

HOUSING AND PROPERTY RIGHTS

**BOSNIA AND HERZEGOVINA, CROATIA
AND SERBIA AND MONTENEGRO**



UN-HABITAT

HOUSING AND PROPERTY RIGHTS

IN
BOSNIA AND HERZEGOVINA,
CROATIA AND
SERBIA AND MONTENEGRO



2005

Security of Tenure in Post-Conflict Societies

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Foreword



The hardships that have confronted the people of former Yugoslavia throughout the past decade have been unprecedented in post-World War II Europe. The political and ethnic conflicts of the 1990s have affected all areas of social, economic and political life, and have had a particularly pronounced impact on the housing and property sectors. Indeed, the region faces an array of severe difficulties related to housing and property issues. These include more than a million refugees and displaced persons who are still unable or unwilling to return to their homes. They also include a dysfunctional housing market in most countries, systematic discrimination against various ethnic groups, in particular the Roma, and an expanding informal housing sector. Many of these problems are associated with the sudden shift to a market-based economy. The privatisation of public housing and the loss of tenure and tenancy rights have rendered many people and families with limited and low-incomes more vulnerable to sub-standard living conditions, evictions and homelessness.

Despite the fact that all Stability Pact countries have committed themselves to the protection and promotion of internationally recognised human rights, far too little attention has been paid to the human rights dimensions of housing and property. The purpose of this publication is to provide an overview and analysis of a wide range of housing and property legislation and policies in post-conflict Bosnia and Herzegovina, Croatia, and Serbia and Montenegro. The laws described in this report range from the accommodation of refugees and displaced persons during the war and post-war period, privatisation and denationalisation, social housing, inheritance and marital property rights. Specific attention is paid to policies and practices related to the housing rights of the Roma and to the added problems many widows, women with missing husbands, traumatised women and other vulnerable persons are facing in exercising their housing and property rights.

It is my sincere hope that the findings and recommendations contained in this report will contribute towards improving the security of tenure for all people and communities in former Yugoslavia and that useful lessons can be learned to help other post-conflict societies

A handwritten signature in black ink, which reads "Anna Kajumulo Tibaijuka".

Mrs. Anna Kajumulo Tibaijuka
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List of Acronyms

APN	Agency for Mediation and Transactions of Specific Real Estate Property of the Government of Croatia
B-H	Bosnia and Herzegovina
CLNM	Constitutional Law on the Rights of National Minorities
CRPC	Commission for Real Property Claims
DPA	Dayton Peace Agreement
ECHR	European Court of Human Rights, or European Convention for the Protection of Human Rights and Fundamental Freedoms
ERRC	European Roma Rights Centre
FB-H	Federation of Bosnia and Herzegovina
FPRY	Federal People's Republic of Yugoslavia
FRY	Federal Republic of Yugoslavia National Institute of Indigenous Affairs
GDP	Gross Domestic Product
IPTF	International Police Task Force
ISSP	Institute for Strategic Studies and Prognosis
LLF	Law on Lease of Flats in Liberated Territories
LTTP	Law on Temporary Take-over of Specified Property
MPWRC	Ministry for Public Works, Reconstruction and Construction
NATO	Northern Alliance Treaty Organisation
NGO	Non-Governmental Organisation
ODPR	Department for Returnees and Refugees

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OHR	Office of the High Representative in Bosnia and Herzegovina
OSCE	Organization for Security and Cooperation in Europe
PHE	Public Housing Enterprise
PLIP	Property Legislation Implementation Plan
POS	Public Funded Housing Construction
RB-H	Republic of Bosnia and Herzegovina
RS	Republika Srpska
SAPK	Socialist Autonomous Province of Kosovo
SAPV	Socialist Autonomous Province of Vojvodina
SFRY	Socialist Federal Republic of Yugoslavia
SOE	Socially-owned Enterprise
SRB-H	Socialist Republic of Bosnia and Herzegovina
SRC	Socialist Republic of Croatia
SRS	Socialist Republic of Serbia
SRS	Socialist Republic of Slovenia
SRCG	Socialist Republic of Montenegro (Crna Gora)

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EXECUTIVE SUMMARY

After World War II, former Yugoslavia introduced a quite unique tenure type of social ownership. Secondly, in the past decade, the former Yugoslavia, like other former socialist countries, went through a comprehensive privatisation and denationalisation process, which significantly changed the real property rights regime and its tenure types. Thirdly, the segregation war of former Yugoslavia was characterised by mass flights of ethnic minorities in the successor states or parts thereof, which among others led to a widespread deprivation of property rights. Finally, the successor states of former Yugoslavia each have their proper institutional framework, which leads to different approaches of the competent institutions on the further development of housing and property legislation.

While the concept of the occupancy right as a form of tenure to socially-owned apartments was introduced in the housing legislation of Bosnia and Herzegovina, Croatia and Serbia and Montenegro, the privatisation process of these socially-owned apartments in each country had its own characteristics and occurred at different times. Thus, both Serbia and Montenegro introduced the privatisation already in 1990. The same applies for Croatia, which, however, did not have the power to implement the privatisation laws in its whole territory until 1995. In contrast, because the war halted the process of privatisation, Bosnia and Herzegovina adopted privatisation laws only from 1997, two years after the Dayton Peace Agreement.

As regards the deprivation of property rights, the war in Bosnia and Herzegovina and in Croatia between 1992 and 1995 resulted in mass flights which left hundreds of thousands of residential units, mostly private houses and socially-owned apartments, abandoned. At the same time the policy of the so-called “ethnic cleansing” produced more than 2 million refugees and internally displaced persons in Bosnia and Herzegovina alone, while in Croatia hundreds

of thousands persons fled their homes. To administer the “abandoned” property and to allocate accommodation to the homeless, Croatia and the three *de facto* entities on the territory of Bosnia and Herzegovina adopted “emergency” laws which finally supported and confirmed the deprivation of property rights of the respective ethnic minorities. In contrast, Serbia and Montenegro did not experience such a mass flight but a mass arrival of refugees and internally displaced persons, who needed to be accommodated. While the first two countries are still on their way to repealing and replacing the discriminatory legislation of the war period, Serbia and Montenegro still have to find a comprehensive solution to accommodate and integrate refugees and displaced persons that are not willing or that are still not able to return to their pre-war homes.

After the end of the military actions upon the Dayton Peace Agreement in 1995, all three countries were subject to a specific institutional framework, which had a significant impact on the future development of their housing legislation. Bosnia and Herzegovina and its two entities of the Federation of Bosnia and Herzegovina and the Republika Srpska fell under the overall supervision of the Office of the High Representative. This Office, supported by a number of international agencies in Bosnia, closely reviewed the revocation of the discriminatory war legislation and actively supported the adoption and implementation of adequate housing laws, which encouraged refugees and internally displaced persons to return to their pre-war homes. In Croatia, the international community maintained a monitoring mandate. Without the same powers and responsibilities as the Office of the High Representative, this mandate was, however, much less successful to support the revocation of discriminatory housing legislation of the war period. In contrast, Serbia and Montenegro further developed their housing legislation autonomously. Although Kosovo is not included in this research, Serbia’s housing laws in relation with other “emergency laws”, which followed after the abolition of the substantial autonomy status of the ‘Socialist Autonomous Province of Kosovo’ must be mentioned, as the adoption of such legislation had its impact on depriving the enjoyment of housing

rights based on ethnic grounds, affecting thousands of ethnic Albanians.¹

The general war context has obstructed the view on the overall transition of these former socialist societies and their respective Yugoslav specific tenure system into democratically governed societies, based on the principles of the market economy and on the real property rights regime of the civil law. This transition deprived vulnerable and low-income groups from the previous socialist state approach, which had provided secure housing tenure to its citizens. The housing legislation of all three countries did not reflect the tremendous effects of the privatisation process on vulnerable groups and accordingly does not provide necessary shelter in the form of social housing benefits. This applies especially to women, who in the post-war market economy system are more often unemployed (44% of women in Bosnia and Herzegovina are unemployed and 80% of the 300,000 persons working in the grey economy are women) and accordingly without sufficient financial means for adequate housing. Furthermore, widows and women with missing husbands have problems accessing pre-war property and have the double burden of taking care of their children and generating an income.

A major concern of all reviewed countries remains the housing situation of the Roma minority and of Roma women in particular. Since the Roma community does not belong to one of the major ethnicities of Serbs, Croats and Bosniaks, they were the group who suffered most from the “ethnic cleansing” policy of the war period. Without having property titles for their informal settlements, they are often deprived of the same basic rights and privileges as owners and lessees. Municipalities often refuse basic public utility services

to these informal settlements. The transformation of socially-owned land - on which most informal settlements are established - into private property for industrial or economic purposes, results in an increasing number of forced evictions, which leave the Roma minority with not even a minimum of security of tenure.

All three reviewed countries are recommended to consider:

- The adoption of social housing laws and policies for the security of tenure of vulnerable and low income groups, and
- The introduction of effective measures to provide more secure tenure and better, non-discriminatory housing conditions for the Roma minority.

Furthermore, the following specific recommendations for each of the reviewed countries should be taken into consideration:

Bosnia and Herzegovina

1) Prevention and Early Warning of Future Discriminatory Housing and Property Laws

Although the housing legislation was initially designed to meet the urgent need for accommodation for refugees and internally displaced persons, it was subsequently used to permanently deprive ethnic minority groups of their occupancy rights and private property. This emergency legislation in disguise may be considered as a blueprint for any country to withdraw property rights from unwanted or underprivileged citizens. The international community should be alert to the mechanisms and features of such legislation in order to detect and possibly in the future prevent the introduction of property rights violations through discriminatory laws.

