Organization for Security and Co-operation in Europe

Mission to Croatia

Headquarters

29 July 2005

Background Report
On Refugee Return in Croatia and the Status of Implementation of the January 2005 Sarajevo Ministerial Declaration On Refugee Returns

Overview

During and after the 1991-1995 conflict, at least ***300,000 Croatian Serbs*** left or fled Croatia. As of 1 July 2005, i.e. ten years later, 117,448 Croatian Serbs have been registered by the authorities as having returned to or within Croatia, from Serbia and Montenegro, Bosnia and Herzegovina and the Croatian Danube region. The sustainability of minority return continues to remain unsatisfactory, mainly for reasons relating to housing and employment problems, and partially due to the lack of basic utilities (water, electricity) and social infrastructure in some return areas.

More than ***180,000 Croatian Serbs are still displaced*** in Serbia and Montenegro and Bosnia and Herzegovina. Out of this figure, according to the 2004/05 re-registration of refugees in both countries, 128,000 retain the refugee status (about 120,000 in Serbia and Montenegro and 8,000 in Bosnia and Herzegovina). However, only a small number was de-registered after voluntary repatriation to Croatia, while most of the Croatian Serb refugees had their status changed through the acquisition of the citizenship of Serbia and Montenegro or Bosnia and Herzegovina. A significant part of them are now considered social cases in Serbia and Montenegro. Many of the deregistered displaced Croatian Serbs still have no effective access to basic rights in Croatia (right to peaceful enjoyment of their property, recognition of pensions and other acquired rights).

The Ombudsman recently emphasized in his annual report that the process of return and integration has been very slow, in spite of the current positive climate provided by the Government with the support of the opposition and Serb minority political leadership. He concludes that there are several contributing factors, in particular slow repossession of property, unresolved issue of former holders of occupancy rights, devastation of abandoned property and damage compensation requests by temporary users, including court verdicts that financially burden owners who should not bear the consequences of actions for which they were not responsible[1].

Sarajevo Ministerial Declaration on regional refugee returns

In October 2004, the Heads of the OSCE missions, EC delegations and UNHCR offices in ***Croatia***, ***Bosnia and Herzegovina*** and ***Serbia and Montenegro*** addressed the governments of the three countries to suggest an agreement on the remaining open refugee issues. The regional process should add impetus in removing the obstacles to return; it should also create

[1]Ombudsman's Annual Report for 2004 pages 128-130

the conditions for those displaced to make a free choice on whether to return or locally integrate in the country of refuge.

A ***Trilateral Declaration*** was signed by the ministers responsible for refugee matters in the three countries on 31 January 2005 in Sarajevo. The commitments of the governments outlined in the Declaration refer to: a) the resolution of all practical, political and legal issues affecting refugees, through meeting of concrete benchmarks, by the end of 2006; b) the non-discriminatory access to rights such as property, pensions, health care, employment and the facilitation of local integration for those wishing to remain in their countries of refuge; c) the development of national plans (*Road Maps*) specifying tasks and benchmarks at national level as well as a *Regional Matrix* listing tasks to be tackled jointly; and d) the appointment of an intergovernmental Task Force that will meet at least four times a year to oversee the drafting and mutual agreement of the *Road Maps* and the *Regional Matrix* as well as the implementation of the process. The first meeting of the Task Force, with participation of the IC in the three countries, took place in Belgrade on 7 April. A second meeting is expected to take place in Zagreb at the end of August.

In March, the Mission and its international partners shared with the Government a structure containing a suggested list of tasks to be included in the Croatian ***Road Map***, containing as well important issues related to the ***access to rights*** of those displaced throughout the region, regardless of their formal status.

The Government of Croatia in April 2005 established a special working group, responsible for the coordination of the drafting and implementation of the Croatian *Road Map*. Members of the working group, under the lead of the State Secretary in the Ministry of Foreign Affairs and European Integration, are assistant ministers in the Ministry of Maritime Affairs, Tourism, Transport and Development, Ministry of Justice and Ministry of Finance.

At a regional meeting of the OSCE, EC and UNHCR Principals, held in Zagreb on 26 April, it was agreed that in order to speed up the work on the Road Maps and the Joint Matrix, each International Community Team shall prepare a ***list of tasks*** it considers important in each country for the successful implementation of this initiative. UNHCR, OSCE and EC Delegation to Croatia shared a list of tasks and related issues with the Government on 27 May.

