



# Organization for Security and Co-operation in Europe

## Mission to Croatia

### Headquarters

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## Background Report on Property Repossession

### 1. Introduction

After Operation “Storm” in 1995, more than 19,000 private properties belonging to Croatian Serbs were left vacant when their owners fled the war-affected areas. After the Croatian authorities took over administration of the newly-liberated territories, these properties became the responsibility of the State under the Law on Temporary Takeover and Administration of Specified Property, adopted later the same year. This abandoned Serb property was then offered as housing to Bosnian Croat refugees, Croat IDPs and Croat settlers from other parts of the country, who were encouraged by the State to repopulate the liberated areas.

The rights of Croatian Serb refugees to return to Croatia and officially reclaim their properties were first recognized in mid-1998, when the Croatian Parliament adopted the “Return Programme”. It institutionalised an administrative repossession scheme, executed through Municipal Housing Commissions.

With the adoption of the 2002 Amendments to the Law on Areas of Special State Concern (LASSC), the Government centralized the repossession process at the ministerial level. This was mainly a reaction to the ineffectiveness of local Housing Commissions and numerous complaints on the flawed and discriminatory nature of the repossession process. The new repossession framework resulted in a more serious attempt by the State to tackle the issue: cases were processed faster, construction of housing for temporary users of private property was increased and a more rational approach to the purchase of Croatian Serb occupied houses - for allocation to eligible settlers - was implemented.

This update on property repossession follows on from data on repossession included in the OSCE ‘Background Report on Refugee Return in Croatia and the Status of Implementation of the January 2005 Sarajevo Ministerial Declaration on Refugee Returns’ issued on 29 June 2005. This Report deals not only with the administrative and judicial aspects of completing the repossession process, but also focuses on qualitative factors currently limiting the impact of repossession on the sustainability of return. This especially refers to the implementation of legal measures adopted by the Government in July 2005, aimed at providing assistance to owners of properties devastated by temporary occupants.

### 2. Quantitative aspects of property repossession

#### Properties that remain occupied

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According to the Ministry for Maritime Affairs, Tourism, Transport and Development (Ministry), 20 houses remained occupied in Croatia as of 7 April 2006. However, this figure does not include occupied properties currently subject to a court procedure (either private or State initiated), or houses whose owners did not apply for repossession. The Ministry claims not to be responsible for these. Taking into consideration all types of occupied property, the total number of houses is now 219<sup>1</sup>. This compares to a total of 1, 124 occupied properties in April 2005 [see Background Report ‘Access to Housing for Refugees’ – April 2005].

The return of a number of residential properties - including those allocated by the state and illegally occupied - depends upon judicial action. Pending lawsuits include those initiated by the owner as well as those initiated by the State Attorney under the LASSC. A response to the Mission request for information on the number of ongoing lawsuits initiated by the State Attorney for the return of occupied property remains pending. In some cases, delays in proceedings have been observed, particularly in the execution of court verdicts awarding possession to the owner. In some cases the Ministry’s response to requests for information required by the State Attorney before initiating a lawsuit are delayed.

A typical example of a court delay effecting the return of property is the case of Nikola Kljajić, a 79 year old Serb, who requested repossession of his house eight years ago. Despite administrative and court decisions issued in 1999 and 2004 respectively, ordering that the property be returned to him, Kljajić remains unable to repossess his home due to a lack of enforcement of the final court decision. Kljajić’s case presents a scenario similar to two other cases - *Kunić v. Croatia* and *Radanovic v. Croatia* - currently being reviewed by the European Court of Human Rights. The Court is deciding whether such delays in the return of property violate the right to fair trial in a reasonable time as well as the right to property.

### **Physical repossession by owners**

Repossession does not always result in the permanent and sustainable return of a property’s legitimate owner. An OSCE field survey has shown that on average only 25 per cent of properties returned are inhabited by the owners. The figure is lowest for the Dalmatian hinterland where only 15 per cent of owners live in their repossessed houses. Around half of the houses remain empty or are used only seasonally. In around 30 to 40 per cent of cases, the owners sell their houses to the State Agency for Real Estate Transactions (APN), and decide to settle permanently in their place of refuge, usually in Serbia and Montenegro or Bosnia and Herzegovina. Their sold houses are then allocated to ex-temporary users, mainly Bosnian Croats, as housing care.