2) International Unified Monitoring Approach

Realising that the housing legislation of the war period forestalled the right of refugees and displaced persons to return and repossess their property, the international community successfully pressurised the FB-H and

¹ See for example the *Law Concerning the Functioning of Republican Government Bodies under Special Circumstances* Official Gazette of SRS n.30/90 of 26 June 1990. See also *Regulation 1999/10 on the Repeal of Discriminatory Legislation affecting Housing and Property Rights*, adopted on 13 October 1999 by the United Nations Interim Administration Mission in Kosovo. This Regulation repealed the *Law on Changes and Supplements on the Limitation of Real Estate Transactions* (Official Gazette of Republic of Serbia, 22/91 of 18 April 1991); and the *Law on the Conditions, Ways and Procedures of Granting Farming Land to Citizens Who Wish to Work and Live in the Territory of the Autonomous Province of Kosovo and Metohija* (Official Gazette of Republic of Serbia, 43/91 of 20 July 1991). See for violation of civil and political rights in this area in the 1990s: Human Rights Watch, *The Former Yugoslav Republics*, 1993, pp. 4-6. Available on: http://www.hrw.org/reports/1993/WR93/Hsw-10.htm#P671_238252

the RS Entities into repealing legislation that revoked property rights. This important measure opened the possibility to repossession of pre-war homes and as such provided the legal basis for the return process. Such a unified and straightforward international approach is to be recommended. This finding is supported by the post war legislation of Croatia which did not face the same pressure and which accordingly never allowed for a fully-fledged repossession of pre-war socially-owned apartments.

3) Importance of Strong Mandate for Neutral Property Restitution Body

Including for the Implementation of its Decisions The legislation on property repossession was not successful without proper implementation. Based on its powerful mandate, the OHR adopted secondary legislation, which significantly improved the proper implementation of the amended property laws. This measure was based on a common effort of all involved internationals but also of local stakeholders. Again, the co-ordinated approach of the international community turned out to be quite effective. While the Bosnian post-war context was unique, lessons learnt such as the need for a strong mandate of a neutral body in charge of property restitution (legislation), the importance of proper (ethnically neutral) implementation and a co-ordinated approach - need to be highlighted and disseminated.

4) Monitor and Facilitate Physical Return

Annex 7 to the Dayton Peace Agreement guarantees the right of refugees and displaced persons to return and to repossess their pre-war property. This guarantee should be interpreted in a wide sense as constituting physical return. If the international community's effort in property repossession focuses only on its formal aspect without monitoring physical return to the pre-war owned property, the real risk is that formal repossession would be completed but de facto the situation on the ground would be of territorial ethnic homogenisation, which is contrary to the DPA principles. Furthermore, in order to include single-headed households in the return process, collective returns involving community support for single-headed households, and

ensuring inclusion of the most vulnerable groups in reconstruction projects are recommended.

5) Transfer of Responsibilities Related to Return of Properties

Since the local authorities are often reluctant to allow the return of properties to pre-war owners, the transfer of responsibilities to central B-H institutions should be considered. Such a transfer of responsibilities should be based on the notion that repossession and return are an integral part of the safe return process. To achieve this goal, it is necessary to facilitate inter-entity and inter-cantonal communication. Currently, the lack of inter-entity communication is a major obstacle, which derives from the very complex administrative structure of a weak central state and two parallel entities (pseudo-states), whereby one is centralised and the other subdivided into 10 cantons, which reportedly do not function well. Ten years after the end of war, discussions on the current constitutional framework and on improving the self-sustainability of B-H in economic and institutional terms are to be supported.

6) Adequate Housing for All

The introduction of private ownership over apartments deprived vulnerable groups of the well-established system of state assistance for housing. While many former occupancy right holders have become private property owners, young persons now face a lack of affordable housing, and the maintenance and management of common spaces of private apartments is a problem across the region. Without such instruments of social housing and a rental market that is better regulated, underprivileged groups face a significant insecurity of tenure. Therefore, the future housing legislation should not only embrace the principles of the market economy but also (re)consider mechanisms to protect the housing of the poor and socially vulnerable groups. This governmental responsibility may be all too easily forgotten in the post-war reconstruction process of Bosnia and Herzegovina. The right to adequate housing, which under international law also includes affordability and accessibility, should be in-

cluded in the Constitution of Bosnia and Herzegovina and its entities.

7) Special Attention to Adequate Housing for the Roma

The housing of the Roma minority in Bosnia and Herzegovina is of special concern. Without being a part of the three major ethnic groups and often without formal property titles, the interests of the Roma are at risk of being excluded in the new housing legislation and its implementation. In the course of privatisation of socially-owned land, the Roma communities are especially at risk of being removed from informal settlements. In this respect, the acquisition of property titles through adverse possession should be considered (which would require amendment of the law to allow for collective adverse possession and for a shorter period of uncontested permanent possession) as well as options such as special zoning and state acquisition of privatised land and prohibition of sales of socially-owned land in the public interest. Upon privatisation of land used by the Roma community, alternative accommodation should be provided to this minority. The international community should further supervise the proper implementation of political commitments of the recent past.

8) Special Attention to Women's Rights to Adequate Housing and (Marital) Property

Widows, women whose husbands are still missing, abandoned women, survivors of sexual violence and torture, other severely traumatised women and Roma women are among the most vulnerable in post-conflict Bosnia and Herzegovina. Many of them have had to take up the roles of caretaker and breadwinner simultaneously, but with few of the resources that were available to them in the socialist era. Unemployment is particularly high among women. They are in need of secure housing, education and training and health assistance. While in the immediate post-conflict years there was much international attention and aid, such international support has been largely withdrawn, as a result of which local women's organisations have discontinued or are about to discontinue due to funding cuts. It is recommended that both international organi-

sations and the government institutions continue to pay specific attention to the plight of these groups of women.

As regards women's marital property rights, the FB-H should adopt the new draft Marriage Law on a priority basis in order to introduce a better protection of women upon divorce. In order to shorten the judicial procedure for the distribution of marital property upon divorce, the efficiency of the judicial system should be improved.

9) Continue to Increase Women's Participation in Decision-Making Bodies

Compared to 2000, the 2004 elections saw an increase in the number of women elected at all levels, even though the increase for higher-level decision-making positions (e.g. mayors and ministers) was very limited. Further efforts should be made to combat gender stereotypes and increase the number of women in decision-making positions.

10) Create Social Housing Projects

Formulation and implementation of social housing projects, at least in urban areas, similar to the Croatian POS project (see Chapter Four), in order to improve the housing affordability for young persons and other persons in need of social housing.

11) Improvement of Judicial and Administrative System

The present situation confirms that a weak judicial system and the underdeveloped rule of law deprive especially the disadvantaged members of the society, including women. Thus, the improvement of the housing legislation should be embedded in the overall improvement of the judicial and administrative system of Bosnia and Herzegovina.

12) Review Civil Laws related to Housing and Property

The "emergency legislation" enacted during the war derogated the basic civil law principles on residential property. This emergency legislation replaced the general applicable property legislation pursuant to the

principle *lex specialis derogat lex generalis* and thus significantly reduced the value of the basic civil law provisions. Post-emergency, it is necessary to review the basic civil laws (e.g. the Law on Ownership, the impact of which was greatly diminished during the war because of the adopted laws on use of abandoned property). The post-war property legislation that has been adopted so far, with its focus on the restitution of abandoned property and the privatisation of socially-owned apartments, did not fulfil this requirement. The reform should also review whether the transformation of the existing socialist-based real property rights legislation into a modern civil real property rights regime requires the adoption of new laws. The same is true for the current administration of real property rights by the cadastral and real property rights registration systems.

13) Enactment of Denationalisation Law

Support the B-H efforts to enact the comprehensive Denationalisation Framework Law and to allow the occupancy right holders in FB-H to purchase the apartments where they live, while ensuring that former owners are entitled to compensation.

Croatia

1) Prevention and Early Warning of Future Discriminatory Housing and Property Laws

The war legislation on socially-owned apartments shows a rather alarming development. While the 1991 Law on Temporary Use of Apartments put abandoned property under state administration without formal revocation of the underlying property title, the subsequently adopted Amendment to the Law on Housing Relations in 1992, and to an even greater extent the 1995 adopted Law on Lease of Flats in Liberated Territories, revoked the occupancy rights permanently without compensation and without an effective judicial review of these decisions. This development proves that the moral scruple of the Croatian legislator lowered continuously during the war period and later, and consequently in the rather open legislative support of the policy of ethnic homogenisation of the

national territory. The international community should be aware of this development and be very alert on any kind of “emergency” housing legislation in future conflicts.

2) Alternative Solutions for Those who Lost their Occupancy Right

Since Croatia had already started the privatisation of socially-owned apartments, the revocation of occupancy rights deprived the mostly Serbian titleholders from the option of purchasing their apartments. Thus, the revocation of these rights constituted a *de facto* expropriation without fair compensation. In contrast to Bosnia and Herzegovina, the revocation of occupancy rights has never been repealed and thus forestalls the return of ethnic minorities to Croatia. Since the Croatian government never fully supported the concept of alternative accommodation for those who lost their occupancy right, the revocation of the latter constitutes, even 10 years after the end of the war, a serious breach of personal property rights. It is recommended that Croatia finds a more adequate solution than the “Housing Care Programme” for this still pending issue.

A solution requires special programmes for the restitution or compensation to these former occupancy right holders rather than general housing programmes like the Public Funded Housing Construction Programme (POS). The recent governmental proposals stressed the necessity to address this issue in a permanent way. However, the proposals to establish protected lease agreements and to apply the POS should be properly developed and amended. It is especially recommended to review some restrictive criteria contained in the government proposal such as 1) the imposed deadlines for applying; and 2) general and not specific eligible criteria for this group (ranking list) for participating under the POS.

