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Side Event: Free Legal Aid for Refugees and IDP's in Western Balkan Region

Free Legal Aid for Refugees and Displaced Persons

in the Territory of Bosnia and Herzegovina, Montenegro, Croatia and Serbia

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The views herein expressed are solely those of the author and contributors and do not necessarily reflect the official position of the OSCE Mission to Serbia.

Introduction

This document elaborates the most important issues related to refugees and displaced population in Bosnia and Herzegovina, Montenegro, Croatia and Serbia through the aspect of providing them with free legal aid and access to justice in the aftermath of the conflicts in the territory of the former Yugoslavia during the nineties. A special emphasis was given to the role of civil society organizations as providers of such aid.

The document provides a review of most important areas of interest for the population of refugees and displaced persons. The UNHCR estimate suggests the number of 4 million people in the territory of the former Yugoslavia who were forced to leave their places of residence because of the war. Serbia, Bosnia and Herzegovina, Montenegro and Croatia still host a large number of registered refugees and displaced persons. Although the war conflicts ended over a decade ago, the displaced persons in the region are still deprived of the possibility to exercise their fundamental rights and freedoms – they still live under the cloud of uncertainty and in terms of both social and economic aspects they represent the most vulnerable part of the population that is still lacking the adequate living and sustenance conditions.

For that reason this population has a specific position and specific needs when it comes to the provision of legal aid compared to the rest of the population in their country of origin and/or the country of refuge. At a meeting of a group of nongovernmental organizations¹ from the region, which provide free legal aid to refugees and IDPs, the access to justice through the provision of free legal aid to these vulnerable groups was identified as a genuine necessity and an indispensable form of support in exercising their fundamental rights and freedoms and finding durable solutions.

In post-conflict societies, the post war period has brought considerable problems characterized by blatant violation of fundamental human rights in the area of housing, civil status rights, property relations, employment, health care and insurance, pensions and other acquired rights.

The issue of questionable and problematic privatizations of companies should also be mentioned as refugees and displaced persons were excluded from the process, which

¹ Your Rights (Bosnia and Herzegovina), Centre for Peace, Non-violence and Human Rights, Centre for Peace, Legal Advice and Psychosocial Assistance (Croatia), Humanitarian Center for Integration and Tolerance, Group 484, Initiative for Development and Cooperation, Serbian Democratic Forum, Praxis , Balkan Centre for Migration (Serbia), Podgorica Legal Center

additionally aggravated their economic position and led to major disproportion in the economic position between this group and the general population in all countries in the region. Refugees, displaced persons and returnees are among the most vulnerable population groups in the entire region because of the consequence of protracted displacement, war destructions, and adverse post-war economic and social situation.

The needs for free legal aid of refugees and displaced persons

In the post-war period, refugees and displaced persons in the region were unable to cope alone with all obstacles preventing their access to rights in the process of reintegration in the pre-war places of residence or integration in the host communities. Ability to exercise basic rights required certain legal skills and knowledge of the regulations. Since they were particularly economically deprived, they were unable to afford costly legal services. Due to the specific nature of their position and the legal issues that were, as a rule, related to access to rights in the country of their origin, lawyers, in majority of cases, were unable to provide adequate professional aid. For that reason this category of people had an extreme need for free legal support. The gap which existed in provision of legal aid to vulnerable population was filled in by human rights NGOs and insignificant number of lawyers who were providing legal aid. The provision of free legal aid to thousands of beneficiaries in the period after the conflicts was made possible only because of the financial support and financial resources of international donors. Although the countries in the region were obliged to provide legal aid and assistance to refugees and displaced persons in facilitating their access to rights, through the re/integration process, it appeared that nongovernmental organizations were the only partner of the international community for this type of support and provision of free legal aid.

The legal areas where the indentified need for legal aid is particularly crucial for refugees and IDPs include: civil status rights, property rights, socio-economic and other acquired rights. Analyses of the number and type of services provided to refugees and displaced persons indicate that the provision of legal aid is a precondition for the access to the following rights: health insurance and access to health care, pensions and recognition of acquired rights, residence status, residence permits and other civil status rights, such as citizenship status, particularly entries into the registry of birth and recognition of legal subjectivity.

