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**4th Report on Issues of Property Repossession under the July 2002
Amendments to the Law on Areas of Special State Concern
(June 2003- September 2003)**

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Part A: OSCE Mission to Croatia Contribution

Executive Summary:

The Report reflects the continued slowness of the repossession process itself, which at the beginning of October has been admitted by the Ministry for Public Works Reconstruction and Construction/MPWRC. The Ministry recognized as well that the Governments declared goal of completing the restitution of occupied LTTP-properties by the end of 2003 will not be achieved.

The reporting period has seen a certain increase in the identification of housing care options for the eligible temporary users, especially in Central Croatia. However this has not brought benefits to the pace of physical repossession which has virtually remained unchanged since the tempo of repossession is linked to the approval and physical allocation of housing care rather than its administrative processing.

As a general rule it can be asserted that whenever housing care has been identified and allocated by the MPWRC/ODPR in the form of lease of an undamaged house the vacation of the occupied property in most cases has taken place within a reasonable time frame. On the other hand whenever a housing care option foreseeing the provision of building material was approved a much longer period elapsed for the vacation of the occupied property. Bearing in mind the current pace of action as well as the fact that still almost 2.700 housing care options need to be approved and allocated by the MPWRC/ODPR it can be concluded that the bulk of the still pending 4.271 cases might be resolved earliest by the end of 2004.

The MPWRC/ODPR has started sending the first payment of compensation to a limited portion of the eligible owners, however, only to those who chose this option in the survey conducted last year.

The MPWRC/ODPR has also adopted a new pro-active approach in trying to discourage looting activities by sanctioning the occupants, although this practice seems to be at an initial stage.

The increased reference of cases of illegal occupancy to the State Attorneys Offices in the reporting period is still not sustained by a prompt and effective action due to multifaceted reasons. The State Attorneys Offices have to date taken action in regard to about 50% of the cases which have been referred to them by the MPWRC/ODPR since September 2002 but claim a poor co-operation in answering their information requests to the MPWRC/ODPR.

Repossession is additionally frustrated by the extreme slowness of the courts in scheduling hearings and executing final verdicts.

1) Introduction:

The 4th Joint Monitoring Report covering the period between June and September 2003 reflects the usual slowdown in property repossession by State and judiciary bodies during the holiday season, while the MPWRC/ODPR continued its activities to a greater extent than in the past. The Report illustrates the slowness of the process, which at the

beginning of October has been admitted by the MPWRC itself. The Ministry recognized that the Governments declared goal of completing the restitution of occupied LTTP-properties by the end of 2003 will not be achieved. The Report as usual relies on information provided by the Ministry as well as on spot checks conducted in the field in order to verify whether or not occupants who have been granted as housing care the lease of an undamaged state-owned property vacate their temporary accommodation within a reasonable deadline. In addition, the judicial path of the pending repossession cases has been examined through extensive court monitoring and meeting with State Attorney Offices at the local level.

2) Assessment of the work of the MPWRC/ODPR

MPWRC/ODPR data:

The MPWRC/ODPR reports 4.271 cases of repossession of occupied LTTP properties which were still unresolved at the beginning of October. The monthly average of resolved cases has slightly increased in the reporting period from 238 to 299 cases of occupied property. Nevertheless, if the pace does not increase dramatically, it may take even longer than the coming year 2004 to assure the physical restitution of all LTTP occupied properties. In addition, slow court procedures may delay the process further. The MPWRC/ODPR monthly report shows that still a significant number of unclaimed properties are restituted.

Housing care:

Regarding the 4.271 still occupied properties the MPWRC/ODPR has administratively assigned housing care for 1,069 eligible occupants, and is in the process of making it physically available. A housing solution in accordance with the options provided by the LASSC and as preferred by temporary users has been recommended (*preporuka*) but still needs to be approved (*suglasnost*) for the eligible occupants of the remaining 2.549 occupied objects¹.

An analysis of the 1.089 cases in which housing care was approved (*suglasnost*) by the MPWRC/ODPR until the end of September shows that a majority of 864 cases² will be resolved through the provision of building material. As most of the administrative approvals were issued in the current year, the completion of the houses will take some time and repossession in these cases cannot be foreseen in the short-term³. Considering

¹ The remaining approx 650 cases are in the process of being referred to the State Attorney by the MPWRC/ODPR.

² The breakdown of the approved **1.089** housing care models is as follows:

model A-lease of undamaged state owned housing object **185**

model B -lease of damaged state owned housing object + building material **146**

model C – lease of state owned flat **13**

model D- allocation of state owned building plot + building material **299**

model E – allocation of building material for the repair or construction of a family house **419**

model F – allocation in collective center **27**

³ The MPWRC/ODPR data shows that a period of more than one year elapse from the approval of a housing care model which foresees the provision of building material (models B-D-E) and the final vacation of the property. This is due to the fact that the delivery of material still takes place at a very slow and inconsistent pace in most of the construction areas and infrastructural problems arise once the objects

that it took the MPWRC/ODPR more than one year (since September 2002) to approve housing care to 2.313 beneficiaries it remains to be seen whether the remainder can be resolved in a shorter time.

A look at the geographical distribution of the cases in which housing care has been approved until the end of June reveals an imbalance between Central and Southern Croatia. Currently, the FC Sisak AoR is ahead with 735 out of 1.089 cases located there, which accounts for 37% of the still 1.966 occupied objects⁴. In the FC Knin AoR on the contrary housing care has been approved in only 354 cases out of 1.864 still occupied properties (18 %)⁵.

The identification and approval of housing care options depends to a great extent on the availability of qualitative alternative housing (for ex. Petrinja and Glina), the interest of (Serb) owners to sell their houses to the APN (Vocin), as well as the co-operation of the local authorities. On the other hand the process is slowed down by the following factors: delays in regard to the allocation of land plots⁶ (Gvozd, Obrovac, Plitvicka Jezera, Benkovac), problems arising with the infrastructure of new constructed objects (Gracac, Topusko) and lack of qualitative alternative housing in the area (Vojnic, Sunja, Donji Kukuruzari).