3) Improved Implementation of the Property Restitution Process

As regards the constitutional right to private property, the repossession process of property to the rightful

owners under the Amendments to the Law on Areas of Special State Concern (LASSC), the subsequent Return Programme and the governmental Action Plan turned out to be quite slow. In fact, the judicial and administrative organs in charge of the repossession process established under the Action Plan and LASSC Amendments are less effective than necessary. As a result of the lack of efficiency and accountability, the Croatian government was not able to maintain the definite repossession of private property by the deadline of the end of 2002, and even by the end of 2004 this process had still not been completed, although in 2004 most progress was made so far. For improved implementation of the property repossession process, the competent authorities should ensure that positive decisions on property return are executed in an efficient manner, embedded by precise and co-ordinated steps. This applies especially to the Office of State Attorney, which should promptly start extra-judicial procedures by issuing eviction orders against illegal or multiple current occupants. As regards the repossession of currently occupied houses, two features should be clearly distinguished: firstly the housing needs of persons occupying others' property as an issue of social housing and secondly the property restitution as a civil law procedure to return the property to the legitimate owners. Currently, the wide protection of current occupants with housing needs forestalls comprehensive property repossession and thus the return of refugees to Croatia.

4) Administrative and Judicial Reform

The repossession of property is a complex process, which requires transparency, accountability and impartiality. To achieve these goals, the effectiveness of the administrative and judicial remedies should be improved. This goal would require an overall administrative and judicial reform as urged by the EU mission in Croatia.² In November 2002, the Croatian government announced a comprehensive and very ambitious plan for judicial reform, which among others envisaged the appointment of more judges. However, the

plan did not produce any significant improvements in practice. The necessary reform of the administrative and judicial system should focus on a more efficient procedure, especially in the execution of civil decisions, and the education and training of state officials and judges to introduce EU standards in the realm of the administration and judiciary. An efficient organisational structure and professional approach of competent officials is essential for increasing the rule of law and trust in the law in Croatia.

5) Harmonisation of Fragmented Property Laws into One Uniform Law

The production of numerous housing laws during the war and post war period has introduced a fragmented legislative body, which includes different laws on various aspects of private property. Moreover, with the Law on Areas of Special State Concern it provides only limited geographical application. The various housing and property laws are a source of confusion, which reduce the enjoyment of property rights. To better protect secure tenure, the Croatian legislator should consider the adoption of a homogenous and uniform property law in a comprehensive act.

6) Adequate Housing for All

The current Croatian Constitution does not enshrine the right to adequate housing, even though Croatia is a party to the International Covenant on Economic, Social and Cultural Rights. Moreover, Croatia's housing legislation does not pay specific attention to the housing rights and needs of vulnerable groups, such as unemployed and low-income groups, widows, divorcees, single-headed households etc. As in Bosnia and Herzegovina, the specific war context may forestall the review of the housing needs of these groups of the society which enjoyed quite a strong protection in the socialist era and which risk to being forgotten in the current introduction of a market economy. As the present low construction rate may further aggravate the housing situation of unemployed and low-income groups, the development of a national programme on social housing construction should be considered. The right to adequate housing should be laid down in Croatia's Constitution.

² See, Opinion on Croatia's Application for Membership of the European Union, Communication from the Commission, Brussels, 20 April 2004, pp. 15 and 19. Available on: http://www.europa.eu.int/comm/external_relations/see/sap/rep/cr_croat/pdf

7) **Continuity and Broadened Focus of Public Funded Housing Construction (POS)**

The programme on Public Funded Housing Construction (POS) has produced some initial positive results. It is recommended to ensure the availability of budgetary funds to guarantee the continuity of this programme, which offers more favourable conditions than those on the free market. It is a useful solution for accessibility on the housing market especially for young families. At the same time, it should be considered whether the POS could not allow for further benefits for women, particularly widows and single mothers.

8) **Special Attention to Adequate Housing for the Roma**

As in Bosnia and Herzegovina, the housing situation of the Roma minority is quite alarming. Without formal property titles, their informal settlements are subject to the tolerance of the competent administrative organs. Due to the still prevailing rejection of this minority, they face discriminatory decisions and significant disadvantageous treatment. Again as in Bosnia, the future privatisation of socially-owned land may further aggravate the housing conditions of the Roma community. Accordingly, a better protection of informal settlements and the acquisition of property titles to the respective land parcels under favourable conditions should be considered, as well as options such as special zoning and state acquisition of privatised land and the prohibition of sales of socially-owned land in the public interest. Croatia has acknowledged the needs of the Roma community within the recently adopted action plan. However, the previous reluctant implementation of the 2003 National Programme for the Roma gives reason to further review the establishment of specific supportive measures in favour of the Roma community.

9) **Simplify and Shorten Divorce Procedures**

While the new Marriage Law has meant a substantial improvement in terms of division of marital property upon divorce, a remaining major concern is the long duration of the judicial procedure for the separation

and the subsequent division of the marital property, which may take up to ten years. This is difficult for the spouse who had to abandon the common property, as s/he faces many years of additional expenses and uncertainty. It is therefore recommended that the divorce procedure is simplified and shortened.

10) **Continue to Increase Women's Participation in Decision-Making Bodies**

While Article 15 of the Law on Local Elections obliges political parties to ensure the principle of gender equality, it does not include any safeguards to ensure that this obligation is met. After the last elections of 2003, the percentage of women in Parliament dropped from 21.2% to 17%. Thus, more stringent implementation of the Law on Local Elections and the Gender Equality Act are recommended.

11) **Collect Gender Disaggregated Data**

Without gender disaggregated data, the assumption that both men and women benefit from specific laws, policies and programmes is often mistakenly continued and cannot be corrected. If figures on different forms of housing tenure, restitution of private property, social housing beneficiaries, local government councillors etc. were disaggregated by sex, these would provide a firm and clear basis for interventions for vulnerable groups. It is therefore recommended that gender disaggregated data is collected at both local and national level.

12) **Strengthen Gender Equality Office**

While the Office for Gender Equality is autonomous, it is inadequately equipped - both in terms of budgeting and personnel - to handle the ambitious agenda it has been given. It is thus crucial that sufficient financial and human resources are allocated to this Office.

Serbia and Montenegro

1) Affordable Housing for Low-income Groups, Refugees and IDPs

a) Balance between Social and Private Ownership

In the recent past, Serbia and Montenegro experienced in the housing sector two opposite systems, from a situation where the state and socially owned socially-owned entities were the overall administrators of socially owned socially-owned apartments to a situation where the citizens assumed themselves assumed the ownership of their apartments without further involvement of the administrative organs. A future housing policy should avoid these two extreme alternatives and instead try to adopt governmental regulative activities to ensure affordable housing and social housing. Especially in Serbia, where in 2000 around 755,000 households (31.6%) live below the poverty threshold and around 373,000 (15.6%) households live below the lower poverty threshold, there is an urgent need for affordable housing.

b) Long-term, Comprehensive Approach

A comprehensive concept for affordable and social housing should be properly developed as an effective response to the housing needs of the low-income population as well as of refugees and displaced persons who opted for local integration in Serbia and Montenegro. The development of such a concept in conditions of a depressed economy will require a long term approach in form of a “new deal” which will focus on the interests of the involved stakeholders and which may result in the satisfaction of the housing needs of individuals, the support of the economic interests of constructors, the reduction of unemployment on part of the working force and finally the growth of the GDP on state level. A prerequisite for the successful implementation of such programmes on affordable and social housing is the adoption of a proper legal framework, which should include fiscal, financial, social and technical aspects. Their long term benefits for the society should be stressed.

c) Coordination Between Ministries and Municipalities

The programme for affordable housing and the programme for social housing should be considered as a priority for future state policies. They will require an interactive approach among various administrative organs. Thus, an efficient level of coordination at horizontal level between the ministries should be guaranteed through inter-ministerial bodies. On vertical level, the necessary co-operation between the policymakers, i.e. the ministries, and the competent organs at municipal levels must be assured. This commitment is also envisaged by the 2004 Strategy paper, “The Housing Sector – Access to Affordable Housing” the Housing Action Plan of the Stability Pact for South Eastern Europe, which pointed out that to ensure social and political stability, housing needs in South Eastern Europe need to be addressed urgently.

d) Financial Resources and Flexible Approach

The development of a social housing programme will require budgetary funds in its initial stage. Given the weak economic situation of Serbia and Montenegro, the international community should consider actively supporting such efforts. On the other hand, the governments of Serbia and Montenegro should consider assuming a more flexible approach to support the development of the social housing sector. Thus, the allocation of construction land to private constructors under favourable criteria with the condition to reserve a quota for social housing could be envisaged.

e) Housing Co-operatives

The concept of housing co-operatives could still contribute to the provision of a better supply of affordable housing. A revival of these co-operatives would require the adoption of an affirmative state policy in favour of these entities. Furthermore, the establishment of a housing bank which can grant affordable loans to housing co-operatives should be considered. Finally, the legal and fiscal framework should be amended to

better satisfy the demands of those co-operatives and to tighten loopholes.

f) Development of Functioning Rental Market

The development of a functioning rental market should be another priority of a future housing policy. Since the current rental market in major urban areas is characterised by very high rents, it does not allow for sufficient affordable accommodation not only for low income but also medium income groups. Amendments to the lease laws should therefore consider restricting the raising of rents to the current statistical index on living costs. The housing policy on the rental sector should establish more regulative measures in order to adjust the currently strong position of apartment owners. Furthermore, any such measures need to avoid conditions which lead to the establishment of a black market in this sector.

g) Building Efficiency and Capacity

Efficient and trained officers will provide faster decisions on the allocation of construction land and on building permits. Future housing and spatial planning policies should allow for the fast adoption of appropriate urban plans, the expedient identification of construction parcels and the efficient construction of infrastructure. All these measures will result in a decrease of the currently high construction costs for new apartments. Furthermore, the already existing legal provisions on the payment of maintenance costs should be properly implemented and enforced. The increased revenues from these payments will reduce the further decline of the housing stock.