The Government shared its ***draft Road Map*** with the IC on 12 July. It follows the format (chart) proposed by the IC in March and presents issues and benchmarks which have been object of consultations with the Government for several years. After an initial analysis of the document the IC partners, in a letter to the State Secretary of the Ministry of Foreign Affairs and Head of the inter-ministerial Commission for the implementation of the Road Map, on 22 July suggested to include a number of issues in the document, which had been proposed in the 27 May correspondence as well.

Among the benchmarks which were not adequately reflected in the draft Croatian Road Map the IC partners suggested to include: remedies for looting/devastation of private properties while under State administration and for claims for unsolicited investments filed by occupants against owners, regularization of status of those displaced who had not yet acquired Croatian citizenship and validation of working years spent in the Serb controlled areas during the war.

The State Secretary stated in his answer on 26 July that the Government appreciates the constructive input of the IC partners and that competent State bodies have been tasked to consider the inclusion of the IC suggestions into the Croatian Road Map.

Access to Housing for Former Occupancy/Tenancy Rights (OTR) Holders

Up to 30,000 households throughout Croatia, almost exclusively Serb, who used to live in former socially owned apartments as holders of occupancy/tenancy rights (OTR) lost these rights and physical access to their homes during and after the war[2]. In the urban centres, which always remained under the control of the Croatian authorities, their rights were cancelled in the course of and after the armed conflict through nearly 24,000 court procedures primarily because of 'unjustified absence' of more than six months. In the war affected areas, additional estimated 5-6,000 Serb households lost these rights *ex lege* immediately after the war. This is the largest remaining refugee and IDP category still without a housing option[3].

Two housing schemes were adopted by the Croatian Parliament in 2000/2002 and by the Government in 2003 for former OTR holders inside and outside the areas directly affected by the war (*Areas of Special State Concern* / ASSC). The programmes differ in geographical scope, procedural and legal aspects, and in housing options available[4].

For the ***urban areas*** of Croatia, the application deadline for possible inclusion in the housing programme was extended from 31 December 2004 until the 30 June 2005, upon the request of the Zagreb-based International Community and of the Serb MPs in Parliament. As of first July, only 16 of the 2,598 applications received had been administratively processed by the responsible Ministry. The Minister earlier had agreed with the IC to provide housing for a first group of beneficiaries, well before the 30 June deadline, to encourage potential applicants. As of end July, however, no households had been provided with flats. Therefore,

[2] Former OTR holders in the Danube Region of Eastern Slavonia, as a rule, did not lose physical access to their flats. They, however, with the abolishment of the legal institution of occupancy/tenancy rights (*stanarsko pravo*) in 1996 lost their formal OTR status. In consequence, they are not in need to be provided by the authorities with flats, but only with an authorization to remain in their flats or a contract on *protected lease*. In many cases the authorities have reconstructed these flats. In such cases, tenants were either allowed to return to their reconstructed apartment or were provided with an alternative flat.

[3] The Council of Europe in 2004 noted that there are "still real obstacles hindering sustainable return of persons belonging to the Serb national minority…including those involving former tenancy rights holders." (Advisory Committee on the Framework Convention on National Minorities "Second Opinion on Croatia" published on 13 April 2005 ACFC/INF/OP/II(2004)002 Para 12). In a separate report referred to the Committee of Ministers and the Parliamentary Assembly of the Council of Europe, the CoE Commissioner for Human Rights stressed the necessity for the Croatian Government to provide access to housing to former OTR holders wishing to return to their former place of residence. (Office of the CoE Commissioner for Human Rights "Report by Mr. Alvaro Gil Robles Commissioner for Human Rights on His Visit to the Republic of Croatia 14-16 June 2004" published on 4 May Comm DH(2005)3 page 17 Para 58).

[4] Applicants for both programmes can be provided, if eligible, with housing in the form of lease of State owned apartments under favourable conditions (the average monthly rent amounts to around € 0,20 per square meter.) Nevertheless the purchase option differs within the ASSC where it is regulated by the 2003 Decree on conditions for the purchase of a State owned family house or apartment in the Areas of Special State Concern, NN (48/03) and outside the ASSC where one of the requirements for the purchase of subsidized apartments is the Croatian citizenship. This would potentially exclude a portion of the refugee population from applying for the purchase option since in many cases it might take several years for them to acquire the Croatian citizenship. In addition, outside the ASSC the purchase price of State owned apartments is around 60 percent of the market price. Therefore the subsidized price still amounts to more than € 900 in cities like Zagreb, which is not affordable for most of the minority returnee households.

confidence in the programme remains very low and this could account in part for the low number of new applications.