Field observations have confirmed that whenever the lease of an undamaged family house or apartment is approved as housing care (option A-C) the occupants vacate the occupied objects mostly within a two month timeframe⁷. In general the claim of the MPWRC/ODPR according to which occupants who have been approved a housing care option of the A-C type must vacate the objects within one month is confirmed.

A lack of transparency in the process of assigning housing care persisted according to field reports. Namely, the practice of regional MPWRC/ODPR to offer housing care to the occupants only verbally allows occupants to reject these offers without losing their eligibility for housing care as prescribed in the LASSC. Sometimes this has affected the priority lists of beneficiaries according to which the local MPWRC/ODPR offices process cases as well. The MPWRC/ODPR claims that the flawed practice of offering housing care on a verbal basis is not longer being tolerated by the Ministry. FC Knin reports as well that some of the RODPR offices have indicated that they will abandon the practice of only oral offers and will offer in writing only.

are finished (sewage system, water connection etc.). Sometimes difficulties arise already at the stage of allocation of building plots (Gracac, Korenica, Obrovac).

⁴ Great imbalances exist also within the FC Sisak AoR as well. In fact if the situation has progressed satisfactorily in the reporting period in Petrinja, Glina, Topusko and Dvor, black spots still remain in Sunja, Gvozd, Vojnic and Donji Kukuruzari.

⁵ The situation is particularly depressed in Benkovac, Knin, Gracac, Obrovac and Donji Lapac.

⁶ Several land plots already approved by the MPWRC/ODPR have still not been allocated for construction to the respective beneficiaries because of administrative delays at the municipal and/or county level. The problem is affects particularly Obrovac where several Bosnian Croat settlers from Karin are dissatisfied with the location of the land plots which were initially assigned to them. In Korenica different streams of the local BC association, including the local Deputy Mayor have tried to influence the allocation of certain land plots to their affiliates. Nevertheless the local MPWRC/ODPR representative in Korenica confirmed to the Mission that the Municipality has only an advisory and technical role in the allocation of land plots whereas the MPWRC/ODPR is the main decision making body in that respect.

⁷ Exceptions remain to this general trend and are mainly to be found in Gvozd, Vojnic and Topusko according to the field checks (samples).

MPWRC/ODPR statistics of the cases solved through the provision of housing care confirm that the overwhelming majority of repossessions have taken place thanks to the provision of types of housing care which do not require provision of building material (options A-C account for 840 solved cases), whereas only 213 cases have been solved through types of housing care foreseeing the provision of building material since September 2002⁸.

APN - houses (Agency for Real Estate Transactions):

The process of property repossession depends to a great extent on the allocation of houses purchased through the Agency for Real Estate Transactions (APN)⁹. Out of 3,000 houses, which the MPWRC considers necessary to provide housing care to all remaining eligible TUs, the APN has purchased only 1.513 houses in the current year¹⁰. The MPWRC/ODPR official database indicates that no more than 700 APN houses have been allocated since September 2002. Field observations show that in the Municipalities of Vojnic and Plaski a significant number of APN houses continue remain empty. The MPWRC states as reasons the bad shape of most of these houses and/or their location outside the more urban locations (social infrastructure) of the relevant municipalities. The MPWRC/ODPR also informed the Mission that 1.966 houses purchased by the APN at an earlier stage are not going to be offered as housing care due to their bad status or remoteness¹¹. In addition, local authorities seem to obstruct in some instances the process of allocation itself as it is apparently the case in Hrvatska Kostajnica and Donji Kukuruzari where local Municipal officials reportedly demand favors or money for the allocation of such objects¹². An additional boost in the purchasing capacity of the APN is required in order to complete the process of property repossession. On the 16 October the Government has tasked the Ministry to increase the purchase of houses by APN to 400 units per months. As the quality of available houses is declining drastically, it is expected that the MPWRC/OPPR will have to rely increasingly on the purchase of damaged houses which will need to be allocated along with building material.

Illegal/multiple Occupancy:

At the moment there are 612 cases of multiple/illegal occupancy pending for which the MPWRC/ODPR has issued administrative eviction orders¹³. The MPWRC/ODPR has issued more than 350 eviction orders over the last three months, most of which refer to illegal occupants who are not in possession of a valid decision on temporary use. In

⁸ Additional 73 cases were solved through the allocation of the occupants in *organized accommodation* (model F), mostly in the Sisak Moslavina and Karlovac Counties.

⁹ Project Proposal for the Council of Europe Development Bank Loan, MPWRC September 2002.

¹⁰ The MPWRC/OPR also intends to allocate State owned apartments as a form of housing care/temporary accommodation. In this respect revisions of the occupants of State owned apartments have been conducted in Knin and Petrinja. In Korenica several State owned flats are in the process of renovation and will be soon allocated as housing care.

¹¹ Out of the mentioned 1.966 housing objects 670 are located “outside of living areas” while the additional 1.296 are damaged according to the MPWRC/ODPR.

¹² Since the new repossession regime has come into effect (August 2002) the APN is now operating directly under the supervision of the MPWRC/ODPR, nevertheless local officials might still try to influence the process of purchase and allocation.

¹³ 315 out of 512 cases have been already referred to the State Attorney Office by the MPWRC/ODPR.

addition, administrative orders are also issued to temporary users who do not fulfill the eligibility criteria for housing care or whose houses were reconstructed in the meantime¹⁴. The Mission's field presence has not noted further progress in regard to the resolution of pending cases on the list of 88 multiple/illegal occupancy cases which was submitted to the Deputy Prime Minister jointly by the OSCE and UNHCR Missions three years ago in August 2000. Many of these cases are pending in front of municipal or higher instance courts.