2) Structural Reform of Banking System

The future housing policy should also focus on the establishment of a functioning banking system, which allows for mortgage loans as a primary financial source for capital investments of individuals in housing construction. To achieve this goal, the current banking system and its policy on mortgage loans require structural reform. Apart from the adoption of a better legal framework which allows for the fast constitution and

effective enforcement of mortgages, the governments of Serbia and Montenegro should establish a fiscal policy which favours the establishment of particular banking institutions granting mortgage loans. Such a saving fund with low interest rates and long repayment periods could be supported by the international community. The development of a functioning banking sector should further be supported by an appropriate tax policy which provides, for instance, favourable conditions for young families to buy their first apartment or house. In this respect, the establishment of different categories of property taxes for houses in urban and rural areas according to their position and purposes should also be considered.

3) Adopt Law on Lease

Serbia should enact the comprehensive Law on Lease; it is not sustainable that this sector is completely unregulated (with the exception of the norms of lease in the public sector). The state should enact a minimum of regulation in this sector in order to avoid the existent full voluntarism in establishing the lease condition by the owners; in this respect the Croatian law on lease could be considered as a good example.

4) Special Attention to Adequate Housing for the Roma

As in Bosnia and Herzegovina and Croatia, the housing conditions of the Roma minority are of special concern. The high number of Roma refugees and displaced persons, especially from Kosovo, has created an emergency situation, to which neither Serbia nor Montenegro have yet found an adequate response. Apart from still-prevailing discriminatory attitudes and decisions not only of the local population but also by the administrative organs, the informal character of many Romani settlements appears to be the major issue to be addressed. Thus, municipalities constantly refuse to provide basic public utility services to informal settlements. Even worse, the transformation of socially-owned land to private property increases the

number of forced evictions against the Roma population. This applies especially to the Belgrade region, where socially-owned land in the suburbs is increasing in economic value. The future integration of the Roma community and the improvement of their housing conditions require the allocation of property titles to informally settled land. This would provide the Roma community with a minimum of secure tenure. Serbia and Montenegro have recognised this requirement in the Vienna declaration which provides for the improvement of the Roma housing situation through the integration of informal settlements in the social, economic and legal framework. This political declaration should be properly implemented through appropriate legislative and administrative measures. In this respect, Serbia and Montenegro should consider providing adequate alternative accommodation for the Roma whose informal settlements are jeopardised through the privatisation of socially-owned land. Other options are special zoning and state acquisition of privatised land and prohibition of sales of socially-owned land in the public interest. Upon privatisation of land used by the Roma community, alternative accommodation should be provided to this minority.

5) Review of Denationalisation Acts

The provisions of the draft Serbian and Montenegrin Denationalisation Act on the position of current users of apartments which are subject to restitution should be reviewed and amended by more precise provisions in favour of the current users. The Serbian draft Act provides only one article on the position of current users which allows them to further use the denationalised apartment on the basis of a lease agreement with the owner. It is recommended to include more detailed provisions in favour of current users in order to guarantee the secure tenure of their apartments. The Montenegrin Denationalisation Act allows for a transitional period of 5 years after the denationalisation during which current occupants may use the apartment as a lessee. After this period, the Government of Montenegro shall provide “corresponding apartments” to the current users. It is recommended to specify in more detail what shall be considered a “corresponding apartment.” The broad terms of the provisions in favour of

current users do not guarantee that their housing conditions will not deteriorate after the expiration of the transitional period and should therefore be amended to provide more substantial guarantees for them.

6) Amend Expropriation Acts

Further amendments to the Expropriation Acts of both Serbia and Montenegro should be considered. The provision on the establishment of the public interest in the Serbian Expropriation Act does not require the state organs to consider the interests of owners and to balance these interests towards the public interest. This rather broad provision should be amended to introduce the requirement of balancing the opposed interests. Thus, the state organs would be obliged to provide a satisfactory explanation as to why the public interest prevails. The Montenegrin Expropriation Act does not provide a definition of the public interest at all, neither in explicit terms nor in more generic ones. The lack of such a definition opens the way for non-transparent and arbitrary decisions on the public interest on the part of the government. Accordingly, the Act should be amended to provide for a definition which serves as a guideline for the decision on the public interest and which thus avoids the abuse of power referred to the government.

7) Simplify and Shorten Divorce Procedures

While the law now explicitly provides for equal rights between the spouses, in practice divorce lawsuits take very long. This is difficult for the spouse who had to abandon the common property, as s/he faces many years of additional expenses and uncertainty. It is therefore recommended that the divorce procedure is simplified and shortened.

8) Collect Gender Disaggregated Data

Without gender disaggregated data, the assumption that both men and women benefit from specific laws, policies and programmes is often mistakenly continued and cannot be corrected. If figures on different forms of housing tenure, social housing beneficiaries, local government councillors etc. were disaggregated by sex, these would provide a firm and clear basis for interventions for vulnerable groups. It is therefore rec-

ommended that gender disaggregated data is collected at both local and national level.

9) **Increase Women's Participation in Decision-Making Bodies**

At present, only 7.9% of deputies in the State Union Assembly are women. In the Serbian Parliament that percentage is 12.4%, while in Montenegro this is 10%. These rather alarming figures make Serbia and Montenegro the country, after Albania, with the largest gender imbalance with regard to women in politics in South Eastern Europe. The Serbian *Law on Local Elections* of 2002 stipulates that the total number of the less repre-

sented sex in the list of candidates may not be smaller than 30%. Safeguards to ensure the implementation of this law should be constituted. In Montenegro, such an affirmative action policy should be adopted. Further efforts should be made to combat gender stereotypes and increase the number of women in all decision-making positions, both at central and local levels.

CHAPTER ONE

Introduction

Former Yugoslav socialist countries acknowledged the social impact of housing. Prioritising collective rights over individual ones, they considered housing and property as a social good rather than an economic factor. The right to *adequate housing* as an economic human right was emphasised while less importance was given to the right to *property* as a civil human right. Since the realisation of economic and social rights through a guaranteed level of economic and social security for all citizens served as a basis to legitimate the socialist regime, the housing legislation and policies of former Yugoslavia explicitly acknowledged and confirmed the social aspect of housing.

This view of housing and property significantly changed after the fall of the socialist Yugoslav regime at the beginning of the 1990s. Following the western model of a market economy, individual private property and the individual striving for personal interests and profit replaced the socialist concept of property belonging to the society and housing as a social good guaranteed by the state. This significant change of values and long-established principles affected the society as a whole but also each individual citizen. While the new economic and social model of the post socialist era offered great opportunities and chances, it also had its negative aspects. This applies especially to vulnerable and low-income groups, which were deprived of the former assistance and housing benefits of the state and which experienced great difficulties in adjusting to the new situation.

The significant change of the understanding of housing and property came along with the disastrous segregation war of several former Yugoslav republics. In the past decade, the territory of former Yugoslavia was the theatre of various armed conflicts, which caused the most serious human rights violations in Europe after World War II. In the context of these conflicts, deprivation of property was one of the most

widespread human rights violations. It occurred often as part of the systematic practice of “ethnic cleansing”, which intended to establish homogenous ethnic territories through the mass expulsion of the respective ethnic minorities. These property rights violations, in the form of mass expulsions, took place in conjunction with other most severe human rights violations such as murder, assault, violation and discrimination.

At the end of the war activities in 1995, Yugoslav society found itself in a situation which was characterised on the one hand by an economic transformation process and on the other hand by the trauma of the war experience. While the first had terminated the long-established understanding of property and housing, the war experience had destroyed the confidence in the protection of basic human rights and the common values of a modern society. In this transitional post conflict situation, the right to return to the pre-war property and, more generally, the protection of the right to property became a basic feature for the reconstruction process both in economic and social terms.

Purpose of the Paper

This research intends to examine the property and housing laws, policies and practices in Bosnia and Herzegovina, Croatia and Serbia and Montenegro. Based on the housing legislation of former Yugoslavia, it reviews the adoption of laws during the war period and their subsequent amendments and replacements in the post-war era. The research focuses on the human rights dimension and reviews the conformity of the applicable domestic laws and policies and their implementation with international human rights standard as set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms or the International Covenant on Economic, Social and Cultural Rights. It gives special attention to the housing situation of women and minority groups, especially the Roma community.

Secondly, the research explores the concept of social ownership and its transformation into private ownership and lease

agreements. Considering the recognised international human rights standards, it reviews to what extent the domestic housing laws and policies establish efficient mechanisms to provide adequate and affordable shelter and security of tenure for all citizens.

Exploring the domestic housing legislation and policies, the review considers the special housing and property situation of the Balkan region which is characterised by growing homelessness, more than two million refugees and displaced persons (the majority of whom are from Bosnia and Herzegovina), dysfunctional housing markets, systematic discrimination against various ethnic groups and an expanding informal housing sector. While the scope of this research is rather broad, it is not meant to review the housing legislation for specific individual groups as e.g. the housing laws for civil servants or members of the Yugoslav National Army. Furthermore, it does not cover the housing issues of the UN administered territories of Eastern Slavonia and Kosovo.³

Methodology

The research is based on an in-depth desk review and analysis of the housing and property legislation and policies of Croatia, Bosnia and Herzegovina and Serbia and Montenegro. Besides the analysis of the legislation of the war and post-war period, it reviews the laws and policies on the transformation of socially-owned apartments into private ownership, the denationalisation of nationalised property and the provisions on social housing. In addition, the relevant provisions on secure tenure in the marriage and inheritance laws have been taken into account, as well as laws and policies related to gender equality. Furthermore, the research considers various property-related reports of international organisations, especially with regard to the housing situation of the Roma minority, whose housing situation was found to be particularly alarming. Special attention has been given to the implementation of the respective laws in the domestic judicial practice

³ Kosovo was not included because of the unavailability of all relevant laws to the researcher.

and their interpretation by the European Court of Human Rights and other international bodies.

On-site missions in the three above-mentioned countries were conducted by the author in the period between February and April 2003, during which ministerial representatives, members of relevant UN agencies and non-governmental organisations were met to discuss property and housing issues. Relevant legislation, policies and court decisions have been considered until the finalisation of the report in May 2005.