At the encouragement of the Mission and its international partners the Government decided to extend the application deadline. The Minister reiterated on 6 July to the IC partners the commitment of the Government to finally provide housing to a first number of eligible beneficiaries before the expiration of the new application deadline on 30 September 2005.

The European Commission against Racism and Intolerance (ECRI), an independent human rights monitoring body established by the Council of Europe, recommended to the Croatian Government in its third report published in June "to implement without delay the programmes for providing alternative housing to former OTR holders"[5].

For 2005, the Government undertook to construct or to purchase on the market approximately 500 flats under this scheme[6]. Forty-four Millions HRK (approx. six Million Euros) were earmarked in the State Budget[7]. As of end July, the Government had not yet spent funds from this special budget item.

In Spring, the Mission began to actively support the governmental information campaign already facilitated by the UNHCR, by promoting the housing programmes in the Serbian media and by funding a series of community meetings with displaced Croatian Serbs across Serbia and Montenegro and Bosnia and Herzegovina[8]. The Head of Mission and the Head of the Department for Return and Integration repeatedly appeared in the Serbian media to encourage Croatian Serbs there to apply[9].

In the mostly rural ***areas directly affected by the war*** (ASSC), a housing care option for various beneficiaries has been in force since 2000/02, but former OTR holders have the lowest priority behind all other beneficiaries. No application deadline has been established for this option. By now only a very limited number of beneficiaries, who had lost physical access to their formerly socially owned home *ex lege* in 1995, have been provided with housing.

Hundreds of proceedings involving the ***termination of OTR*** continue in the Croatian courts. The State continues to seek termination against OTR holders who reside in their apartments; they will be evicted if the State's lawsuit succeeds. The State also seeks to terminate even where the OTR holder's absence resulted from forcible eviction by members of the military or police during the conflict and the OTR holder used all available legal means to regain possession. Finally, the Government continues to seek termination and eviction of Serb

[5] European Commission on Racism and Intolerance "Third Report on Croatia" adopted on 17 December 2004 and published on 14 June 2005, p.28.

[6] The Ministry is currently negotiating with commercial banks a loan scheme which would allow the purchase of apartments on the private market to be allocated to beneficiaries outside the ASSC who opted for lease.

[7] In the State budget for 2004, 23 M HRK (approx. € three M) had been earmarked; nevertheless the amount was never spent and reallocated for other purposes in November/December 2004.

[8] The project funded by the Mission was implemented by the Serb Democratic Forum, a Croatia based NGO with partner organisations in Serbia and Montenegro and Bosnia and Herzegovina. Community meetings were organized in several municipalities of Serbia and Montenegro with a known high concentration of refugee population originating from Croatia such as Sombor, Sremska Mitrovica, Novi Sad, Belgrade, Herceg Novi as well as in Bosnia-Herzegovina.

[9] This refers to their appearance in the UNHCR funded TV Program *Povratak* (Return) broadcasted by the Serbian National Television RTS, which attracts a solid audience from refugees and displaced persons in Serbia and Montenegro.

residents although to date no alternative housing has been provided under the housing care programme. The Council of Europe recently recommended that in "cases concerning the legality of the termination of occupancy/tenancy rights, particular care should be taken to ensure that each case is examined carefully and in a non-discriminatory manner."[10]

The Mission and its international partners have long advocated for moratorium on the execution of evictions in ongoing court-ordered OTR terminations, which threaten to cause new displacement in 2005, almost ten years after the war. At the end of 2004, the Ministry of Defence agreed to forego eviction of former OTR holders until – if eligible - they receive housing under the above-mentioned options. While the Ministry continues to seek termination, no new executions of evictions from MoD flats have come to the knowledge of the Mission since January. Other State bodies have not yet followed this suggestion.

In December 2004 the ***European Court of Human Rights*** agreed to re-consider the legal issues surrounding the judicial termination of OTR in *Blecic v. Croatia*[11]. The Government put forward the housing programmes in *Blecic* as part of its achievements in the process of the return of refugees and displaced persons[12]. Since the ECHR acknowledged that the OTR termination in *Blecic* occurred in the context of an armed conflict, the ECHR may consider whether principles of international humanitarian law as relates to the protection of civilians during armed conflict are relevant.