Cross-border Double Occupancy:

The Housing Verification Unit (HVM-OHR) currently lists 542 cross border double occupants of private property in Croatia who have access to housing in Bosnia & Herzegovina (either repossessed or reconstructed)¹⁵. In its monthly report of July 2003 the MPWRC/ODPR rectified that only 116 out of 480 families of alleged cross-border double occupants are actually occupying private properties in Croatia¹⁶. The rest of them according to the MPWRC/ODPR have either vacated occupied properties or applied for housing care but do not currently occupy private property in Croatia. The Mission has checked eight cases of alleged cross-border double occupants from the HVM lists who have already received an administrative eviction order from the MPWRC/ODPR. In only one case out of eight the alleged cross-border double occupant has actually vacated the occupied private property. In the remaining seven cases, the MPWRC issued administrative orders to vacate the properties in February and March of this year but has so far failed to forward any of these cases to the State Attorney.

The MPWRC/ODPR has informed the Mission that it has increased its efforts to verify and document via the Croatian Consulate in Banja Luka/BiH-RS cases of cross-border double occupancy aiming at using the received data for action against confirmed double occupants.

The Stability Pact MARRI initiative has continued its efforts to assist the related governments in establishing an efficient and meaningful exchange of related data.

In regard to the Government program of cross-border delivery of building material in Bosnia & Herzegovina around 1.200 families of beneficiaries have been identified by the MPWRC. The program, apart from BCs families residing in Croatia, mainly targets Croatian DP families in BiH. Therefore, the impact of this project on the property repossession process in Croatia remains limited¹⁷.

¹⁴ The structure of the 612 pending administrative orders is as follows:

-241 illegal occupants without a valid decision

-93 occupants with completed reconstruction

-278 occupants who do not fulfill with the eligibility for housing care because own other property

¹⁵ Source "Update on HVM Cross-border Issues" 1st October 2003.

¹⁶ The discrepancy can be partially explained by significant differences regarding the definition of "double occupancy" in BiH and Croatia (much higher tolerance-level in favor of the occupant)

¹⁷ So far 53 families of Bosnian settlers occupying private property in Croatia have been allocated building material in BiH through this Program, which, according to the Ministry is however not primarily intended for temporary occupants in Croatia.

Compensation Payment for State Use of Private Housing:

The MPWRC/ODPR advised the Mission in September, that compensation payments have been sent to 439 owners in accordance with Art. 27, Para 4 of the LASSC¹⁸. The Ministry claims to have mailed so far compensation settlement-forms (*nagodba*) to 1.212 eligible owners out of 1.869 who opted for compensation in the survey (*anketa*) conducted by the MPWRC/ODPR since December 2002. The Mission is concerned that less than one third of all 3.819 owners of claimed properties¹⁹ have received a compensation settlement-form so far.

Both OSCE field observations and the MPWRC/ODPR confirm that at least 400 eligible owners have contested the content of the *nagodba* by refusing to sign it and have requested additional information from the MPWRC/ODPR. The main source of controversy is, according to the Mission's findings, the wrong calculation of the square meters of the *living space* of the occupied houses; some owners think that it should be much higher than actually calculated by the Ministry.²⁰

As announced during the meeting of the principals of the EC Delegation, the UNHCR and the OSCE Mission with Minister Cacic on 4 September, on behalf of the three international partners, in a letter dated 14 October 2003, the Head of the OSCE Missions Return and Integration draw the attention of the Assistant Minister and Head of UPPI (ODPR) to issues in regard to the process of payment of compensation in accordance with Art. 27 Para 4 of the Law on the Areas of Special State Concern. The letter indicates that as to the provisions of the above mentioned Law it needs to be noted that MPWRC/ODPR is providing compensation (7Kn) per square meter of the so-called *living space* only. The Law, Art 27, Para 4, however, reads that "The State shall be obliged to compensate the owner who has submitted a request for property repossession, but the property has not been returned into his possession within the deadlines as per Paragraphs 2 and 3 of this Article, for the damage incurred due to that reason". In other words, there is no basis for such limitation to be found in the Law.

The letter states further that a recent survey conducted by OSCE field offices has confirmed that this process, more than 11 months since coming into effect of the Government's obligation to pay compensation, has not yet gained full pace and shows significant elements of inconsistency.

This development has raised the concern of the three international partners.

In order to significantly speed up the process, to increase its transparency and to bring it in line with existing legislation, the three missions suggest the following:

¹⁸ 910 compensation payments have been corresponded so far in four installments:

First installment amounts to 536.000 HRK and has been corresponded to 106 owners,

Second installment amounts to 423.800 HRK and has been corresponded to 157 owners,

Third installment amounts to 1.110.000 HRK and has been corresponded to 290 owners,

Fourth installment amounts to 949.000 HRK and has been corresponded to 357 owners.

¹⁹ The total number of repossession claims at the 1st August 2002.

²⁰ In addition the Mission is also aware of different cases in which the owners refused to sign the *nagodba* since they demand the payment of the interest for the delayed as foreseen by the Croatian legislation.

- *Nagodba*-forms should be sent without delay to all owners who applied for repossession; regardless as to whether or not they have actually chosen this option or have been able to participate in the questionnaire (*anketa*).
- The MPWRC/ODPR is being encouraged to attempt to identify the whereabouts of all potential beneficiaries or to send the *nagodba*-forms to those addresses to which the *anketa* had been sent. In addition, these forms could be made available on the web page of the Ministry.
- In those cases where data on the living space of some of the properties might not be known to the MPWRC it is suggested that MPWRC/ODPR ask the owners to complete this statement by themselves in order to speed up the process.
- The missions ask to take care that no regional or local MPWRC/ODPR official attempts to discourage owners of properties reposessed after 31 October 2002 from requesting compensation payment to which she/he is entitled.
- MPWRC/ODPR also should take care that no regional or local MPWRC/ODPR official attempts to discourage owners of claimed properties, which were offered in the meantime to the APN, from requesting compensation payment until the payment for the sale will have been affected.
- The payment of compensation should be speeded up in order to avoid that the three month deadline would expire (Art. 4 of the *nagodba*) which would allow to render the *nagodba* null and void.