Overview

Chapter Two of the research explores the concept of social ownership in former Yugoslavia. After the explanation of the occupancy right regime over socially-owned apartments, it describes the development of the Yugoslav housing legislation and policy after World War II until the segregation of former Yugoslavia in the beginning of the 1990s.

In *Chapter Three* the housing legislation of Bosnia and Herzegovina is reviewed. Firstly, the “emergency” legislation of the war period in the Federation of Bosnia and Herzegovina, in Herceg Bosna and in the Republika Srpska is explored. Then the post-war legislation on repossession of private property and socially-owned apartments in the Federation of Bosnia and Herzegovina and in the Republika Srpska within the institutional framework of the Dayton Peace Agreement is described. Subsequently, the privatisation of socially-owned apartments and the denationalisation process in both entities is examined. After the review of social housing issues and the housing situation of the Roma minority, the relevant provisions on secure tenure in the marriage and inheritance laws are described. The Chapter concludes with a set of recommendations.

In *Chapter Four* the Croatian housing legislation and policies are examined. The “emergency” legislation of the war period is reviewed before the process of repossession of private property and the still lacking return of formerly socially-owned apartments is analysed. Similarly to Chapter Three,

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the privatisation and denationalisation laws and policies are then presented, followed by social housing issues, the housing situation of the Roma minority and the relevant provisions in the marriage and inheritance law. Finally, conclusions and recommendations are included.

In *Chapter Five* the focus is on the housing legislation and policies of Serbia and Montenegro. Since neither country adopted specific “emergency” legislation during the war period, the review starts with the privatisation and denationalisation process in both states. This is followed by an examination of the Serbian and Montenegrin Expropriation Act. Subse-

quently, recent challenges in the housing sector are described, with special attention to refugees and displaced persons. As in Chapters Three and Four, social housing issues, the housing situation of the Roma minority and relevant provisions in the marriage and inheritance laws are then reviewed, followed by a set of recommendations.

Annex I contains the text of the Vienna Declaration on Informal Settlements in South Eastern Europe, adopted in September 2004. The Declaration of the 5th Forum of Cities and Regions of South-East Europe or “Budva Declaration” adopted in October 2004, is attached in Annex II.

CHAPTER TWO

Housing Legislation and Policies in Former Yugoslavia

2.1 Introduction

The legal and policy framework related to land and housing in former Yugoslavia had some specific and unique features, which had been developed during its socialist era. The concept and legal institute of “social ownership”, for example, was developed as a Yugoslav specific kind of ownership right. Social ownership has been widely misunderstood and often been simplified to mean state ownership, with the term “society” used as a legal and ideological fiction in order to conceal the state monopoly on property.

In the late 1950s, the former Federal People’s Republic of Yugoslavia (hereinafter: FPRY) decided to abandon the Soviet model of state ownership over production means and real property. In order to reduce the power of the state, it introduced the new concept of social self-governance (“model drustvenog samoupravljanja”). This new model abolished state monopoly through the establishment of specific non-state institutions, termed social-political communities (“drustveno politicke zajednice”), which comprised all non-state institutions at municipal, national and federal level. Examples of such non-state institutions were public housing enterprises and socially owned enterprises. The model of social self-governance introduced also the institute of social ownership as a new socio-economic category which became the dominant form of tenure throughout the Federation.

The concept of social ownership is based on the principle that nobody is entitled to claim ownership over the production forces and their results, which belonged to the society as a whole.⁴ The main motivation behind this new concept

⁴ Views on how to interpret “social ownership” differ among former Yugoslav academics. Most of these views, however, were based on the premise that social ownership was a new socio-economic category and tenure system, which could neither be fully

was the conviction that monopolies, especially the monopoly to exclusive possession of property, should not be allowed. Accordingly, socially owned property belonged to all members of the Yugoslav society and it was the society which delegated the right of disposal over such socially owned property to the Yugoslav Federation. Social ownership existed over urban and agricultural land, the production means (such as machines) in socially-owned enterprises, and use/occupancy rights over socially-owned apartments. Also, a system of associated work in economy (based on non-market regulations) was established. Thus, social ownership was introduced as something similar to “the common good” of all Yugoslav citizens with the results of production belong to the society as a whole.

The Constitution of 1963 changed the name of the Yugoslav Federation into Socialistic Federal Republic of Yugoslavia (hereinafter: SFRY). It formally introduces the concept of social ownership; thus in its Introduction it is said that “*nobody has the ownership right over social production means - nobody meaning neither social-political communities, associated labour organisations nor single workers - and nobody can under any legal ownership title claim the product of the “social work”, nor operate, nor dispose of social production forces, nor arbitrarily determine the conditions of distribution.*”⁵ However, the formal introduction of the concept of social ownership did not completely banish private ownership. For residential property, private ownership was allowed but significantly limited to a certain size of living space.⁶ Land that privately owned houses were built on always remained in social ownership. The private owner of the

explained nor grasped by traditional civil law criteria. Many academics agreed that social ownership is an ideological, philosophical, but also (pseudo-)legal category, which cannot be understood as entailing an unlimited right over real property. The limitations that characterised this tenure type were introduced in order to allow all members of the society to formally use the objects held in social ownership. As such, it was considered as a quasi-right or shared right of disposal under certain conditions. Questions as to who the holder of such social-owned property was, and who – in the name of society – had a right of disposal over it, were subject to much debate. The fact that social ownership still included a use right, was explained as a remaining feature of the market economy.

⁵ Introduction; Basic Principles, Chapter III of the Constitution of SFRY, 1963.

⁶ Article 2 of the *Law on Nationalisation of Rental Houses and Construction Land*, Official Gazette of FNRJ No. 52/58, specified that the citizen’s private residential ownership was limited to: (1) one family house, i.e. a house with two apartments or with three small apartments; (2) a maximum of two apartments as separate residential unit; (3) two family houses composed of maximum two apartments and a third small apartment; (4) one family house and one apartment as a separate part of a building.

house did have a use right over this socially owned land. Such use rights were also granted to factories (socially owned enterprises) over the socially owned land they were built on. For agricultural land, private ownership was limited to a maximum of 10 hectares.⁷

In this respect, Yugoslav socialism was rather pragmatic since it considered private ownership as an existing necessity and a remaining capitalist relic for a transitional socialist society. The restrictions on private property were imposed to prevent capitalist exploitation.

The Yugoslav legislator subsequently tried to regulate all ownership relations in one comprehensive law, which sought to merge some European continental civil law elements and the concept of social ownership. Preparatory work on this project took almost 20 years; the *Law on Basic Ownership Relations* was adopted in 1980.⁸ It privileged social ownership in several respects and introduced rules completely contrary to certain traditional western civil law institutes. For example, a thing in social ownership could not be acquired through adverse possession, ownership rights ceased upon transfer of a good into social ownership.⁹

2.2 Types of Tenure

The Yugoslav system included the recognition of private ownership, including tenure types derived from it, such as lease or authorised use. However, the model of social ownership became the most dominant form of ownership in all sectors and realms, including residential property. Social ownership over residential property was further developed into the “occupancy right” as a specific tenure type.

To understand the nature and scope of the occupancy right over socially owned residential property, its position and sig-

⁷ This limitation derives from the *Law on Agricultural fund of Overall People's Property and Allocation of the Land to the Agricultural Organisation*, Official Gazette of FPRY nos. 22/53, 27/53, 4/57, 46/62. See also Article 80 of the SFRY Constitution of 1974.

⁸ *Law on Basic Ownership Relations*, Official Gazette of SFRY, No. 6/80.

⁹ See Articles 29 and 44 of the *Law on Basic Ownership Relations* respectively. Furthermore Article 55 stipulated that easement could not be created by adverse possession over the thing in social ownership.

nificance within the socio-economic system of the Yugoslav society has to be considered.

Box 1: Socially Owned Enterprises

Socially owned enterprises were economic subjects, whose production means (such as machines, buildings) were socially owned: owned by Yugoslav society. Employees of socially owned firms were entitled to the right to use of the production means (machines) and the right to disposal of the final results of their work (the term “profit” could not be used for ideological reasons).

Box 2: Non-Economic Institutions

Non-economic institutions were all other subjects that were socially useful, but not productive in economic terms, such as administrative bodies, municipalities, public housing enterprises, hospitals, cultural institutions, schools and universities.

Based on the above mentioned model of social self-governance, employees of socially owned enterprises (hereinafter: SOE) and other, non-economic, institutions had to pay a certain percentage of their income to the housing funds of their SOE or institution. These housing funds were subsequently used to acquire socially owned apartments, which were built and maintained by self-governing non-state institutions, known as “Public Housing Enterprises” (hereinafter: PHE).¹⁰ SOEs and non-economic institutions were legally required to agree with these PHEs on the construction of apartments¹¹, based on the financial means of their housing funds. Once an apartment building was constructed, the SOE or non-economic institution which had funded the construction was entitled to allocate apartments to its employees. Accordingly, they were also known as “allocation right holder”.¹² The allocation of apartments was based on a number of eligibility criteria, upon which a priority list of the employees entitled for such an allocation was established.¹³ The eli-

¹⁰ The Croat/Bosnian/Serbian name of this institution was *Samoupravna interesna zajednica stanovanja*, which could be translated as: “Self-governing body for the interests of the community for housing”. It is generally referred to as Public Housing Enterprise (PHE).

¹¹ Article 110, paragraph) *Law on Associated Labour*, Official Gazette of SFRY, Nos. 53/76, 57/83, 85/87, 6/88, 38/88.

¹² See Article 49 *Law on Housing Relations of FPRY n.16/59*.

¹³ These eligibility criteria were generally established within the internal statutes of the SOE or non-economic institution. Persons on the priority list, who deemed that the eligibility criteria were violated, were entitled to lodge a claim for annulment of the allocation decision with their SOE or non-economic institution. The supreme organ of the

gibility criteria included generally the years of employment, the number of household members for each employee, the social and economic position of their household members, their health conditions and their housing need.