Reconstruction of Destroyed Residential Properties

A six-month temporary extension of the application deadline for S***tate reconstruction assistance*** in 2004 brought an additional 16,000 claims for reconstruction, mainly from those displaced abroad[13]. Many of these claims, however, are repeated applications[14] or requests not covered by the Law on Reconstruction.

As of 1 July 2005, around 9,500 new requests have been processed by the local State administration offices. So far, the rate of positive decisions regarding ***eligibility*** is below 30 percent. The main reason is that many residential properties have been assessed as 'no-war-damage', following the restrictive definition of the 1996 Law, but disregarding the June 2000 Amendments to the Law on Reconstruction. These amendments foresee the eligibility also for properties not damaged by direct war operations. These damages, such as planting of mines, explosive devices, detonations, and pillage etc, often referred to as *terrorist acts*, disproportionately affect Serb properties, mainly in areas which always remained under the control of the Croatian Government. The main condition according to the 2000 Amendments

[10] Advisory Committee on the Framework Convention for the Protection of National Minorities, "Second Opinion on Croatia" published on 13 April 2005, ACFC/OP/II(2004)002E, Para. 54.

[11] In July 2004, the ECHR decided that Croatia did not violate the European Convention on Human Rights when the court terminated Blecic's OTR because she did not return to her flat within six months during the period of armed conflict.

[12] *Blecic v. Croatia*, Para. 49.

[13] The 2004 Government reconstruction program included the reconstruction of 3,900 houses (IV-VI category of damage) and payment of 2,600 cash grants (I-III category of damage) to reconstruction beneficiaries. The 2005 reconstruction programme envisages reconstruction of 3,000 houses (IV-VI cat.) and 3,000 cash grants (for beneficiaries of I-III cat.).

[14] There is nonetheless a limited category of repeated applications concerning cases which were rendered ineligible for reconstruction assistance under the 1996 Law on Reconstruction, but should now be granted assistance in light of the June 2000 Amendments to the same Law, which had removed discriminatory limitations of the cause and definition of damage as well as territorial limitations. The Mission advised the Ministry to separate those cases from the broader category of repeated applications and to assess them in accordance with the more favourable regulations in force since five years.

is that the damage must have occurred from the beginning of the *Homeland War* until 15 January 1998, the date of the peaceful reintegration of the Croatian Danube region, which was until then under UN administration.

Despite insistence by the Mission since 2000, the assessment of damage by the respective county commissions is still conducted in accordance with laws and instructions[15] pre-dating the June 2000 amendments to the Law on Reconstruction, which contain criteria contradicting the damage definition of these amendments to the Law on Reconstruction and which exclude from reconstruction assistance. The Mission has repeatedly called upon the Government to apply the latest revisions and amendments to the law adopted in June 2000, and to stop using the discriminatory parts of the 1996 Law on Reconstruction which no longer apply[16].

Mission spot checks in the field continue to identify destroyed houses whose damage has been superficially or wrongly assessed by county commissions for war damage assessment.

As a result of the high proportion of questionable decisions rendering the applicant ineligible for reconstruction assistance, the ***number of new appeals*** against first instance negative decisions has reached approx. 1,500. The total number of pending complaints against eligibility decisions amounts to approx. 10,000. The Ombudsman recently noted excessive delays in processing reconstruction applications, observing however that his intervention in some individual cases proved successful[17]. He stressed that State officials needed to issue decisions in a timely fashion because it was legally required, rather than doing it on the basis of political arbitration[18]. The Ministry intends to speed up processing of these appeals by hiring new lawyers.

Through the 2003 Law on Responsibility for Damage Caused by Terrorist Acts and Public Demonstrations (Law on Terrorist Acts), Parliament changed the nature and scope of the remedy available for ***property damage resulting from terrorist acts*** in pending court cases. While under the prior law owners could seek financial compensation for any type of property through court proceedings, the Law on Terrorist Acts limits the right to recovery to reconstruction of residential property through an administrative remedy[19]. As acknowledged by the Government, few property owners have received a remedy after the application of the Law on Terrorist Acts because much of the property for which owners had submitted claims is no longer eligible for the substituted remedy of reconstruction. The Supreme Court has confirmed Parliament's action, finding that property owners whose pending claims were stopped since 1996 and then re-started under the new law since 2003 are no longer eligible for a financial remedy, but only reconstruction[20]. This retroactive elimination of previously valid

[15] In particular the Law on Determination of War Damage (NN 61/91 and 70/91) and the Instructions for the Implementation of the Law on Determination of war Damage (NN 54/93).