Insufficient co-operation among key players:

Field reports suggest that co-operation among local authorities and the MPWRC/ODPR still requires significant improvement. In regard to the allocation of building plots several administrative problems at the regional and municipal level continue to delay the start of the construction works for the housing care approved in the following municipalities: Gvozd, Korenica, Obrovac and Benkovac. In addition once the construction of housing units is completed occupants are often prevented from moving into the new objects due to the lack of infrastructural connection (water, sewage system) which is to be conducted by the Municipal authorities (as it is the case in Gracac).

3) Assessment of the work of the Offices of County/Municipal state attorney

Within the reporting period there has been – albeit incremental – progress in the work of the County and Municipal state attorneys.

To date, the MPWRC has forwarded approximately 315 cases to local state attorneys for purposes of initiating or continuing lawsuits for eviction against the users²¹. Based on field staff reports, local state attorneys have received case files for further action from MPWRC as follows:

²¹ The data refers to the beginning of September 2003.

Municipal State Attorney	Cases recorded since 3 rd report	Total cases currently
Knin	37	66
Sibenik	0	4
Karlovac		40
Benkovac	35	46
Zadar	8	17
Split		1
Dubrovnik	1	1
Nova Gradiska		7
Bjelovar-Bilogorska	3	3
Pozega	0	1
Vitrovitica	2	2
Slatina	0	1
Gospic		31
Topusko		14
Glina		21
Petrinja		32
Sisak		1
Sunja		3
Majur		2
Dvor		4
H. Kostajnica		7
D. Kukuruzari		11
Total		315

While the increase in the number of cases transferred to the local state attorneys is encouraging, the number of cases in which state attorneys have taken action that will lead to the repossession of the property is significantly smaller. The following chart shows cases in which municipal state attorneys have taken action as well as those cases in which the case file are incomplete and further action has not been taken:

	MSA	HC	MSA joined	Incomplete
Knin	11	12	11	14
Kostajnica	3	3	15	6
Karlovac	9	9	22	6
Korenica	7	11	18	7

Caption: MSA: Lawsuit initiated by MSA; HC: cases that were initiated by MSA; MSA joined: cases in which the MSA joined proceedings initiated by owners; Incomplete: cases forwarded by the MPWRC that are incomplete

While local state attorneys have, in general, acted within legal deadlines in the limited instances in which they have taken action on transferred cases, delays in the transfer of cases from MPWRC has resulted in a significant delay in implementation of the LASSC provisions related to judicial proceedings for repossession. Indeed, the first cases initiated in court state attorneys were in general initiated approximately nine months after the adoption of the LASSC amendments. The Government conclusion adopted on 16 October tasks the State Attorney to speed up the processing of property repossession cases referred by the MPWRC, the impact of such a measure will be assessed in the next monitoring Report.

Problems in ODPR-State Attorney Cooperation slow repossession process:

Throughout the country, communication between local state attorneys and the MPWRC/ODPR as well as property owners needs improvement and in some instances is non-existent. In a significant number of cases, the files transferred by MPWRC/ODPR do not contain all necessary documentation, particularly documentation on proof of ownership. State attorneys point to such incomplete documentation as the basis for their inability to proceed with the initiation of court proceedings.

In Zadar, for example, the municipal state attorney received 8 new cases during the reporting period. However, six (6) contained incomplete documentation; a similar situation exists in Hrvatska Kostajnica and Karlovac. In Gospić the county state attorney cannot proceed with 22 cases for the same reason; 14 such cases remain pending with the municipal state attorney in Knin, accounting for more than 20 % of the total caseload.

This situation is further exacerbated by long delays to transfer the documentation. In Sisak, the municipal state attorney requested the MPWRC to submit additional documentation in two cases from Sunja on 26 November 2002 and 14 January 2003 respectively; yet to date, the MPWRC failed to respond to these requests. Similar delays according to the state attorney were encountered in cases forwarded to the state attorneys in Donji Kukuruzari and Dvor.

While state attorneys fault MPWRC for failing to forward complete files, for their own part they appear to take little independent initiative to cure the defects in the case files by seeking necessary information from other (administrative) authorities, e.g., cadastre offices. On the contrary, state attorneys confine themselves to requesting that MPWRC/ODPR provide the missing documents. There are no reports indicating that state attorneys proceed – if their contacts with MPWRC/ODPR yield no results – to seek a solution through their chain of command with the Chief State Attorney in Zagreb.

On the other hand, in some cases forwarded by the MPWRC to state attorneys the property in question had already been repossessed. This has occurred in the municipalities of Sunja, Dvor and Split. As a result, duplicative and unnecessary actions were taken by both state attorneys and courts.

Given this continuing pattern of cooperation difficulties and passiveness of the local state attorneys, the Mission will address this issue with both MPWRC and the State Attorney General.

Application of the LASSC:

The provisions for property repossession of the Law on Areas of Special State Concern (LASSC) have been in force for more than one year.

In isolated cases state attorneys continue to apply provisions of the law inconsistently and contrary to instructions issued by the State Attorney General in March 2003. The Dubrovnik MSA has expressed the opinion that because the LASSC is *lex specialis* in repossession litigation, it applies beyond the territorial scope of the ASSC.

In a similar vein, the Petrinja MSA after initiating a lawsuit for repossession requested that the procedure be suspended until the user's house was reconstructed. This demonstrates that state attorneys in representing the state's interest in such lawsuits play an unorthodox role unknown in other types of lawsuits, namely representing the legal interests of both parties to the litigation, underscoring that the LASSC legal dispute is a dispute only in form, not substance.