Once employees were on top of the priority list, the allocation right holder allocated available apartments to them through an internal administrative act called “allocation decision”.¹⁴ With this document, the employees were entitled to enter the assigned apartment. The allocation decision required the employees to conclude a “contract of use” over the apartment with the PHE within a short period of time, usually one month, upon the physical possession of the apartment.

Upon the conclusion of this contract of use, the employee and his/her spouse were registered (or co-registered) as occupancy right holders. The basic rule was that when both spouses live in the same household and apartment, the occupancy right was granted *ex lege* to both spouses, unless the spouses agreed otherwise.¹⁵ Formal co-registration was of secondary importance in comparison to this very strong principle. Thus, the substance of occupancy right was that both spouses were joint holders of occupancy rights. Other household members were users of the apartment and were usually mentioned in the contract of use.

In exceptional cases other household members could be co-registered. The contracts of use were registered at the PHE, tribunals and the allocation right holders.

Accordingly, the eligible employees acquired the occupancy right over the socially owned apartment only upon the fulfilment of all three conditions, i.e. the allocation decision, the

physical presence in the allocated apartment and the conclusion of the contract of use between them and the PHE.¹⁶

The determination of the nature of the occupancy right within the civil law doctrine is difficult. It may be best described as a right *sui generis* (i.e. not deriving from one of the tenure types established within the civil law system), which includes both elements of the obligation rights and the real rights regime. On the one hand, the obligation or contractual part was introduced through the contract of use as a prerequisite for the acquisition of the occupancy right.¹⁷ Other obligations of the occupancy right holder included the obligation to pay “rent”, utilities and the general building expenses. On the other hand, the occupancy right provides for elements of the real rights regime. Thus, it allowed the occupancy right holders to exercise this right *erga omnes*, which means that they could exclude not only their contractual party, the PHE, but any third person from the use or the disposal of their apartments. The second real or absolute element of the occupancy right was its indefinite duration as a right for life which could be inherited.¹⁸ Furthermore, the family character of the occupancy right extended it to other family members. Finally, the occupancy right holder was allowed to change or modify the apartment by all legal means, apart from transfer, sale or mortgage.

Under civil law, the occupancy right holder could be best defined as a beneficiary of rights, which go beyond those of a protected lessee but which do not include all those of a private owner. Upon the fulfilment of their obligations in the contract of use, the occupancy right holders enjoyed substantive legal protection which, at least until the war, amounted to a high level of secure tenure.

management “Workers Council” made the final decision on such claim. See Articles 50 and 51 of the *Law on Housing Relations of FPRY n.16/59*.

¹⁴ In general the employee could not choose a particular apartment. Only in particular social or medical cases of the occupancy right holder or their family members, upon the opinion/recommendation of the competent medical organ or the centre for social care, could specific requirements be taken into account.

¹⁵ *Law on Housing Relation of 1966*, Art.18, paragraph 2.

¹⁶ The above described procedure for the acquisition of an occupancy right has been established through Articles 46-61 of the *Law on Housing Relations of 1959*, Official Gazette of FPRY, No. 16/59 and 17/62.

¹⁷ *Law on Housing Relations*, Official Gazette of FPRY n.16/59 (Art.130) and 17/62 (Art.50).

¹⁸ The occupancy right could generally not be terminated. However, the *Law on Housing Relations of 1959* provided for a number of reasons to terminate the occupancy right upon exceptional circumstances, such as the non paying the rent for three consecutive months (Articles 136, paragraph 3 and 130, paragraph 3) non-use of the apartment for the period of more than 6 months (Article132, paragraph 1) in certain cases *ex lege*, (e.g. in case of allocation of another apartment: Article 24). In these cases, the termination procedure was initiated by the competent public attorney office.

Thus, prior to the 1990s, the real property regime of former Yugoslavia was characterised by two tenure systems: private ownership and social ownership. For the latter, it introduced the tenure type of occupancy rights, which established the rights and obligations of users of socially owned apartments. During the rapid industrialisation and urbanisation of the Yugoslav society in the 1960s and 1970s, these occupancy rights over socially owned apartments became prevalent in urban areas. In rural areas, private ownership remained but was subject to severe restrictions.¹⁹

2.3 Housing Legislation and Policies

In this section an overview will be provided of the relevant housing legislation and policies from 1945 until the segregation of former Yugoslavia in the early 1990s.

2.3.1 Period from 1945 to 1953

At the end of World War II the newly introduced socialist system resulted in significant structural changes that affected all parts of political, economic and social life in former Yugoslavia. Copying the Soviet model, the state assumed a monopoly on all aspects of public life. Obviously, these changes also had a deep impact on the property and housing relations, which became characterised by state intervention and administration.

World War II had resulted in many homeless and displaced persons and in massive migration from rural to urban areas that additionally aggravated the housing crisis in urban areas. In an effort to manage this housing crisis, the Yugoslav authorities assumed the power to determine the amount of rent in order to protect the lessees, mostly homeless or displaced persons. Furthermore, the state retained the exclusive power to allocate residential units to people with housing needs. This allocation applied even to private property as the state

¹⁹ These restrictions consisted of the so-called “agrarian maximum” upon which “one rural domestic community”, accordingly a family household but not every person, could own a maximum of 10 hectares of agricultural land.

imposed the obligation on private owners to accommodate families in up to the half of the surface of their house.²⁰ This limitation of private ownership over residential property went so far that it often did not leave enough surface for the later imposed nationalisation of so-called “surplus space” The power of administrative organs in deciding on the allocation of “surplus living space” in private houses to homeless and internally displaced persons was practically unlimited. This meant that the state did not have to resort to nationalisation in such cases. The families that were accommodated in private houses had to pay rent to the owners, but this rent was determined by the administrative organs and the use of the rental fee had to be spent on repair and maintenance of the house.

Later a number of laws and decrees were adopted, which transformed private ownership over a large part of residential property into state ownership.²¹

The state interventionism in the housing market had positive and negative impacts. On the one hand, it secured a certain level of social equality and security through the establishment of a rational use of housing with uniformed living space and fixed maximum rents. On the other hand, the state-controlled rent was not sufficient even for the ordinary maintenance of the housing fund. The low rents did not stimulate the lessors to maintain the housing units, while the tenants did not handle their assigned apartments with the necessary due care. Accordingly, the administrative intervention in the housing market resulted in the decline and deterioration of the already limited housing fund.

2.3.2 Period from 1953 to 1959

In order to reduce the state monopoly in the housing sector and to end the decline of the housing fund produced by the

²⁰ This practice was based on administrative decisions, not on a law.

²¹ *Decree on Administration of Residential Units*, Official Gazette of FPRY, Nos. 52/53 and 29/54; *Law on Housing Relations*, Official Gazette of FPRY, No. 16/59; *Law on Economic Activity of Residential Units in Social Ownership*, Official Gazette of SFRY, Nos. 35/65 and 50/68. State ownership was later transformed to social ownership.

overall state intervention, a new policy and subsequently a new set of laws were adopted.²²

While until 1953 the construction of residential units was exclusively financed by the state, the *Law on Contribution to the Housing Fund*²³ imposed in 1956 a compulsory contribution of 10% of the employees' salary to a newly established particular fund for housing construction. The subsequent increase of financial resources significantly stimulated the housing construction. This trend is shown in the table below:

Table 2.1: Residential Housing Construction in Yugoslavia from 1952 to 1959

Year	Number of Units
1952	34,907
1953	38,199
1954	34,208
1955	29,849
1956	37,005
1957	44,725
1958	61,681
1959	60,611
TOTAL	341,185

Source: Yugoslavia 1946-1964, Yugoslav Statistical Yearbook, 1965.

The table gives an account of the enormous and constant increase of residential housing construction from 1955 to 1959, when the construction of apartments had more than doubled. Indeed, Yugoslavia was from 1957 to 1961 one of the European countries with the highest share (6%) of the GDP for housing construction.

Once the emergency situation in housing had come to an end, the attention shifted to improving the legal security of tenure of the apartment users. At that time, competent organs could terminate the contract of use and allocate the apartment user another accommodation according to their discretion. This

22 Law on Nationalisation of Rental Houses and Land for Construction, Official Gazette of FPRY, No. 52/58; Law on Housing Relations, Official Gazette of FPRY, No. 16/59; Law on Commercial Flats and Space, Official Gazette of FPRY, No. 15/59; General Law on Housing Communities, Official Gazette of FPRY No. 16/59; Law on Housing Cooperatives, Official Gazette of FPRY, No. 15/59; Law on Ownership on the Part of Residential Units, Official Gazette of FPRY, No. 16/59; Law on Financing the Residential Construction, Official Gazette of FPRY, No. 47/59.

23 *Law on Contribution to the Housing Fund*, Official Gazette of FPRY, No.57/55.

needed to be changed, and the secure tenure and stability of tenants improved. Thus, the *Decree on Administration of Residential Units*²⁴ introduced the “right to an apartment”, which gave the users a subjective right to the permanent use of the allocated apartment, in accordance with the general rules on residential units.²⁵ The acquisition of the right to an apartment required a contract of use between the user and the competent municipal organ for housing over the allocated residential unit. The user was thereby obliged to pay a rent which was established by the municipal housing organ based on various factors, such as the location and the condition of the apartment. The right to an apartment could only be terminated in exceptional cases enlisted in the Decree²⁶, while the user preserved the right to cancel the contract with a one month notice.²⁷

2.3.3 Period from 1959 to 1970

In the late 1950s, former Yugoslavia introduced a series of legislative reforms, which established the concept of self-management over the production means. The core element of this concept was the limitation of state monopoly in the decision making process.