[16] This version of the Law had been adopted after consultations with the OSCE and its international partners in spring 2002.

[17] Ombudsman's Annual Report for 2004, page 60.

[18] Ombudsman's Annual Report for 2004, page 129.

[19] Numerous lawsuits seeking compensation for property damage under Article 180 of the Law on Obligations initiated in the early to mid 1990s were suspended by Parliament in 1996. These were re-started under the new criteria for recovery set forth in Law on Terrorist Acts, i.e., court proceedings for financial compensation are only allowed for personal injury, while property damage claims will be resolved through administrative claims under the Law on Reconstruction. See Articles 7 and 8, Law on Terrorist Acts [See Section below Constitutional Court: Fair Trial and Effective Remedy p. 30].

[20] In April and November 2004 and March 2005 the Supreme Court upheld the lower courts' decisions that the State is no longer liable to compensate property damage caused by terrorist acts. The damages were sought in

claims in which property owners had a "legitimate expectation" of having their claim decided could result in ECHR review.

Property Repossession

During and in the first three years after the war, about 19,500 properties belonging to Croatian Serbs were allocated under a 1995 Law to ***temporary users***, about 60 percent to Bosnian Croats. As of 1 June, following Government efforts to facilitate the return of such properties, out of this total, 650 residential properties remained occupied (about 486 claimed and 174 unclaimed)[21].

The impact of the repossession on the sustainability of return remains limited. ***Physical repossession*** by the owners takes place in only half of the resolved cases. Up to 8,000 of the properties considered as having been returned were in fact sold by the owners to the State, mainly while still occupied. A significant number of owners prefer to sell their properties to the State and remain in their countries of refuge[22]. In addition, more than 3,000 properties considered as having been returned remain empty and often devastated. In most such cases the authorities have no knowledge of the whereabouts of the owners.

Many of the physically repossessed houses are ***devastated and looted***, mainly by their departing occupants, and are not inhabitable. As of June 2005, few owners had received at least some kind of State assistance in the form of building materials, to which they are entitled under the 2002 Amendments to the Law on Areas of Special State Concern /LASSC. In June, the European Commission against Racism and Intolerance (ECRI) strongly recommended the Croatian Government to "make every effort to prevent occupants who are obliged to relinquish property from looting and damaging it, by taking effective measures with regard to prevention, compensation and punishment".[23]

Two-thirds of the remaining occupied properties are located in ***Dalmatia*** and more than half are concentrated in three municipalities: Knin, Benkovac and Obrovac[24]. The repossession primarily depends on the pace of construction of alternative housing for the temporary users. Since the beginning of the year, 198 houses in five newly established settlements (Benkovac, Knin, Korenica, Gracac, Obrovac) have been handed over to temporary users of Croatian Serb properties, mainly Croats from Bosnia and Herzegovina.

---

claims filed in 1993 and 1992 respectively, however due to the change of law they were dismissed by the Supreme Court as the plaintiffs are not entitled to seek compensation through court procedure. At least two of these cases relate to property not eligible for reconstruction. Rev-276/04-2, 8 April 2004, Rev-905/04-2, 4 November 2004 and Rev-596/04-2, 2 March 2005.

[21] The official data reported by the Ministry refers only to claimed properties and cases which have not been referred to the State Attorneys Office ore are pending in courts. The Ministry's figure of 385 cases thus excludes 174 unclaimed properties and 91 cases pending with the judiciary at different stages of proceedings.

[22] Among the main reasons for the increase in the sale of Croatian Serb properties to the State are: a) the will to locally integrate in the country of refuge b) an increase of offered price beyond the market conditions in war-affected areas c) the sense of frustration deriving from the prolonged lack of access to their property d) the attitude of some APN officials aiming at convincing owners to sell their properties to the State.

[23] European Commission against Racism and Intolerance "Third Report on Croatia" adopted on 17 December 2004 published on 14 June 2005 Para. 27.

