

## REFUGEES AND DISPLACED PERSONS – STATE OF AFFAIRS

### **SERBIA: EUROPE'S LARGEST PROTRACTED REFUGEE SITUATION**

Serbia is one of the five countries in the world listed by UNHCR as a protracted refugee situation (with Afghanistan, Eastern Sudan, Bangladesh, Tanzania), and involved in related talks held in Geneva in December 2008.<sup>1</sup>

Addressing refugee/IDP issues is one of the core tasks of the OSCE Mission to Serbia. The Mission assists and advises the Government of Serbia in developing strategies and mechanisms aimed at final closure of the refugee file. The Mission has also engaged in establishing a network of skilled lawyers from Serbia, Croatia and Bosnia and Herzegovina (BaH) to address human rights violations, especially in the area of refugee/IDP protection. There are still many unresolved and complex legal issues related to return and integration where engagement of this group of human rights defenders is required in order to ensure an adequate redress for infringement of individual rights.

#### **Regional Initiative – The Sarajevo Declaration Process**

Because of its cross-border character, the refugee issue requires action at the regional level. Throughout the past decade all the governments of the region have restated their commitment to the unconditional right to return and the need to find durable solutions for these refugees. However, interstate dialogues were sporadic and this broad political commitment had only been partially translated into concrete progress on the ground. The joint efforts of the international community in bringing respective governments together resulted in signing of the Sarajevo Declaration on 31 January 2005, at the time by Serbia and Montenegro, BaH, and the Republic of Croatia.<sup>2</sup> The Declaration affirmed the willingness of the three Governments to close the Refugee chapter by 2006, through development of the country action plans, which should highlight the remaining obligations of a government and provide clear benchmarks.

After several years at a standstill, the process received a new start in March 2010 when the region's countries gathered for an international conference in Belgrade. Ever since, the regional and bilateral expert level contacts were intensified with an aim to exchange statistics and work on durable solutions with the support of UNHCR. It was agreed at the March 2010 conference that the parties would convene at a donor conference by the end of 2010, and a stock-taking conference in early 2011. The Mission monitors this process carefully, along with UNHCR, EU and CoE.

Serbia is still hosting more than **86,000** refugees,<sup>3</sup> out of which **64,500** are from Croatia and the rest from BaH. The number of refugees in Serbia has significantly decreased since 1996, when **524,000** refugees were registered. The decrease is a result of regional return process to BaH and Croatia, resettlement programmes and naturalisation process<sup>4</sup> in Serbia. Still, more than **300,000** persons in Serbia await durable solutions, be it return to the country of origin or integration in Serbia. Some refugees in Serbia still live in collective centers (still 60 centers running as of April 2010) and depend on the scarce state resources.

#### **Return to the Republic of Croatia – Main Problems**

Convalidation of registered working years/pension contributions in former UN protected or controlled areas.<sup>5</sup> Only in May 2008, a new Rulebook on procedure for convalidation of the decisions and particular acts have come into effect restoring a possibility for submission of applications for convalidation of working years. It is not clear yet what would be the impact of that measure on all those who are still residing outside of the Republic of Croatia.

Occupancy/Tenancy Rights (OTR) are not recognized as property rights in the Croatian legal system. Unlike in BaH, restitution is not possible. The rights were simply terminated and the fact that someone had abandoned an apartment due to armed conflict, intimidation or pressure was not considered as a justified reason. The agreement on a comprehensive solution for terminated OTRs has not yet been reached, leaving this issue outstanding within the Sarajevo Declaration process.

Housing care program inside the war affected areas available to potential returnees (former OTR holders)<sup>6</sup> Precise figures on the number of applicants who are still residing outside Croatia or hold refugee status in neighboring countries are not available, thus making it impossible to assess the pace of implementation and its influence on refugee return. The following issues are of particular concern: lack of transparency in determining priority beneficiaries' lists; ungrounded differential treatment of applicants; exclusion of local self-government units from decision making (contrary to the applicable law<sup>7</sup>); shortcomings in implementation of the Law on General Administrative Procedure and excessive lengths of proceedings.

Housing care program outside the areas of special state concern<sup>8</sup>. Total number of applications received until the closure of the deadline on 30 September 2004 was 4,425 cases. Still not available are reliable data on the number of concluded protected lease agreements and data on the number of housing

<sup>1</sup> ...'UNHCR defines a protracted refugee situation as one in which refugees find themselves in a long-lasting and intractable state of limbo. Their lives may not be at risk but their basic rights and essential economic, social and psychological needs remain unfulfilled after years in exile' UNHCR/2006: "The State Of The World's Refugees: Human Displacement In The New Millennium". Also <http://www.unhcr.org/4937de6f2.html>

<sup>2</sup> The Ministers were Mirsad Kebo for BaH, Rasim Ljajic for Serbia and Montenegro, and Bozidar Kalmeta for the Republic of Croatia.

<sup>3</sup> Source: Commissariat for Refugees of Republic of Serbia, August 2009. As a part of the ongoing data exchange exercise between the countries in the region, the data base of Commissariat for Refugees of the Republic of Serbia is under constant revision.

<sup>4</sup> Amendments to the Citizenship Law in Serbia in 2001, enabling refugees to obtain Serbian citizenship under favorable conditions, were the main stimulus for altering one's refugee status to that of a citizen.

<sup>5</sup> Legal framework: Law on Convalidation of 1997; Decree on the implementation of the Law on Convalidation of 1998.