The reform also introduced significant innovations for the housing sector. Thus, SOEs and non-economic institutions were authorised to set up particular housing enterprises, which became responsible for the construction and maintenance of socially owned apartments. Municipalities as non-economic institutions were usually entrusted with the management of these housing enterprises. A new housing policy in the form of the *Federal Resolution on the Further Development of the Housing Economy*²⁸ declared housing as a priority for the

24 Article 1 Decree on Administration of Residential Units, Official Gazette of FPRY, No. 21/54.

25 Ibid, Article 7, paragraph 2.

26 Ibid, Article 54 established inter alia the following conditions for the termination of the contract of use: (1) if the user damaged the allocated apartment; (2) in case of use of the apartment contrary to the provisions stipulated in the contract of use; (3) in case of non-payment of rent for two months; (4) in case of non payment of maintenance costs of common space within a certain period.

27 Ibid, Article 58

28 *Resolution on the Further Development of the Housing Economy*, Yugoslav Federal Assembly, 21 April 1965, Official Gazette of SFRY, No. 21/65.

Yugoslav society and confirmed housing enterprises to be of particular social interest.

Subsequently, the municipalities were given legislative power to establish the minimum and maximum amount of rent. In conformity with the new policy, the housing enterprises adopted more economic criteria for the management of apartment buildings. Thus, the rent ceased to be symbolic and became tied to service and maintenance costs. Despite the higher amounts of the rent, it however never interfered with the family living standard.²⁹

The main source for housing construction remained the federal budget. However, the higher rents allowed the Government in 1961 to reduce the employees' contribution to the housing fund from 10% of their salary to 4% of their net salary.³⁰

The new policy resulted in the beginning of the 1960s in another increase of construction of apartments, especially in urban areas. In 1961 alone, the housing enterprises constructed more than 100,000 residential units, i.e. over 60% more than the apartments constructed in 1959.

Table 2.2: Construction of Apartments in Yugoslavia from 1960 to 1965

Year	Total Number of constructed Apartments	Socially owned
1960	75,733	35,626
1961	100,175	43,215
1962	100,523	43,597
1963	110,183	43,623
1964	121,549	51,519
1965	121,972	44,578
TOTAL	634,135	262,160

Source: *Yugoslav Statistical Yearbook, 1978, page 87.*

²⁹ In 1960 the rents increased 2.5 times. However, they never exceeded 3% of the total household expenses.

³⁰ The Law on Contribution to the Housing Fund, Official Gazette of FPRY n. 57/55 was thereby replaced by the amended Law on Contribution to the Housing Fund, Official gazette of FPRY n. 9/61 and Official Gazette of SFRY nos.52/64 and 8/65. While the first Law on Contribution to the Housing Fund imposed a contribution of 10% from both the active and the retired population (pensions), the subsequent Law of 1961 imposed a contribution of 4% from the gross salaries only.

In 1959, the *Law on Housing Relations* finally introduced the occupancy right.³¹ This right was much more substantial than the previous, limited “right to an apartment”, which it replaced. Thus, the occupancy right was extended to all members of the occupancy right holder’s household. The family character of the occupancy right accordingly guaranteed the secure tenure of all household members.³² The Law furthermore gave women equal rights to obtain occupancy rights and to rent apartments. Rental at that time was not common but still possible. The *Law on Housing Relations* also assigned the SOEs and other non-economic institutions the allocation right upon which they could allocate socially owned apartments to their employees. In addition, the so-called allocation right holder also had the competence to initiate eviction proceedings against unauthorised users of socially owned apartments.

2.3.4 Period from 1970 to 1974

Amendments to the Constitution in 1971 changed the institutional framework of the Yugoslav Federation.³³ Upon these amendments, the republics became the principal legislators, whereas the Federation reserved only legislative powers on matters of common interest for its whole territory. Accordingly, the competence on housing legislation was transferred

³¹ Article 3 *Law on Housing Relations*, Official Gazette of FPRY, No. 16/59.

³² The substantive rights especially in the favour of the spouses were guaranteed by the law under certain conditions. The basic rule was that spouses living in the same household and socially owned apartment were both considered to be occupancy right holder, unless the spouses would agree otherwise. Therefore, the occupancy rights were granted *ex lege* to both spouses. When the spouse to whom the occupancy right had been initially assigned, died or ceased to use the apartment permanently, the other spouse became the occupancy right holder over that apartment. The substance of occupancy right was that both spouses were joint holders of occupancy rights while other persons (household members) were users of the apartment. Users are entitled to permanently use the apartment under the same conditions as occupancy right holders. If for certain reasons the occupancy right holders (both spouses) ceased using the apartment, other household members (users) must determine in the common agreement who would be occupancy right holder. If they failed to do so, then the allocation right holder could nominate the occupancy right holder.

³³ The SFRY as a federal state was composed of six federal republics (states): Slovenia, Bosnia and Herzegovina, Croatia, Macedonia, Montenegro and Serbia with two provinces with autonomous status, Kosovo and Vojvodina. The individual republics already enjoyed a substantial autonomy with individual parliaments, constitutions and constitutional courts. The 1971 constitutional amendments gave each republic, including the two autonomous provinces, a quasi-independent status with powers comparable to those within a confederate state. This status especially refers to the republics' right to be represented by their own delegations in the federal parliament and their right to approve federal laws.

from the Federation to the republics.³⁴ Now the Yugoslav republics could decide autonomously on the compulsory amount of the employees for the construction of socially owned apartments, which varied among the republics between 4.5% and 6% of the net salaries.

The improvement of the general living standard subsequently also stimulated private investors to purchase residential property. Supported by favourable banking loan conditions, which allowed for loans over a period of 20 years at only 2% of annual interests, they started to invest proper financial means in the purchase of apartments.³⁵ From 1965 onwards, the participation of private investors increased continuously. In fact, in 1970 the private investment in housing was 3.5 times higher than in 1965. These private financial investments and the financial means of the housing funds allowed for intensive construction of residential property.

Table 2.3: Construction of Apartments in Yugoslavia from 1966 to 1970

Year	Total	Socially owned	Privately owned	Built Apartments per 1000 Citizens
1966	129,109	50,330	78,779	6.6
1967	127,600	45,147	82,453	6.4
1968	128,883	43,775	85,108	6.4
1969	120,116	39,929	80,187	5.9
1970	128,792	44,394	84,398	6.6
Total	634,500	223,575	410,925	6.3

Source: Yugoslav Statistical Yearbook, No. 5, 1973.

In 1970, with 27% of the total investments for housing construction, which constituted 8% of the GDP, former Yugoslavia was the European country with the highest investment in housing construction. In the 1970s, an employee of an SOE with an average salary could afford a medium-sized socially owned apartment in a relatively short period of time be-

34 Each republic and autonomous province subsequently adopted its own Law on Housing Relations: Serbia: Official Gazette of SRS, No. 29/73; Macedonia: Official Gazette of SRM, Nos. 36/73, 14/75 and 27/86; Kosovo: Official Gazette of SAPK, Nos. 26/73, 11/83, 29/86 and 46/89; Slovenia: Official Gazette of SRS, Nos. 18/86 and 33/81; Bosnia and Herzegovina: Official Gazette of SRBiH, Nos. 13/74, 16/74, 14/84 and 12/87; Vojvodina: Official Gazette of SAPV, No. 19/74; Montenegro: Official Gazette of SRCG, Nos. 4/74 and 32/78; and Croatia: Official Gazette of SRC, No. 52/74.

35 As described above, private ownership of residential property was allowed, but, however, restricted to a certain size of living space.

tween 7 or 8 years.³⁶ Housing availability and housing space improved further in the course of the 1970s.³⁷

An important innovation in Yugoslav housing policy was the introduction of “solidarity apartments” for low-income groups who could not satisfy their housing needs without the help of the society.³⁸ The relevant laws assigned the centres for social work to determine eligible candidates for solidarity apartments, who were entitled to acquire an occupancy right over such an apartment.³⁹

2.3.5 Period from 1974 to 1990

The 1974 Federal Yugoslav Constitution provided for the principles of a new social and economic order based on the concept of “self-management” and “associated labour”. While it confirmed that the final results of production belonged to the society as a whole, it also upgraded the occupancy right over socially owned apartments to a constitutional principle.⁴⁰

In the previous period of the “housing economy”, housing enterprises constructed apartments for anonymous “clients”, which were SOEs, other non-economic institutions or unknown private individual buyers. In the middle of the 1970s, the new intention was to establish a system for a more rational and programmatic construction and maintenance of apartments, which served the individual interests of all par-

36 However, an employee of a non-economic subject, for example a public library, had to wait longer before s/he could be allocated a socially owned apartment, as non-economic subjects had less apartments at their disposal. Yugoslav Statistical Yearbook No. 10, 1975.

37 Yugoslav Statistical Yearbook No. 6, 1980. From an average of 49.6 square meters in 1971 to 52.2 square meters in 1975.

38 Only the Slovenian *Law on Housing* (Official Gazette of SRS, Nos. 18/86 and 33/81 (Article 4)) explicitly mentioned the allocation of solidarity apartments. In the early 1970s all republics and the autonomous regions decided on separation of the particular amounts for housing construction of the solidarity apartments by the PHE. Criteria for distribution of the solidarity funds were defined by the internal acts of the allocation right holders.

39 Usually, eligible candidates for solidarity apartments were employees having had work accidents, and families with only one employee in the household. Until the end of 1980s, unemployment did not represent a social problem in the Yugoslav society.