This low rate of sustainability after repossession is due to various factors which are not always within the Government’s control. Most notably, repossessed houses are often heavily damaged, while the owners have no means to make repairs. Additionally, State housing and repair programmes are still only partially implemented, with many owners unaware of their existence. Poor economic conditions and a lack of employment opportunities also contribute to the low sustainability of return.

### **3. Quality of repossession – devastation/damage**

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<sup>1</sup> Unclaimed occupied property = 90; occupied property sent to the State Attorney’s Office (SAO) = 88; occupied property subject to private lawsuits = 21.

A significant number of occupied properties were returned to their owners in a devastated and uninhabitable state. Damages are mainly caused by the removal of fixtures by departing temporary users. The direct consequence is prolonged displacement and, in some cases, the sale of the property.

Until recently, the only option available to owners who repossessed damaged property was to apply for building material through the housing care programme. However, many owners did not apply claiming that there was inadequate information about the availability of this programme. To date, only a few positive decisions for housing care have been issued for this group of applicants.

### **The Government's new 'repair' programme**

Following international community (IC) recommendations, the Government passed a Decision on 22 July 2005 tasking the Ministry to start a programme for repairing devastated/damaged properties. However, assistance was limited to 'damages caused by intentional devastation by the temporary users,' and to cases where damages were officially recorded. Thus a large number of afflicted owners have been excluded from the programme.

At the end of 2005 the Ministry selected approximately 400 properties for damage assessment. Companies sub-contracted for the project are in process of assessing the damage in order to provide the Ministry with an estimate of costs<sup>2</sup>. This should be followed by eligibility approval and repair work. So far, only six owners have been accepted as potential beneficiaries although no eligibility decisions have actually been signed. The programme remains largely undefined with no official instructions from the Ministry yet issued.

The Ministry has taken no action to repair properties devastated by temporary occupants if the damage was not officially recorded during the repossession procedure. In many cases, official damage records are lacking because ODPR<sup>3</sup> officials were reluctant or even refused to undertake the procedure<sup>4</sup>. Moreover, owners themselves were unaware of their rights and did not insist on the damage being recorded. The Mission is strongly urging the Ministry to devise an appropriate mechanism that would enable this category of people to apply for the new repair programme.

While the Mission appreciates the launch of the long-awaited repair programme, some issues still have to be addressed if implementation is to be successful:

- Detailed programme instructions need to be issued so that implementation is consistent and unified.
- Administrative procedures should be established in order to enable the owners of devastated/damaged property to apply for repair assistance even if the damage was not registered during the official repossession procedure.

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<sup>2</sup> By 6 March 2006 estimates for repair costs had been prepared for 120 houses.

<sup>3</sup> ODPR is the Ministry's Directorate of Displaced Persons, Returnees and Refugees, responsible for all issues connected with property repossession and housing care.

<sup>4</sup> This was the case in areas covered by OSCE Field Offices (FO) in Sisak, Gospic and Knin. FO Knin reports that State officials were insisting on qualifying almost all repossessed property as habitable and without damage. This practice only changed in 2005. The problem of not registering damage seems to be most serious in Lika-Senj County where almost all properties have been looted or damaged, but this information was either completely omitted from the records or only partially reported.

- The Ministry should resolve the question of compensation for those owners who have made repairs themselves. At the moment, this appears not to be taken into account in the damage assessment procedure.
- Many owners on the initial lists are not aware that they could benefit from the newly launched programme, as they live elsewhere due to the damage on their houses. As the Ministry has no contact data for most of these individuals, damage assessments cannot be done with many owners potentially missing the opportunity to benefit from the programme. An energetic information campaign is needed to remedy the situation.