The process of repossession and recognition of property rights is unreasonably long while the regulations covering property protection and the implementation of it are in contradiction with international standards and obligations taken in the area of human rights protection. It is evident that the countries in the region take different approaches and have different practice in regulating and protecting the right to property and the right to home. This in particularly applies to the approach taken and differential treatment applied in provision of the providing housing

care to refugees and displaced persons and in finding comprehensive solution for the tenancy rights in Croatia.

It is important to emphasize that in regard to the access of refugees and displaced persons to utility infrastructure and services, there is a record of practice that denies access to the utility infrastructure (electricity, water, sanitation, telephone, roads) in all the countries in the region. Also, the characteristic of this practice is inertness in reconstruction or failure to reconstruct the infrastructure that is destroyed during the war. This has negative impact on the sustainability of return and might lead to secondary displacement.

Employment of refugees and displaced persons is reduced to a minimum, which yet again aggravates the poor socio-economic status of this population. The best example to substantiate this is a survey conducted in Bosnia and Herzegovina which shows that only 1% of the total number of displaced persons and returnees are employed. In other countries in the region the unemployment rate of the refugees and displaced persons is significantly higher than the unemployment rate in the general population.

The importance and role of nongovernmental organizations in providing free legal aid to refugees and displaced persons is best illustrated by statistical data on the type of free legal services provided and the number of beneficiaries.

According to the 2009 data of **Vaša prava BiH** (*Your Rights BiH*), 8,197 beneficiaries received legal aid in Bosnia and Herzegovina. According to the data published by **Legal Centre Montenegro**, in the period 2007 - 2010 free legal aid was requested by 10,350 beneficiaries who received 26,529 services in total. In Croatia, **Center for Peace, Nonviolence and Human Rights in Osijek** registered over 55,500 beneficiaries of free legal aid services in the period from 1998 to mid 2010. In **Serbia**, **Praxis NGO** has provided legal aid, information and counseling for 86,184 beneficiaries (internally displaced persons, refugees, returnees upon readmission, members of minority communities – mostly Roma population) relating to regulation of the civil status, property, social, economic and other rights. According to their own data, during the last three years **Serbian Democratic Forum, SDF** has provided legal aid to 11,000 refugees from Croatia residing in Serbia. The database of **Initiative for Development and Cooperation - Serbia** contains data on 1,500 beneficiaries (refugees and displaced persons) that received free legal aid during the period from April 2008 to September 2010. Also, in Serbia, **Humanitarian Centre for Integration and Tolerance** provided free legal aid for more than 130,000 beneficiaries, out of which more than 100,000 were refugees and IDPs, while approximately 20,000 belong to the domicile population resolving legal issues in the countries established after the dissolution of SFRY.

Obligations of the countries in the region to provide free legal aid

Regardless of the fact that for years civil society organizations have been providing some forms of legal aid to thousands of citizens, the system of free legal aid in Serbia, Bosnia and Herzegovina, Montenegro and Croatia is only in the phase of its initial creation. This implies development of the legislative framework that regulates this area and consistent implementation of the law in practice as prescribed by relevant international treaties and the supreme legal acts in all countries in the region.

The right to have access to justice is one of the fundamental human rights. The key in establishment of a good system of free legal aid requires proper understanding what is the role that state should have in it and acceptance of the obligation to respect, protect and fulfill human rights.

During the past 15 years, only nongovernmental organisations have been providing independent, impartial and professional legal aid to refugees and displaced population. This has enabled them to have access to justice without discrimination. In many communities the trust that has been earned through the work staff of these organizations, appeared to be a good concept for promotion and realization of the idea of justice for all, peace, and tolerance in the region.