[24] In Knin alternative housing for eligible temporary occupants could easily become available in case more stringent and speedy measures are adopted against a significant number of households (reportedly 143) who continue to illegally occupy State owned apartments even though they have access to reconstructed houses in the surrounding areas. The Government has so far issued administrative eviction orders against this category of illegal occupants which are currently being challenged in Court.

Various ***administrative or judicial impediments*** still hamper the successful completion of the repossession process, by continuously favouring occupants' interests over owners' rights. Although the process of property repossession has entered its completion stage, the effects of these serious shortcomings relate to earlier repossessed properties as well, and remain unresolved. This refers to the continued *housing care* requirement for occupants as a *precondition*[25] for their vacating property, the lack of assistance for owners of houses devastated and looted, as well as pending lawsuits against owners for compensation of occupants' investments in properties while under State administration.

The ***Ombudsman's report for 2004***[26] emphasizes his intervention was needed in a majority of cases where temporary users were unjustifiably favoured to the detriment of owners. Similarly, the ***Commissioner for Human Rights of the Council of Europe*** expressed surprise at the fact "that even though temporary occupants possess sufficient resources to rent or construct another accommodation, they can only be evicted once an alternative accommodation has been offered"[27].

In May, the ECHR agreed in *Radanovic v. Croatia* to review whether Croatia's various schemes since 1995 for the administration and return of Government allocated private property violated the applicant's rights to peaceful enjoyment of possessions and effective domestic remedy due to the inability to access her property for more than seven years[28]. Notably, the ECHR's review will include consideration of both the procedural and substantive repossession provisions of the 1998 *Return Programme* of the Government and Parliament, which were replaced in 2002 by the LASSC. In late 2002, the Constitutional Court dismissed five separate constitutional challenges to the *Return Programme* that had been pending for up to three years, contending that the adoption of the LASSC eliminated its jurisdiction for further review[29].

As stipulated in the Law on Areas of Special State Concern, the owners of properties not returned within the foreseen deadlines (1 November 2002/1 January 2003) were to receive ***compensation for the continued use*** of their residential properties by the State. Out of approx. 3,500 potential beneficiaries, 1,693 had received this compensation as of 1 July. The increase since Status Report 15 amounts to only 165 beneficiaries[30]. In the above-mentioned case *Radanovic v. Croatia,* the ECHR specifically noted that the compensation offered by the Government to the applicant for its use of her apartment did not cover the entire period during which the plaintiff was denied access to property.

---

[25] Government officials continue to wrongly interpret this conclusion of the OSCE, which was shared by the European Commission in its *Avis*/Opinion on Croatia in spring 2003, as an alleged general disagreement of the Mission with the Government's policy to provide alternative housing to occupants. The Mission however has continuously expressed its concern that the provision of housing to occupants is treated as a *precondition* for their vacating other's property, *regardless* of the ability of the occupant to provide for him/her. See as well the report of the Commissioner for Human Rights of the Council Europe referred to on page 22 of this Status Report.

[26] See Ombudsman's Report for 2004, page 128.

[27] Office of the CoE Commissioner for Human Rights "Report by Mr. Alvaro Gil Robles Commissioner for Human Rights on His Visit to the Republic of Croatia 14-16 June 2004" published on 4 May CommDH(2005)3 page 14 Para 44.

[28] *Radanovic v. Croatia*, Admissibility Decision 9056/02, 19 May 2005.

[29] U-I-1024/1999 et al., dated 18 December 2002 (unpublished).

[30] The State administration denies compensation payments to owners who have originally opted against State compensation payment and filed a compensation request only after the repossession of their houses or after having sold their houses to the State.

Based on an instruction of the Prime Minister in November, the Ministry started to design a ***compensation model for owners of properties looted/devastated*** by departing occupants while under State administration. Eligible owners should receive organized repair assistance or cash grant. The Government, on 22 July adopted such a decision (*Conclusion*). The Mission appreciates this long expected step. The Ministry is now supposed to draft detailed instructions before implementation will start. The Mission expects that the Government assistance will relate to all owners whose devastated State administered properties were returned to them after coming into effect of the 2002 Amendments to the Law on Areas of Special State Concern/LASSC on 1 August 2002 whose provisions on assistance for owners in such cases are not yet being implemented in practice.