#### **4. Other aspects of property repossession**

##### **Compensation for the State use of property post-November 2002**

Contrary to current legislation, many owners have encountered problems receiving statutory compensation for the State use of their properties - as foreseen by the November 2002 LASSC - if applying for compensation after repossession. The Mission together with the Ombudsman and various Croatian NGOs approached the Ministry/ODPR advocating a change in current practice. Although the Ministry/ODPR has acknowledged the mistake, it continues to advise owners who have physically reposessed their property to sue the State for compensation justifying the policy with budgetary restrictions. Those owners who did decide to sue the State have received satisfaction from the courts, which correctly branded this official practice as inappropriate.

The waiting time for payments is still too long. ODPR reports that out of 1,822 owners who requested compensation, 1,777 received it. Yet, according to OSCE field checks, less than a third of applicants entitled to compensation have actually received it.

The Mission and its international partners will continue to advocate respect for the compensation scheme as envisaged by existing legislation, with no need to seek recourse from the courts.

##### **Counter claims for investments in state-allocated property**

Counter claims by occupants seeking reimbursement from owners for investments made to a property while they were authorized to use it, continue. Some counter claims have been resolved in out-of-court settlements. However, others remain before the courts. As has been the case previously, if the occupant succeeds, the owner could be ordered to pay significant sums, which can lead to a court-ordered auction of the owner's home.

Since the State allocated the property and can be seen as responsible for any civil claims arising from the allocation, the State is currently considering a proposal from the Ministry for the State to assume the owner's debt. This should be accomplished through the adoption of a sub-legal act institutionalizing a system of extra-judicial settlements to be offered by the State to temporary occupants.

##### **Repossession hindered by fraudulent sales to the State**

Remedies for property fraudulently sold to APN remain incomplete. Owners who initiated lawsuits to annul fraudulent contracts continue to experience difficulties in the repossession of their properties, even where they have succeeded in gaining a positive court decision. Repossession is particularly complicated in those instances where the property is

being used to accommodate third persons<sup>5</sup> or APN has already initiated the formal process of registering ownership of the property.

### **Repossession of occupied agricultural land**

In certain parts of the country, particularly the Zadar hinterland, owners face significant difficulties in repossessing agricultural land and business premises allocated to temporary users. Given the persistence of this problem, the Mission has recently provided funding for a legal aid project to help some owners initiate the lengthy and complicated court proceedings required to repossess their land.

## **5. Conclusions**

The process of repossessing residential property is nearing its end, ten years after the end of the war. Some 200 houses still await repossession, with official statistics lowering the number by ignoring repossession cases currently pending before the courts. However, it is these cases which have lasted the longest, with owners waiting years for the resolution of their cases.

The Mission is of the opinion that the successful completion of the return process relies heavily on the condition of housing after repossession. A large number of repossessed houses are damaged to the point of being uninhabitable, with owners unable to afford the necessary repairs. With no help from the State, many potential returnees decide to leave Croatia resulting in the low level of owner occupancy noted by the Mission in field checks.

Therefore, the Mission welcomes the launch of the long-awaited repair programme. However, the process has to be accelerated, clear instructions issued and owners contacted and informed about the programme. Moreover, owners with no official record of damages should also receive satisfaction as soon as possible.

The Mission notes a number of other imperfections related to property repossession. The State continues to try and avoid paying compensation for the use of private property beyond November 2002. Owners whose properties were fraudulently sold to APN still encounter numerous obstacles in regaining their houses. The issue of occupied agricultural land and business premises also awaits serious consideration from the authorities.

Some progress has been made in regard to the question of unsolicited investments by temporary users, whereby the State should pay the amount required by the investor.

Within the framework of the Sarajevo Declaration, the Government has agreed to address some of the outstanding issues mentioned above - a commitment which now needs to be realised through a series of concrete steps.

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<sup>5</sup> This is the case for the Jakovljevic family from Brod-Posavina in Western Slavonia who are temporary users of an APN house previously purchased in a fraudulent transaction. A court in Nova Gradiska Court has now ruled that the house should be returned to the original owner with the occupants facing eviction.