Article 18, paragraph 9 of the LASSC authorizes the state attorney to initiate a lawsuit against the occupant seeking compensation for damage that occurred during his/her possession. Even though looting continues to be observed in a significant number of cases [see section 2 above], the Mission is not aware of any legal actions by state attorneys pursuant to Article 18 para 9 LASSC.

4) Assessment of the work of the Courts

State attorney Lawsuits:

The increase in the number of cases submitted to the municipal state attorneys has yet to result in a significant increase in action taken by municipal courts. Municipal Courts in Croatia held only a handful of hearings in SA repossession cases within the reporting period and these were often scheduled only after long delays, despite Article 18 para 6 LASSC providing for '*emergency procedure*'. This is best demonstrated by the Municipal Court in Knin where only two hearings in cases initiated by the MSA were held since July 2003 and by the Municipal Courts in Karlovac and Vojnic where only two hearings on eviction cases were held in the last seven months.

On average²² the Municipal Court in Karlovac scheduled hearings only after 5, 5 months from the date the state attorneys filed the lawsuits. In Hrvatska Kostajnica 12 cases have been pending without hearing since January 2003.

The table below depicts information received from field staff and shows a comparison of the number of pending cases and hearings that have been carried out thus far:

²² Sample: 14 cases

Municipal Court	Cases	Hearings	Evictions
Knin	11	2	0
Karlovac, Vojnic	13	2	0
Majur, Dvor, HK, DK	17	2	0
Gospic	18	1	0

Caption: *Cases* refers to total number of repossession cases forwarded by MSA to Municipal Courts; *Hearings* = number of cases within the reporting period in which hearings were carried out; HK = Hrvatska Kostajnica; DK = Donji Kukuruzari

This low number of court hearings may be in part attributable to the courts essentially being closed during the extended summer holiday.

Lengthy procedures:

Delays in the work of the courts in property repossession cases are exemplified by recent proceedings at the Municipal Court Karlovac. In 8 hearings, including cases initiated by state attorneys and owners, the judge postponed further proceedings pending a written response from the MPWRC to the court's request for information whether the user/defendant had the right to housing. Obtaining these statements from MPWRC has taken up to 4 months (e.g., while the court's requests were sent in May 2003 the MPWRC responded only by August 2003) and proceedings have therefore been delayed.

In addition it appears that the MPWRCs written responses only indicate the users' general right to housing, without specifying the option of housing care to be applied (see Article 7 LASSC). The court has then tended to send a second request seeking specification of the housing care option that dictates the deadlines for court to order the user to vacate the house.²³ The court should request all information deemed pertinent to its further action on the case in its first inquiry. Resort to a series of inquiries on the same matters inevitably leads to delays and requires repeat responses by the MPWRC.

As a result of this procedure, 6 of the 8 cases, all of which have been pending in the trial court for more than one year, were postponed for further hearing until 16 October 2003. In practice, the result of such protracted proceedings is that the legal dispute solves itself outside the court as the user solves his/her housing problem and the formal court procedure has no part in resolving the legal dispute between the owner and user.

Continued Delays in execution of final court rulings:

As indicated above, few if any final verdicts on requests for repossession have been issued by courts in response to actions initiated by local state attorneys. A relatively small number of final verdicts granting repossession to the owner have been issued in cases initiated by the owner. However, implementations of these final orders for

²³ In the first case the TU has 15 days starting from the day in which a lease contract on state housing was signed (see Article 18 para 2 LASSC) to vacate the property; if housing care is provided with building material the TU is granted 90 days after receipt of the last shipment of the construction material (see Article 18 para 1 LASSC).

repossession that include eviction of the occupant who has been judicially determined to be no longer entitled to possession continue to be delayed. Examples include the 'Rater', 'Panda', and 'Sara' cases in Korenica in which private homes are being used as businesses. There have been several year delays in the issuance of court orders to implement the final court order for eviction. When these orders for execution were finally issued in June 2003, the execution of the eviction was then postponed until a date uncertain.

Postponements in the execution of final orders have been based on legally questionable grounds. For example, pursuant to a final verdict issued by the Karlovac Municipal Court in March 2003, a Croatian settler owning property in Istria was to be evicted on 1 October from a building he uses as a restaurant and which he has illegally occupied since 1996²⁴. However, the eviction was postponed on the eve of its execution when the court accepted the user's motion for a change of venue **on the execution order**. The court referred the motion to the Supreme Court for review. However, it appears that the court should have rejected the motion out of hand given the apparent legal impossibility of the execution of a court order being done in another location than that where the property and the occupant are located. The Serb owner, who learned about the postponement of the eviction upon his arrival in Krnjak, has been evicted from the house he had legally occupied in Banja Luka/BiH-RS in 2002. He applied for repossession of property in 1997 and the case had been referred to the Court by the former Housing Commission Krnjak in February 2001. This failed eviction was the subject of significant media attention.

After repeated delays an eviction was carried out in Petrinja on the third attempt on 2 October 2003. The occupant moved to an empty building on the same property belonging to the same owner, justifying his action by stating that this second house had "never (been) mentioned in the Court proceedings". The State Attorney after consultations with officials from the Petrinja Municipal Court interpreted it as "not being part of the repossession procedure" and hence did not challenge or otherwise prevent this new illegal occupation of the owner's premises.

5) Looting

Looting

A negative aspect of some progress in the repossession of property by owners is that looting by the occupant of both fixtures and moveable property prior to vacating Government allocated property continues to occur on a routine basis. The Mission's field office in Hrvatska Kostajnica reported several cases in the Sunja municipality in which users destroyed or severely damaged before vacating the premises they had occupied. Similarly, the field office in Petrinja reported seven cases in which when the owner repossessed the property it had been significantly damaged and looted.

