



Organization for Security and Co-operation in Europe

Mission to Croatia

Headquarters

VJESNIK
Chief Editor
Ms. Andrea Latinovic
Slavonska Avenija 4
10000 Zagreb

Zagreb, 13 August 2004

Dear Ms. Latinovic,

The article "The position of Croatian Courts has been confirmed" of your author Miroslava Rozankovic, published in Vjesnik on 7 August 2004, contains a number of allegations about the policy of the international community and the OSCE in particular as well as a couple of factual mistakes which I believe should be corrected. I would highly appreciate if you would publish this letter. Below I want to comment on some major points.

First of all let me clarify that the OSCE and its international partners are following a two - track policy in regard to the issue of terminated occupancy/tenancy rights. This policy aims at

a) Bringing clarity on the legal aspects pertaining to the termination of occupancy/tenancy rights, and

b) Providing housing options to all refugees and internally displaced persons who want to return, regardless of the housing category they were using before the war.

The ECHR decision in the Blečić vs. Croatia case has contributed to the first aim, legal clarity, although some questions remain. It does not affect the second Mission objective. The Court has indeed decided that the occupancy/ tenancy right flat of Ms. Blečić was her *home*, but under the circumstances of this case, the balancing of interests permitted the State interference (the termination of this right).

Your author believes that the Court ruling in the Blečić case has put the OTR issue *ad acta*. This is actually not the case simply for the reason that the Court has not ruled on a number of elements. The Court ruling indicates that in other situations of termination under different facts and circumstances the balancing in individual cases might be different (termination of occupancy/tenancy rights for so-called enemy activity without a criminal conviction, forcible evictions where occupants sought civil remedy of eviction without success, etc.). It is also notable that the Court did not decide whether or not occupancy/tenancy rights equal a property interest. In addition, the Court has not ruled on the

impact of the terminations of occupancy/tenancy rights on refugee return since Ms. Blečić was not a person with refugee status. The question as to whether terminations had a discriminatory effect on national minorities had not to be clarified in this particular ruling since minority status was not pleaded in this case.

As known, the OSCE acted as *amicus curiae* (prijatelj suda) in this proceeding, following the assessment by the then Dutch OSCE Chairmanship that briefings by both OSCE Mission to Croatia and OSCE Mission to Bosnia and Herzegovina would be beneficial to the case. The request to intervene as a third party is in accordance to the broad human rights mandates of both missions.

The OSCE Mission has never promoted the “return of occupancy/tenancy rights” (as legal construct) as claimed by your author. The Mission has also made it clear that it would, in most cases, be impracticable for victims to move back to their old apartments and that remedies may take many forms. Therefore the fear that the “return” of those apartments would lead to a big injustice is unfounded.

The provision of housing options to all refugees and internally displaced persons continues to be one of the most important issues to the OSCE Mission to Croatia and its international partners and a joint priority with the Government of Croatia. This obligation has been assumed by the Government without a legal obligation to do so and therefore the ruling in an individual case can not have an impact on this decision. The Government in its presentation to the Strasbourg Court in response to the OSCE has explicitly stated that the Government already had the occupancy/tenancy right housing questions of refugees addressed through housing programmes. This statement certainly had been taken into consideration by the Court.

A meeting of Minister Kalmeta and the Principals of the OSCE Mission, the EC Delegation, UNHCR and the US Ambassador on 4 August resulted in an agreement to proceed with the programmes. In particular the publicity campaign of the Government on this issue should start in early September (actually it did not start in December last year as your article seems to indicate). This joint priority is also confirmed by the prominent role the resolution of the housing problem for former OTR holders is given in the *opinion* of the European Commission on Croatia, as well as in the draft European Partnership Agreement with Croatia. In addition, the Principals of the OSCE, the EC Delegations and the UNHCR in Bosnia and Herzegovina, Croatia and Serbia and Montenegro will propose a *Road Map* to the three Prime Ministers for eventually closing the refugee file. A paramount principle of this *Road Map* will be that all refugees and internally displaced persons who want to return should have a realistic possibility to do so, including, in particular, a secure environment and access to housing.

Sincerely yours,

Peter Semneby
Ambassador
Head of Mission