Although the state should play the leading role, in organizing and providing free legal aid, governments of the countries in the region failed to do enough to enable thousands of refugees and displaced persons to have adequate access to justice. By adoption of the strategic documents for the reform of the judicial sector all countries in the region, took the obligation to enact laws regulating provision of free legal aid in order to adequately respond to the needs of those impoverished, especially in protecting their rights and freedoms in civil and administrative matters.. Only Bosnia and Herzegovina (in some areas²) and Croatia³ have adopted laws on free legal aid, while the process is still ongoing in Serbia and Montenegro.

The establishment of an adequate system of free legal aid would fulfill all the commitments taken by the countries in the region as signatories and members to the International Covenant on Civil and Political Rights, Hague Convention on Civil Procedure, Convention on Facilitation of International Access to Courts, and in particular the European Convention on Human Rights and Fundamental Freedoms. The aforementioned legal documents provide guarantees for full

² The area of free legal aid is regulated under the laws of: Brčko District-Law on Legal Aid Office (2007); Tuzla Canton / Law on Providing Legal Aid (2009); Canton of West Herzegovina- Law on the District Office for Legal Aid (2008); Zenica-Doboj Canton - Law on Free Legal Aid (2006); Republic of Srpska - Law on Free Legal Aid (2009); in addition to the aforementioned parts of the state that have adopted statutory regulations on free legal aid the procedure for enactment of the proposed Law on Free Legal Aid is in progress in the B&H and Una-Sana Canton (2010)

³ In the Republic of Croatia Decision on Proclamation of the Law on Free Legal Aid was passed on 15 May 2008 at the Croatian Parliament Session. The Law on Free Legal Aid ("Official Gazette No. 62/08) came into force eight days after its publication in the Official Gazette.

equality of citizens before the law and the right to a fair and public hearing before an independent court.

It can be said that the current legislative initiatives in this fields and enactment of regulations are characterized by the intention to exclude NGOs completely from the system, or give them only minor tasks and opportunities to act in the area of free legal aid. The existing legislative solutions minimize the role and participation of NGOs in the governmental system of free legal aid, and the resources available to them are only symbolic and can hardly cover the operating expenses.⁴ In the process of enactment of the law on free legal aid, the establishment of the concept and implementation of the law, the countries failed to recognize special needs of refugees and displaced persons. In the countries that have not yet adopted the law (Serbia and Montenegro) there is a risk that they may follow the solutions that already exist in some countries in the region which do not recognize the actual needs of refugees and displaced persons for free legal aid. The criteria for provision of free legal aid and areas of its implementation have been set very narrowly in some countries in the region, so that many refugees and displaced persons are frequently found ineligible for the free legal aid due to formal reasons. It should be highlighted that granting the free legal aid is commonly conditioned by reciprocity and restrictions in granting and recognizing the right to free legal aid in a certain geographic region to the country nationals only, where it may be provided to foreigners only under certain conditions.

Strict eligibility requirements that have to be fulfilled by potential legal aid providers, represent only one form how to restrict participation of NGOs and prevent them to qualify for that role. Regardless of whether the legislative framework is present or not, the issue of financing of NGO activities for providing the free legal aid still remains a very important one. The existing regulations in some countries disqualify NGOs for funding opportunities or make them eligible only for minor amounts. NGO activities have been so far fully funded by international donors. The aim of these projects was to meet the basic needs of this particular population.

In recent years the financial support of international donors to NGOs has been substantially reduced, although the needs of refugees and displaced persons for legal aid have not decreased. The World Bank report on poverty in the countries of this region provides rationale for belief that in the forthcoming years the need for free legal aid will remain quite substantial. The restrictive requirements stipulated in the regulations on free legal aid, as well as minor number of approved requests in Croatia and Bosnia and Herzegovina, suggest that the current system of free legal aid will not be able to appropriately respond the needs of refugees and displaced persons.

⁴ In 2009 the NGO Vaša prava BiH, Bosnia and Herzegovina, received EUR 2500 as a form of financial support from the government to provide free legal aid to certain categories of beneficiaries.