²⁴ One of the most prominent cases of illegal occupancy in Krnjak (Central Croatia), the 'Park' case, user Vinko Petrovic and owner Petar Kunic, also appears on the list of 88 multiple/illegal occupancy cases which was jointly shared by the OSCE and UNHCR Missions with the Croatian Government in August 2000.

To date, State Attorneys have not initiated any actions against occupants seeking compensation for damage, although so authorized by the LASSC. For their part, owners have been reluctant to approach State Attorneys for purposes of initiating such claims, expressing skepticism about the possibility of succeeding in obtaining compensation through civil lawsuits against the occupants. However, the Mission has advised owners to pursue this remedy provided by law.

In Karlovac county owners of looted and damaged houses were in the past directed and instructed by RODPR employees to claim compensation in civil proceedings against the temporary users. The RODPR recently started to advise temporary users that in case of any damage the police would be notified and criminal proceedings would follow suit.

Given its perspective that the prevention of looting and intentional damage is preferable to after-the-fact attempts to obtain compensation for damage incurred, the Mission has undertaken a number of activities with RODPR and police to sensitize them to this issue as well as to engage them in preventive efforts. In mid-September, field staff arranged a multi-agency meeting in Benkovac to discuss looting with representatives of local police and ODP. The Mission's Police Adviser has also initiated discussions with the Ministry of Interior in Zagreb concerning the possible issuance of instructions to local police concerning operational procedures on looting. The Ministry has expressed a willingness to address this issue, acknowledging police under-performance in this area.

There is a gap in the criminal law whereby looting of fixtures is not an *ex officio* criminal complaint, but is only pursuable by private complaint. In the coming period, the Mission will initiate discussions with the Ministry of Justice, Administration and Local Self-Government regarding a proposed amendment to the Criminal Law to explicitly forbid looting.

Annulment of housing care grant as sanction for looting by occupant:

The Mission received information on a new approach to looting taken by the RODPR Sisak according to new verbal instructions. In at least one case the RODPR revoked housing care to an occupant who caused serious damage to the occupied property before her eviction. Purportedly, the funds saved by the revocation of housing care would be re-allocated by RODPR as a form of compensation to the owner for the damage caused by the occupant. While this approach might produce the desired effect both to deter users from looting and to provide owners with compensation for damaged property – thereby precluding lengthy procedures for compensation at the municipal courts – the practice is open for argumentation. The approach is in a 'stress ratio' between the provision of housing care, which is contingent upon certain criteria stipulated in the LASSC, the sanction contained in Article 18 para 7 LASSC²⁵ and obligations imposed on the current occupants under the LTTP,²⁶ which in its Article 1 sets out *the 'aim to protect [the property] and to safeguard the claims of creditors.'* This is further determined by Article

²⁵ Article 18 para 7 LASSC: 'A temporary user shall be accountable for the damage that occurred through his fault on the facility he received for temporary possession and use.'

²⁶ Law on Temporary Takeover and Administration of Specified Property, 01-95-1579/1 (Amended on 17 January 1996)

7 para 1 LTTP which obliges temporary occupants ‘to run the property with due care of a good manager’ but is not free to dispose of the property (para 2). The failure to meet the obligations of these obligations can result in a decision overruling the initial decision to provide the property for temporary use (para 10).

Recommendations:

- **The MPWRC/ODPR should speed up the process of approval of housing care to the eligible applicants by consistently offering housing care/temporary accommodation on a written basis only;**
- **Eviction proceedings should be immediately initiated against those families whose illegal occupancy of State owned flats has been proved through the recent surveys conducted in several municipalities;**
- **The MPWRC/ODPR should act more pro-actively with the county/municipal authorities in regard to the adoption of municipal urban plans and the related infrastructural issues which obstruct the allocation of land plots in several municipalities;**
- **The MPWRC/ODPR should base its new pro-active approach in discouraging looting on written instructions distributed nationwide;**
- **The MPWRC/ODPR should considerably improve coordination and cooperation with both municipal state attorney offices and municipal courts with regard to transfer of cases, documentation of repossession cases, and responses to judicial inquiries;**
- **The MPWRC/ODPR should specifically and unequivocally indicate in its decisions and in its responses to judicial inquiries whether users are entitled to housing care, including the manner in which housing care is provided where applicable;**
- **The Municipal Courts should eliminate delays in conducting proceedings and the rendering of final verdicts in repossession cases through the application of the ‘emergency procedure’ as provided in Article 18 paragraph 6 LASSC;**
- **The Municipal Courts should execute final decisions without delay and better coordinate with administrative authorities and/or the police to ensure timely execution;**
- **The Municipal State Attorneys should likewise coordinate both with the MPWRC/ODPR and municipal courts in repossession cases;**
- **The MPRRC/ODPR and the Chief State Attorney should coordinate on standard modalities for use by all local state attorneys;**
- **The MPWRC should review the impact of the LASSC implementation after more than one year has passed and consider legislative amendments to eliminate delays and duplicative procedures. The OSCE Mission is prepared to provide pertinent advice.**

Part B: UNHCR Contribution

1. Progress in Repossession

The implementation of the 2002 A/LASSC made progress in some areas covered by UNHCR FO Sisak, whereas the rate of repossession in the area covered by UNHCR FO Knin is much lower. This report will make observations valid for both areas, but will also point out area specific developments.

