Croatian authorities during 1991 conflict and 6,000 on the territory that was

under control of local Serbs until 1995. According to the OSCE around 100,000 people from urban areas of the Republic of Croatia were affected by that. The authorities of the Republic of Croatia did not accept armed conflicts, justified fear, direct or indirect pressure and threats, and in some cases forced and illegal evictions from the apartments, as well as inexistence of objective preconditions for physical return of beneficiaries and similar circumstances as legally relevant facts to justify the absence of tenancy right holders from or not returning to their apartments within legally prescribed deadline. In that sense, policy and attitude of the Republic of Croatia towards displaced ethnic Serbs it is possible to review from, for example, official standing point of Croatian Parliament, that is that the owners of vacant houses and apartments (mostly ethnic Serbs), that were used as accommodation of numerous expellees and refugees (mostly ethnic Croats), who were robbed and expelled from occupied areas, left those houses and apartments on their own free will in order to join the great Serbian aggressor. This general view and attribution of collective guilt to a particular group of citizens has, without any doubt, reflected and it still reflects on minority return to the Republic of Croatia as well as to (non)recognition of acquired rights to former tenancy rights holders. Republic of Croatia has, as to displaced former tenancy rights holders, turned a deaf year to *the Resolution 1120 of the United Nations Security Council of 14 July 1997* by which the right of all refugees and displaced persons originating from the Republic of Croatia to their original homes in the Republic of Croatia has been reinstated. Authorities of the Republic of Croatia have also ignored some, although legally not binding, but relevant international standards of human rights protection included in, for example *Resolution 2004/2 on Housing and Property Restitution for Refugees and Displaced Persons of the UN Sub-Commission for Promotion and Protection of Human Rights*, and in *UN ECOSOC Principles on Housing and Property Restitution for Refugees and Displaced Persons* (also known as *the Pinheiro's Principles*) of June 2005. Despite the fact that displaced former tenancy rights holders are being denied the property character of their tenancy rights, the Republic of Croatia ratified and joined the *Agreement on Succession Issues of former Yugoslavia* where the tenancy rights of former SFRY citizens are considered within *the Annex G of the Agreement "Private property and acquired rights"*. The Agreement came into power on 2 June 2004 and it is legally binding document for all successor states of former SFRY although its practical application, especially in sense of exercise of rights and obligations from the Annex G, remains problematic.

(7) Under international pressure, after years of inaction, the authorities adopted two housing care programs for former occupancy / tenancy rights holders: in and outside war affected areas e.g. Areas of Special State Concern. The issue of the legality of occupancy / tenancy rights terminations is not tackled by the programs. Two housing care models are ordered in significantly different legal frameworks e.g. acts of different legal nature. The first program is regulated under the *Law on Areas of Special State Concern*. Several categories of citizens can apply for housing care assistance in war-affected areas. The second program is regulated by the *2003 government Conclusion* and *2008 Decision*, intended exclusively for former occupancy / tenancy rights holders in areas outside the Areas of Special State concern where the main urban centers are situated. Housing for the displaced former occupancy / tenancy rights holders of Serb ethnicity, who have decided to return to Croatia, essentially begins to solve in 2007/2008. Excluding the City of Vukovar for its very specific situation, by the end of 2006, non-governmental organizations recorded very few cases of provision of housing care to displaced former tenancy rights holders of Serb ethnicity. Implementation of the program of provision of housing care to the above-mentioned categories is still characterized by insufficient transparency and certain administrative, legal and political obstacles. Key problems in reference to the monitoring and assessment of the results

accomplished, however, are the lack of transparency of the work of the ministry in charge and their regional offices, and lack of availability of relevant information.

(8) Certain number of ethnic Serb returnees as well as persons belonging to some other minorities (e.g. Roma and Bosniaks), longtime residents of the Republic of Croatia, has difficulties in exercising rights to Croatian citizenship thus the exercise of economic, social and political rights guaranteed to Croatian citizens. These persons are discriminated in comparison to non-citizens of Croatian origins in relation to the acquirement of Croatian citizenship.

(9) Further on, a number of displaced Serbs face difficulties in accessing other economic and social rights acquired before the escalation of 1990s conflict e.g. pension rights, labour rights and right to participate in privatization of former socially owned companies under favorable conditions. Access of minority returnees to the state reconstruction programs (aimed to provide assistance in reconstruction of destroyed and devastated private housing units) improved over the years – however, a number of applications and complaints remain pending before competent institutions for years.

(10) There are many allegations on discrimination in employment of ethnic Serb returnees in public enterprises and institutions. Proportional representation of the national minorities in the judicial bodies and bodies of state administration guaranteed by *the Constitutional Law on the Rights of National Minorities* remain unexercised to the large extent.

(11) Lack of realization of numerous rights is largely contributed by inefficient, unprofessional and politicized public administration and judiciary and their disproportionate work. Reviewing real situation in exercise of particular rights such as employment and adequate representation and sustainability of minority returns, and their practical realization are blocked by the lack of reliable, detailed and updated data disaggregated by ethnicity.

(12) Access to justice is often made difficult for displaced population for high court fees and lawyers tariffs, as well as for, in some particular cases, lack of trust in judiciary and public administration. The free legal aid system established by the adoption of *the Law on Free Legal Aid* (applicable since 1 February 2009) proved to be very problematic, too complicated and insufficiently efficient.

RECOMMENDATIONS:

The Human Rights Council and its member states should encourage and urge Croatia authorities to:

- Intensify efforts to create necessary preconditions for sustainability of minority returns. Relevant national policies and practice should comply with human rights and other treaties Croatia is party to;
- Establish adequate redress mechanisms and just solutions in recognizing and accessing denied and/or terminated property and other rights acquired by displaced persons belonging to minorities before 1990-s conflict no matter of their decision to return to Croatia or to locally integrate in places of their current residence outside Croatia;
- Eliminate and / or minimize impact of 1990-s and 2000-s discriminative practices and of application of discriminative legislation on displaced persons belonging to minorities;
- Take efficient and transparent measures for investigation and suppression of all forms of discrimination against minorities, including those displaced, with the emphasis on efficient implementation of *the Law on Combating Discrimination* (applicable since 1 January 2009);
- Improve practical application of *the Constitutional Law on the Rights of National Minorities*, and to develop and secure effective measures to strengthen full political, economic and social integration and participation in decision making of minorities, including minority returnees.