Local courts continue to order owners to ***compensate temporary users for investments*** made on the properties without the owners consent. In two recent cases[31], local courts have scheduled auctions for the sale of Croatian Serb properties because the owners were unable to pay the court ordered compensation to the occupants. In addition, local courts continue to condition repossession of approximately ten cases of occupied properties (mostly houses transformed into business premises by the occupants) on the reimbursement for investments, despite at least one Constitutional Court decision in which the owner's right to repossession was upheld separate from the issue of any obligation for investments[32]. This problem results, at least in part, from an imbalance between the rights and obligations of owners and occupants due to legislative changes that freed occupants of the obligation to pay rent, while leaving in place the obligation of owners to pay for investments. The Mission proposes legal equality between owners and occupants to be re-introduced through legislative changes. Alternatively, the Mission has suggested, the State, having eliminated owners' right to obtain rent, should assume responsibility for payment of costs of investments. The CoE Commissioner for Human Rights found "the compensation practice seems worrying if we consider, on the one hand, that authorization to use the property was given by the State without the consent of the owner and that, on the other hand, the occupancy was given free of charge." [33]

As reported by the State Attorney's Office, as of 2 June there are still 91 ***court cases pending against temporary users*** of private property, initiated by the State Attorney, on the request of the Ministry for Maritime Affairs, Transport, Tourism and Development**.** After the initiation of legal action by the State, many temporary users leave the property voluntarily, with the result that few court evictions were required.

[31] In the Pizzeria *Sara* case, in late February 2005, the Croatian Serb owner repossessed his house following the court ordered eviction of the Croat illegal occupant who had used the property rent-free as a successful business for more than 8 years. The illegal occupant filed a claim for compensation of the investments he made after he received the Government's permission to use the property. The Court ordered that the user receive 30,000 Euros from the owner. The court scheduled an auction of the property for the 24 February, but postponed it later due to initiated court procedure of the owner's wife who asked for the execution to be annulled on half of the house. The Zabrdac case is facing similar destiny. The court auction of the property was scheduled for the 14 April 2005 so that the temporary user could receive 6,000 Euros for the investments he made in the property without the owner's consent.

[32] U-III/1936/2001, dated 29 September 2004. The Constitutional Court upheld the decision of the Gospic County Court ordering the eviction of a temporary user who has been using the property allocated by the Government for-profit business, namely a café, in Korenica. The Court found that such use was contrary to Article 10 of the 1998 Return Program that only contemplated use of allocated property for residential purposes.

[33] Office of the CoE Commissioner for Human Rights "Report by Mr. Alvaro Gil Robles Commissioner for Human Rights on His Visit to the Republic of Croatia 14-16 June 2004" published on 4 May CommDH (2005)3 page 18-19 Para 61.

Since November 2004, dozens of cases of obvious ***fraud in the sale of Serb properties*** to the State without the consent of the owners, through falsified powers of attorney, have been reported. The Police, the Office of the State Attorney and the Office for the Suppression of Corruption and Organized Crime (USKOK) launched investigations against private real-estate mediators, mainly based in Serbia and Montenegro, and State officials in the fraudulent transactions[34]. The State real estate agency, APN, in October 2004, after the first cases had been reported publicly, introduced more stringent verifying procedures of the powers of attorney. The Mission is advocating a pro-active approach by the State aimed at alleviating the burden of owners, by promoting peaceful out-of-Court settlements between the State and the owner or, if needed, fast-track court action aiming at the annulment of fraudulent purchase contracts[35].

Administrative and legal issues affecting the reintegration of returning populations

The legal deadline of 31 December 2004 for the ***re-establishment under favourable conditions of the status of permanently residing foreigner***, primarily for displaced Croatian Serbs who lost this status after leaving the country during the armed conflict and who had not acquired Croatian citizenship, was extended until 30 June 2005. This was a result of an agreement of the Government with the Parliamentary representatives of the Serb minority, supported by the Mission and its international partners.

The consistent implementation of ***Article 115*** of the 2003 Law on Foreigners regulating the renewal of status under favourable conditions is still being hampered by a lack of fair and uniform application by a number of local Police Administrations[36]. The Ministry of Interior undertook additional efforts towards the simplification of the permanent residence and health care requirements. The issue has been suggested by the Mission and its international partners as one of the benchmarks for the Croatian *Road Map* for the implementation of the Sarajevo Declaration on refugee return. In April, the Mission and its international partners, in a letter to the Minister of the Interior, encouraged the Government to take legal action aiming at extending the application deadline. The Ministry of Interior has indicated to the Mission that the Minister will propose to the Government/Parliament a one-year-extension of the application deadline.