During the last few months, ODPD made **noticeable progress in the administrative process of repossession**, e.g., through identifying housing care solutions and signing agreements with temporary users (TUs). In the Knin area though, the administrative process remains at the stage of cancelling decisions on TU (blocked, however, by some fifty administrative court decisions in favor of TUs, who initiated administrative court proceedings; some fifty more cases are pending) and has not yet progressed to linking TUs with housing care options. Some owners still did not receive Decisions on the Cancellation of the Decision on Temporary Use, which raises the concern that ODPD did not meet the deadline foreseen by the ALASSC according to which all TU decisions should have been cancelled by 31 December 2002 (Art. 27 para 3 and Art. 30 para 2).²⁷

Another positive development is that the first payments under the compensation settlement have arrived in the field. UNHCR looks forward to a greater number of recipients benefiting during the months to come. However, many owners are still refusing the offered compensation presuming that its acceptance will further delay repossession or would limit their right to compensation based on other laws. UNHCR would welcome steps by MPWRC/ODPD to properly inform the owners in this matter and clarify their rights by amending the compensation settlement. UNHCR is pleased about the increased number of owners now signing the settlement for compensation in the Knin area.

UNHCR welcomes the closer co-operation between some RODPDs and UNHCR partner NGOs (CHR and SDF) in the Sisak area, both on the local and regional level concerning the solution of individual cases. However, there is still room for improvement and any ODPD initiative to further strengthen this co-operation is welcome, not only for the Sisak Area, but even more so in the Knin AoR.

Furthermore, UNHCR is pleased to see that some RODPD's in the Sisak area are now taking more decisive action towards the prevention of looting (see below 3) and would welcome similar steps being taken in the Knin area

However, given the prevailing constraints, it seems unlikely that the GOC will be able to fulfil its commitment and solve all problems related to property repossession by the end of this year. Especially, in the Knin and Zadar area a large number of cases most likely remain unsolved and due to a lack of housing care solutions also the Gvozd caseload probably will not be closed.

²⁷ UNHCR FO Knin has such cases recorded through ZvoniMir CRT.

A major constraint is that the identification of housing care solutions does not necessarily result in immediate physical repossessions, as the number of APN houses is limited and the construction of new housing units takes time.

The other main obstacles to repossession are:

- Some RODPRs have been negotiating housing care solutions with TUs through unrecorded verbal offers, which allows TUs to turn down such offers without consequences. This results, of course, in a prolonged process of repossession. UNHCR is not aware of a single case, in which the TU lost the right to housing care on the grounds of not accepting an offered housing solution. Given the lack of stock for adequate permanent Housing Care the option foreseen by the ALASSC (Art. 17 par 3, Art. 18 para 3-9 and Art. 28 para 2), which opens the possibility of providing *temporary* Housing Care instead, should be widely considered by ODPR and further limit the room for “negotiations”.²⁸ That might contribute to accelerating the process of repossession.
- ODPR is slow in forwarding fully documented cases of terminated rights for temporary use to the State Attorney’s Office to initiate the eviction procedure. It is obvious that in some areas (e.g. Knin, Zadar, Benkovac) State Attorneys are delaying the start of eviction procedures. It remains unclear which understanding has been reached in this process between the MPWRC/ODPR and the State Attorney’s Office in Zagreb.
- The actual implementation of evictions has made no progress. Forced evictions are being conspicuously avoided. Should an eviction be scheduled, the concerned state institutions often allow it to be prevented by the pressure the BC settler community is able to exert on court and police officials.
- Even clear-cut eviction cases, i.e. of those TUs, who lost or never had any rights to temporary housing, are not being carried out. UNHCR is not aware of a single eviction of a TU, who had his/her own property repossessed or reconstructed.
- The process of verification of cross-border property occupancy appears to be cumbersome and very slow. UNHCR is concerned that the current procedure that implies verification of HVM and CRPC information by the Croatian Consulate in BiH is not matched with adequate resources.

The solution of those cases, which depend on the interaction of RODPRs, MPWRC, state attorneys and the courts, does not show the expected results. A stronger commitment and

²⁸ In accordance with Art. 38 para 1 ALASSC, ODPR only administratively changed contracts with TUs from permanent into temporary housing care. It remains unclear, however, what measures ODPR intends to take for TUs that are now only eligible for temporary Housing Care but were allocated land and construction material (e.g. Benkovacko Selo).

joint effort by all concerned government bodies would be needed to process these cases more efficiently.

In addition, **UNHCR Knin** identified the following reasons for the extremely slow and inefficient repossession of private property in their area:

- RODPRs lack legal expertise, resulting in misinterpretations of the relevant laws or poorly conducted administrative procedures. UNHCR thus suggests employing more legally educated personal.
- The administrative court decisions annulling ODPR's cancellations of temporary use slow down the repossession process. UNHCR appreciates that RODPRs have started resuming the procedures in response to these administrative court decisions (e.g. re-interviewing, property status confirmation from BiH) and hopes that this will be completed soon - thus enabling repossession and de-blocking ongoing civil court procedures on repossession.
- The initiation of court procedures by the owner is often delayed and sometimes even hindered by the continued reluctance of some RODPRs to provide owners with copies of decisions on temporary use (or newly issued decisions on the cancellation of the decision on temporary use), which define the space allocated for temporary use²⁹. UNHCR welcomes ODPR's announcement that case documentation will be made available to owners, who may contact ODPR at the local or central level with written requests.
- At the time of the report, UNHCR had had no information of whether ODPR makes use of the provision of the LASSC (Art. 28 and Art. 17 para 2), whereby users have to accept temporary accommodation until permanent housing care can be provided. Therefore, UNHCR would be pleased to receive the list 214 temporary user families, who according to ODPR have been directed to temporary accommodation, either in collective centres or APN houses.
- In the same vein, some Municipal Court judges in Knin returned to the previous practice of making positive decisions on repossession, but conditioning the eviction to the provision of permanent Housing Care to the TU.
- Based on the Ombudsman's Report, which states that 454 apartments in Knin are used by persons, who have their own houses in Kijevo, Drnis, Vrlika, Unesic, Ruzic and Promina reconstructed by the State, ODPR started a new review of State owned apartments in Knin. UNHCR understands the necessity of conducting a review in order for ODPR to be able to efficiently resolve the remaining caseload. Based on the experience with a similar survey conducted in 2001, which led to no tangible results

²⁹ The Law on Administrative Procedures obliges the administration to provide citizens with copies of decisions affecting them directly. The LTTP decisions usually contain a provision, whereby a copy of the decision had to be delivered directly to the owner. For a number of reasons, (including unknown address of the owner), this was in many cases never done.

and rather delayed the solution of ‘clear cut’ cases, UNHCR is concerned that the new survey might have a similar effect, but, of course, would be pleased to see this concern being proved unfounded.

