Summer return season sees continued slow property repossession

The summer usually is high season for return of displaced persons and refugees. On the other hand, official bodies often decrease their activities due to the holiday season. Against this background and realizing that the provisions for property repossession in the Law on Areas of Special State Concern (LASSC) have now been in force for one year, the Mission, through its field presence conducted an assessment in July of the pace of property repossession. The point of departure for the assessment was official data recently shared with the Mission by the Ministry for Public Works Reconstruction and Construction (MPWRC). The Mission's conclusion is that repossession by owners through the administrative and judicial processes remains slow.

The administrative procedure for repossession implemented by the MPWRC continues to be delayed by the need to provide housing to occupants. This causes regional differences in the speed of the implementation of repossession, related in part to differences in the type and availability of alternative housing available to occupants. Persons occupying private property having been granted housing care in the form of the lease of a state owned family house or apartment have generally vacated the occupied property within 60 days. This picture prevails mainly in parts of central Croatia where habitable alternative housing is available and has been recently purchased by the Government.

In other parts of Croatia, particularly in the Knin and Zadar regions, housing is mainly provided in the form of land and building materials, requiring the investment of additional time and expenses by the occupants. The Mission identified only a small number of cases in which occupants of private property provided with land and building materials had actually completed the construction of a house and vacated the occupied property. The pace of repossession in southern Croatia is the slowest in the country and repossession in most municipalities will not be finalized by the end of the year.

The Mission examined the role of the State Attorney in the repossession process. The Mission's field assessment did not uncover any cases in which an owner physically repossessed his house as a result of a lawsuit for repossession initiated by a State Attorney. Thus far the inclusion of the State Attorney institution in the repossession procedure as a replacement of the Housing Commissions has not led to tangible results for owners.

Several failed eviction attempts in property repossession procedures

In June and July, the Mission's field staff monitored several failed evictions in procedures for repossession of private property previously allocated by the Government.

In Petrinja, an eviction was postponed for a second time in July. Because the user had previously refused to move out the court executor requested police assistance. However, when supporters of the occupant showed up at the house on eviction day the police assessed that enforcing the eviction would be too dangerous.

In Benkovac and Slatina, two evictions were not carried out due to agreements reached between the owners and the users on the scheduled day of the evictions. It appears that the consent of the owners to the postponement, notwithstanding large fees having been paid to

secure the eviction, was significantly influenced by the large number of supporters of the occupants present.

The three cases illustrate the difficulties encountered by State Attorneys and owners when seeking court enforcement of eviction orders. In each case the police chose not to disperse the crowd despite having a sufficient number of armed officers present at the site. Police frequently do not file criminal charges against those who prevent the execution of eviction orders.

The Head of the Police Administration in the Ministry of the Interior acknowledged to the Mission that the police performed poorly on several occasions during evictions. He would address the concerns at a conference with field commanders in early September.

Constitutional Court addresses question whether a lawyer's wartime absence can be a permanent bar to membership in professional association

The Constitutional Court in July reversed a decision of the Supreme Court and required the Bar Association to re-consider its denial of membership for lack of sufficient "dignity to practice law" to a lawyer who was absent for more than six months in 1991-92. The fundamental question posed by the Court is essential to post-conflict reconciliation and integration of minorities into the judiciary and legal profession; wartime conduct has previously been applied as the basis for rejection of minorities for judicial appointments.

In this case, the Bar Association in 1992 de-registered a lawyer from Eastern Slavonia on the grounds that his absence for more than six months was insufficiently justified. When applying for re-admission in 2001, the Bar Association rejected the request on the grounds that the lawyer's absence from his clients, colleagues and homeland for more than six months in 1991-92 demonstrated that he was unworthy of practicing law within the meaning of the law regulating the practice of law. The quoted sections of the Bar Association's negative decision notably do not cite legal harm incurred by clients as a result of the lawyer's absence, but refer solely to the fact of the absence itself. The Supreme Court affirmed the Bar Association's decision deferring to its application of the legal standard.

The Constitutional Court found that the decision of the Bar Association violated the applicant's right to equality before the law, equal participation in public affairs, and the right to work. It also found that the Supreme Court's decision violated the lawyer's right to judicial review by inadequately evaluating the negative decision issued by the Bar Association. In particular, the Constitutional Court noted that the Supreme Court failed to adhere to the interpretation of the legal standard of "dignity to practice law" previously elaborated by the Constitutional Court in a 1995 decision.