<sup>6</sup> Legal framework: Law on Areas of Special State Concern - 2000/2002

<sup>7</sup> Article 38, Law on Areas of Special State Concern - 2000/2002

<sup>8</sup> Legal framework: 2003&2006 Government of Croatia Conclusions

units allocated to those who applied and still reside outside of the Republic of Croatia. The Decision of the Government of Croatia on the Sale of State-Owned Flats of 2 September 2010 introduces purchase option for apartments allocated to beneficiaries of the Housing Care Programme outside the Areas of Special State Concern. The real impact of the Decision on accelerating refugee return and increasing the number of housing provided to refugees/former OTR holders is yet to be measured against the possibility of the reopening of the deadline for application which expired in December 2004.

Reconstruction of damaged properties has seen significant progress. **142,208** houses and apartments were reconstructed by July 2007. However, in addition to this number of unsolved cases there are **10,438** cases undergoing appeal out of which 643 cases pending first instance and **9,795** pending second instance.

### **Local integration in Serbia - Concerns and Prospects**

Parallel to conducting series of round-tables throughout Serbia in late 2007, the Mission in cooperation with UNHCR and with participation of the Commissariat for Refugees completed a comprehensive analysis of law and practices regarding integration, followed by a set of recommendations on how to address existing flaws in the legal system and inconsistencies in the practice. The main recommendations relate to:

Statutory rights where assistance need to be provided to refugees in acquisition of documents from country of origin that are essential in the process of acquisition of citizenship in Republic of Serbia while the acceleration of the procedures for naturalization of refugees is needed in the Serbia;

Employment where the transparency and access to information regarding employment opportunities needs to be ensured while the National Employment Service should establish a system for monitoring position of vulnerable groups, including refugees;

Education where refugees should be enabled to have access to scholarships for secondary and higher education;

Health insurance where harmonization of practices and resolution of identified problems is needed in order to ensure unimpeded enjoyment of health protection;

Pension rights and disability insurance where the Agencies of Serbia, BaH and Croatia should invest additional efforts to ensure efficient implementation of Bilateral Agreements on Social Insurance;

Right to social welfare where maximum simplification of procedures is needed for exercising the rights to various forms of social assistance to refugees who opt for local integration;

Housing issues where the use of the experience gained so far in responding to housing needs of refugees is recommended, so to benefit from the best ideas of the existing models and develop new ones to be cost effective to the state and attractive for donors.

### **IDPs: PROTECTION OF RIGHTS IN SEARCH FOR DURABLE SOLUTIONS**

Unlike refugees, IDPs are citizens of the country, and therefore fully entitled to enjoyment of all rights on an equal footing with other citizens of the state. Thus, primary responsibility for their protection lies with the state. However, in practice IDPs face difficulties accessing rights because their specific characteristics are not taken into

consideration by law-makers and authorities at all levels. A broad set of problems arise from the fact that there is still no agreement on mutual recognition of documents issued in Serbia and/or Kosovo respectively.

### **Return & Statistics**

According to the latest UNHCR statistics as of 1 August 2009, there are **205,835** IDPs from Kosovo registered in Serbia. During the entire period of the conflict, and even today, the number of IDPs registered in Serbia is on the rise. When it comes to the IDP situation it is generally characterized by a very slow pace of return, mainly related to the unstable security situation and difficulties in access to rights. According to the statistics of the UNHCR in Pristina, the total number of minority returnees is 16,661 persons, covering the period from 2000 to 2007, and includes returns from Serbia, within Kosovo and from third countries.

### **IDPs access to rights in the location of displacement and the place of habitual residence**

In order to analyse the ability of IDPs to fully enjoy their rights in their location of displacement and their place of habitual residence, the Mission in cooperation with civil society, NGO Praxis and UNIJA, and union of the IDP associations, conducted a study on the "Access to Justice, Property, and Economic and Social Rights by IDPs". The main findings of the analysis showed that:

- IDP population is not able to enjoy rights on equal footing with other citizens of the state in regard to the specific group of rights such as: access to documentation, education, employment, social protection, access to property rights and access to justice.
- The state failed to adjust the existing legal framework in Serbia to the specific position and needs of the IDP population in order to enable their unimpeded access to these rights.
- Discrimination against IDPs and especially members of the Roma/Ashkali/Egyptians] communities is a result of this omission;
- In many instances a direct link has been confirmed between the lack of access to rights by IDPs while in displacement and infringements of their rights in the place of former residence. This in particular relates to differential treatment accorded to IDPs in their place of former residence thus preventing their access to documentation/recognition for the validity of documentation, justice, property social and economic rights;
- IDP population does not perceive return as a viable option because of the real and perceived lack of security conditions, general lack of basic economic conditions that would support sustainable return and difficulties experienced in access to and peaceful enjoyment of property rights. In regard to property rights the key issues relate to the following:
  - general lack of adequate mechanisms in Kosovo in providing effective protection of immovable property from destruction, illegal occupancy and unlawful possession;
  - unreasonable length of and inefficient procedures for property repossession;
  - lack of an adequate mechanism preventing usurpation, repeated usurpation and destruction of property;
  - general lack of effective investigation leading to identification and punishment of perpetrators;
  - fraudulent property transactions and difficulties experienced with the registration of property into the land book registry.

#### **For more detailed information please contact:**

Mrs. Ružica Banda, National Programme Officer  
([ruzica.banda@osce.org](mailto:ruzica.banda@osce.org))

Mr. Madis Vainomaa, Human Rights Programme Coordinator  
([madis.vainomaa@osce.org](mailto:madis.vainomaa@osce.org))