- The Municipal Court in Knin is slow in scheduling court procedures on repossession requested by the owners on the basis of by ODPR’s cancellations of decision on temporary use³⁰.

2. Utilities

UNHCR Knin was unable to review the electricity cases submitted in the last report. With regard to the Ostojic and Milic cases, the court procedures initiated by ZvoniMir are still ongoing. No new cases have since been reported to UNHCR.

UNHCR Sisak did not receive any complaints about individual discrimination in the provision of access to electricity.

3. Looting

Given the limited field monitoring capacity of UNHCR Field Offices, looting cases submitted with the last report have not been followed up further physically by UNHCR for this report. All new cases are exclusively based on partner NGO reports (SDF Vojnic and Pakrac, CHR, IPC) and could not be physically verified by UNHCR staff. However, UNHCR partner agencies are continuously reporting incidences of looting, a lack of will on the side of most RODPRs to prevent this and a deficient legal framework, leaving owners unprotected and vulnerable. UNHCR expects that the attached new as well as earlier charts of individual looting cases, which provide a real life picture of the situation many ‘happy’ owners find themselves in, will be seriously followed up by the concerned GOC bodies.

In the Knin area, UNHCR did not observe any action by RODPRs to prevent looting of the houses that are to be returned to the owner. Applying for building material through RODPRs remains the only avenue by which owners of repossessed but devastated houses can receive assistance. However, this measure remains meaningless in reality as, presently, the solution of such cases takes low priority.

UNHCR is, on the positive side, pleased to note that RODPR Sisak is now taking concrete action in the prevention of looting by explicitly warning the TU about its consequences. This new approach includes both police intervention and undertaking legal measures against the TU, damage assessment by a court expert, as well as the possibility of sanctioning looting with the eventual loss of the right to housing care and repair assistance for the owner under the housing care scheme. As this might prove to be

³⁰ Source: ZvoniMir’s Court Representation Team. The CRT launched some 6 months ago 6 repossession lawsuits on the basis of ODPR’s cancellation of decision on TU but there are only 3 cases scheduled for court hearings until now.

an effective measure in the prevention of looting, UNHCR encourages a widespread and decisive implementation of this approach by other RODPRs.

UNHCR welcomes that ODPB instructed all RODPR's accordingly and that the first effects (e.g. cancellation of the Right to Housing Care due to devastation of the occupied house in one case in Hrv. Kostajnica) already can be seen in the field. Also ODPB's intention of sending a circular letter to all TUs, thus informing them about their responsibility under Art. 18 para 7 and 8 ALASSC, is positively noted. In addition, UNHCR suggests to explicitly mention in this document that intentional devastation of the house allocated for temporary use constitutes a criminal act.

Such measures, however, have by no means reached everyone in the Sisak area. As the attached chart documents, 'looting', remains common in the municipalities of Glina, Petrinja, Vojnic, Gvozd, Plaski, Karlovac, Hrv. Kostajnica and D. Kukuruzari.

From these reports, it is also visible that filling the PP-11 forms significantly improved in some areas, especially in Glina and Vojnic, where RODPRs register now in most cases accurately the condition of the property at the moment of repossession. As the information entered in the PP-11 forms is still often deficient in other areas, MPWRC should reinforce the obligation of the RODPRs to accurately document the hand-over.

4. Other Observations (not directly related to the implementation of the LASSC)

Exchange of Property

There is concern that the imbalance in legal proceedings between Croatia and BiH in relation to the annulment of contracts on exchanged properties could result in housing problems for many Croatian Serbs currently residing in exchanged properties in BiH. Bosnian Croats are increasingly requesting the Bosnian courts to annul these contracts, with 192 cases pending before the courts in Banja Luka. The Bosnian courts' willingness to annul these contracts based on the claim that they were signed under duress (with the immediate post war period viewed as sufficient proof of pressure) results in the immediate re-registration of ownership in the name of the original Bosnian Croat owner. Swift PLIP eviction of the Croatian Serb occupants follows. The evicted Croatian Serbs, at the same time face problems in repossessing their former properties in Croatia; often still occupied by Bosnian Croats who repossessed their property in BiH. In practice, many of the Bosnian Croats may end up possessing both properties - until the long and cumbersome repossession process in Croatia is completed.

Repossession of Land

In the Benkovac area, a group of returnees, together with some local Croats from Benkovac, signed a joint petition, expressing their frustration about the behaviour of Vojvodina Croats, who settled Benkovac area after the operation 'Storm'. The petition names some of these settlers as 'especially problematic' and highlights that the land of the pre-war Benkovac local population is occupied without any legal basis. The group calls for urgent intervention of the State, suggests sanctioning of the concerned individuals (who are said to have been violent even towards the local population) and

seeks the immediate return of their land. Besides that, the signatories of the petition pointed out that those settlers received permanent housing care in Benkovac area, although they exchanged their houses in Vojvodina for houses in Osijek, Vinkovci and Zagreb during the war. The petition was widely shared with , e.g., OSCE, UNHCR, Police and the State Attorney. The Zadar Police Department for Crimes conducted an investigation and informed the signatories of actions taken as well as their assessment of the situation. While admitting that many property issues remain unresolved in the area, the Police assesses the security situation as stable.

Attachments: Chart on the Devastation of Repossessed Property in the Sisak and Karlovac Areas May – August 2003

MS/NP/GS, Knin/Sisak, 24/10/2003