State ***recognition of the acquired working years by Croatian Serbs*** in the Serb controlled areas, during the conflict for the period between January 1992 and August 1995, and in the Croatian Danube Region until the peaceful reintegration in January 1998, still remains unsatisfactory. The right to validation set forth in the 1998 Law on Con-validation[37] was

[34] The Deputy State Attorney and the Head of Office for Fight Against Corruption and Organized Crime (USKOK) confirmed to the Mission in April that three APN employees are currently under investigation together with an indefinite number of mediators from a Serbian based real-estate agency.

[35] In April 2005 the Gospic Municipal Court annulled the purchase contract of a family house belonging to a Croatian Serb made through a forged power of attorney without the knowledge of the owner. The lawsuit was initiated in December 2004 by the owner as soon as he discovered that his repossessed property had been alienated without his consent. Concerns are raised by the fact that the local State Attorney Office contested the involvement of the damaged owner in the proceedings arguing that he was not a party of the purchase contract. The Deputy State Attorney indicated to the Mission that he would look into this attitude of the local SAO.

[36] Field observations confirm that several local Police Stations still request unnecessary documentation from applicants wishing to renew their status upon their return to Croatia such as proof of financial accountability and insured housing and others from which they have been specifically exempted by Article 115 of the 2003 Law on Foreigners. The Mission maintains a permanent constructive dialogue with the Ministry of Interior aiming at overcoming such obstacles.

[37] Law on Con-validation (NN. 104/97)

limited through a Governmental Decree setting a deadline for application, which expired in April 1999. Although the Constitutional Court recently upheld the authority of the Government to enact such a deadline[38], the Mission continues to encourage the Government to extend this deadline since most of those persons who would benefit from the law only returned to Croatia after its expiration. The OSCE, EC Delegation and UNHCR have suggested to the Government that extension of the period for obtaining recognition of working years for pension benefits should become a part of the draft Croatian Road Map.

More than 80 percent of the remaining 3,341 refugees under protection in Croatia (mainly Bosnians from Bosnia and Herzegovina) have manifested the intention to locally integrate in Croatia. Currently there is no legal framework in Croatia that would enable non-Croatian refugees to locally integrate and to enter into the regular naturalization process.

Reintegration issues and access to basic infrastructure

Although the Government has invested significant financial means in many parts of Croatia aiming at re-establishing the war-destroyed infrastructure, lack of access to basic utilities such as electricity and water remains a disincentive to return in some minority return areas.

The Government formalized its co-operation with the State electricity company (HEP) in September 2004, aiming at speeding up the ***re-electrification*** of settlements in the war affected areas. This initiative was influenced by the Mission's August 2004 Report *Lack of Electricity Supply in Minority Returnee Villages* which identified 189 minority villages and hamlets still lacking access to electricity nine years after the war. The Mission noted in January that only 11 percent of the 189 villages and hamlets identified in its report had been included by the Ministry and the HEP in their priority lists for the 2005 reconnection activities. In January, the HEP agreed with the Mission to review once again the priority list, to include additional villages proposed by the Mission, according to basic cost-effectiveness criteria. The Mission learned recently that the budget foreseen for re-electrification has not been significantly increased. If the slow pace of re-electrification of minority return villages would be retained, many families may remain without electricity for up to 15-20 years since their return.

In June, the responsible Assistant Minister in the Ministry of Maritime Affairs, Tourism, Transport and Development agreed with the Mission and the EC Delegation about the need to develop a concrete multi-annual plan aiming at resolving this problem in the foreseeable future. On 6 July the Minister announced to the IC that additional efforts will be invested in the current year in order to re-electrify more return villages than planned by the 2005 State budget and the HEP will be allowed to take additional debts in order to fund their re-electrification.

The Mission currently is producing a report, based on comprehensive field research, on the current state of ***water supply*** in the war affected areas, based on field observations. The main findings suggest that a general upgrading of the network would certainly improve living conditions for all residents and would encourage agriculture and small entrepreneurship. The Mission intends to distribute this report widely, in order to assist local self-government units at various levels in their search of donors, and to prioritize the re-connection to water supply of villages with a high potential for return.

[38] U-II-1488/2001 et al., 23 March 2005 (unpublished).