40 Article 242 of the SFRY Constitution of 1974 reads: “Citizen are guaranteed (emphasis added) the acquisition of the occupancy right over an apartment in social ownership to whom is secured, under conditions determined by law, the permanent use of the apartment in social ownership in order to satisfy personal and family (or household) housing needs.”

ticipants involved better. To that end, the *Programme of Publicly Directed Housing Construction* was adopted at federal level in 1975. This new housing policy aimed to improve the housing standard through the introduction of a quicker, more flexible and more rational approach in the construction of apartments and houses. To achieve this goal, it established a particular institution of common interest called Public Housing Enterprise (hereinafter: PHE), which were to be organised at municipal level.⁴¹ The main mandate of the PHEs was to co-ordinate the interests and to establish interactive participation of the various actors engaged in housing construction, such as investors, constructors and municipal organs.⁴² To ensure a better communication and interaction between the stakeholders, the PHEs were established as an assembly-forum, composed on the one hand of delegates of the various actors involved in housing construction - such as architects, cadastral offices, infrastructure and urban planners and constructors - and on the other hand of delegates of the beneficiaries, such as SOEs and other non-economic institutions.⁴³ Thus, the assembly was a forum where all stakeholders could exchange their specific interests and where they could agree on the financial terms of future construction projects. Despite their function as a discussion forum the PHEs were, however, autonomous institutions with their own legal capacity. Upon the agreement of all involved parties on a construction project, they concluded in this role a contract on the joint venture with all parties.

The rationale behind the PHEs was the idea to bring together the - in the capitalist system completely opposed - actors in housing construction, i.e. the sellers, the buyers and the public organs, in order to bundle their interests and efforts. To avoid the accumulation of profits on the part of one single actor at the expense of the others, the PHEs forestalled the possibility of direct agreements between the parties; instead it obliged them to mediate their interests in the

41 See also above, Section 2.2, Types of Tenure.

42 One year after the introduction of the PHEs in 1975, already more than 1000 PHEs had been established at municipal level throughout the Federation, their number continuously increasing.

43 All delegates had an equal voice and voting right. However, private investors as future buyers of constructed apartments and houses were not represented in the assembly.

assembly meetings and then to conclude a contract on the joint venture with the PHEs. Bringing together the opposed stakeholders in a single forum, the PHEs aimed to support the general interests of the society by preventing the creation of monopolies and the subsequent exploitation of the other parties involved. Thus, the structure of the PHE was in accordance with the Yugoslav concept of self-management, which allocated the production means and the results of the production to the society. Furthermore, the PHEs embraced another component of the self-management concept, which provided for the free association and representation of the interests of the single members of the society within non-state institutions.

Once the construction of an apartment, which had been financed by an SOE or a non-economic institution, had been completed, the allocation right holder assigned the apartment to its employees. They subsequently concluded a contract of use with the PHEs and thus acquired the occupancy right over the socially owned apartment. For individual private investors, however, a different procedure applied. They invested their own financial means in the apartment through a direct contract with the PHEs, which specified the features of the apartments and its costs. Upon the finalisation of the construction, the private investors acquired full private ownership over the apartment. Since private constructors were not admitted, all contracts for the construction of private apartments had to be concluded with the PHEs.

The period of *publicly directed housing construction* lasted from 1975 until the segregation of former Yugoslavia in the early 1990s. In its initial phase, the programme contributed considerably to improvement of the housing conditions. However, since the early 1980s, the SFRY faced an economic crisis which had been caused by several factors, such as huge external debts and a galloping inflation and which also had its consequences for the housing sector. For the first time since the 1950s, the housing construction assumed a negative trend. During this crisis, the private sector became the principal investor in housing construction.

Table 2.4: Construction of Apartments in Yugoslavia from 1983 to 1989

Year	Total per Year	Public Sector (socially owned)	Private Sector	Built Apartment per 1000 Citizens	Percentage of socially owned Apartments
1983	139,772	51,667	88,200	6.1	36.9
1984	130,845	43,760	87,085	5.7	33.4
1985	127,589	42,706	84,883	5.5	33.5
1986	129,996	45,198	84,798	5.6	34.8
1987	120,269	38,094	82,175	5.1	31.7
1988	119,332	36,281	83,051	5.1	30.4
1989	116,236	30,220	86,016	4.9	26.0

Source: *Statistical Yearbook of Yugoslavia 1990*, page 106.

At the end of the 1980s, various reasons for the housing crisis could be identified. The institutional changes of the 1974 Constitution and the subsequent housing policy had imposed the PHEs as the exclusive “sellers” to provide apartments to investors, both private individuals and socially owned firms. At the same time the PHEs had become the exclusive “buyers” of apartments from constructors. In fact, the new housing policy had created an “institutionalised monopolist”, which prevented direct contacts between investors and constructors and accordingly the development of an efficient housing construction based on market criteria. Being paid by the investors according to an established schedule without any connection to the services provided, the PHEs furthermore became more and more inefficient. Additionally, the PHEs were not motivated to exercise their influence on the constructors to construct the apartments at reasonable costs. This trend became visible in the 1980s when the constructors, as a protective measure against the high inflation, had irrationally raised their prices and the PHEs had subsequently passed them on to the final buyer without any intervention. This irrational and inefficient approach in housing construction was probably the main reason for the housing crisis at the end of the 1980s.

2.4 Conclusions

The housing legislation and policies of former Yugoslavia after World War II until its segregation in the early 1990s may be summarised as follows:

- The former Yugoslavia introduced a Yugoslav specific kind of ownership, the so-called social ownership, which embraced the idea that neither the state nor its individual citizens but the society as a whole should be owner of the production means and its results.
- For residential property, the concept of social ownership introduced the occupancy right, which provided for the rights and obligations of users of socially owned apartments. It may be best described as a property relation, which gives the title holder more rights than a lease agreement but which does not include all the privileges of private ownership. In fact, the timely unlimited and inheritable occupancy right allowed occupancy right holders to exclude anybody from interfering with their right over the socially owned apartment without that they could fully dispose over it.
- After World War II, former Yugoslavia faced a huge demand in housing on part of homeless and displaced persons, which was further aggravated through massive urbanisation. Since the initial overall state administration of residential property resulted in a decline of the housing stock, it entrusted non-state self-managing housing enterprises with housing construction. Furthermore, it introduced housing funds within socially owned enterprises, which collected compulsory contributions of the employees for housing purposes. The higher financial resources resulting from these contributions led to a significant increase in housing construction.
- Once the emergency situation had come to an end, the Yugoslav legislator provided for more secure forms of tenure to apartments users through the establishment of a “right to an apartment” which was subsequently replaced by the occupancy right. The increasing living standard in the course of the 1970s allowed more private investors to purchase apartments. These additional financial resources further supported the construction boom in former Yugoslavia.
- In order to administer the housing market, the self-managing housing enterprises became more and more important. Initially established to mediate the interests between constructors and public and private investors, they finally assumed a monopoly in the construction

sector. This monopolist position led to inefficiency and mismanagement, which again resulted in a drastic decrease of the construction of socially owned apartments.

- At the same time, the private sector became the principal investor in housing construction. Upon the fall of the Berlin Wall, the public aspiration for private ownership over their apartments rose. This led the Yugoslav republics to adopt privatisation laws, which allowed occupancy right holders of socially owned apartments to purchase them. Remaining occupancy rights were subsequently transformed in lease agreements. The challenges and failures of these privatisation processes shall be described in detail throughout this research.
- While former Yugoslavia in the 1970s experienced a construction boom which made it in Europe a leading country with respect to investment in construction, the mismanagement at the end of the socialist era and the disastrous consequences of the recent wars left a complete devastated housing market, characterised by millions of refugees and internally displaced persons without home and a huge destroyed housing stock especially in Bosnia and Herzegovina and Croatia. At the same time, the discriminatory legislation of the war period had deprived millions of property owners of their rights. The following chapters will review how Bosnia and Herzegovina, Croatia and Serbia and Montenegro have mastered these challenges.

CHAPTER THREE

Bosnia and Herzegovina

3.1 Introduction

The recent war in Bosnia and Herzegovina from 1992 through 1995 caused the most serious human rights violations in Europe after World War II. Killings, disappearances, forced displacement, systematic rapes, evictions, and mass expulsion of people from their homes, were used in order to change the ethnic composition of communities. In such an environment deprivation of property was an integral part of the policy of so-called ‘ethnic cleansing’, which was generated by extreme nationalist leaders to create ethnically pure states. In total, some 2.2 million persons were forced to leave their homes. Approximately 1 million persons fled across borders, an estimated half of whom fled to other republics of the former Yugoslavia, while approximately 1 million others became internally displaced.⁴⁴ Before the war, urban areas were generally ethnically mixed, while rural areas tended to be dominated by one ethnic group. However, ethnically homogenous villages were positioned very close to other ethnically diverse villages throughout the country. The war and ‘ethnic cleansing’ shattered Bosnia’s heterogeneity and tolerance; today Bosnia’s ethnic picture is completely different from the situation before war.⁴⁵

The signing of the General Framework Agreement for Peace in Bosnia and Herzegovina, generally referred to as the Dayton Peace Agreement (hereinafter: DPA), on 14 December 1995 formally marked the end of the war.⁴⁶ The DPA

44 Preliminary Report of the Special Rapporteur, Paulo Sérgio Pinheiro, submitted in accordance with Sub-Commission resolution 2002/7 on Housing and Property Restitution in the context of the return of Refugees and Internally Displaced Persons, 16 June 2003, E/CN.4/Sub.2/2003/11, p. 7.

45 Deutsche Gesellschaft für Technische Zusammenarbeit, Sector Project Land Tenure in Development Cooperation, *Land Tenure Issues in Post-Conflict Countries – the Case of Bosnia and Herzegovina*, undated.

46 The commonly accepted name of Dayton Peace Agreement derives from the place where the three parties reached this agreement, in the US air military base Wright-Peterson in Dayton – Ohio on 21 November 1995.

was an internationally brokered peace agreement, signed under strong pressure of the USA by representatives of the Bosnian counterparties, i.e. Bosniaks, Serbs and Croats.⁴⁷ In its Annex 10 it introduced an international body responsible for the civilian implementation of the peace settlement, the High Representative for Bosnia and Herzegovina.⁴⁸

The DPA recognises the existing consequences of the war by providing in its Annex 4 a new Constitution for Bosnia and Herzegovina, which establishes two Entities:

- (1) The Federation of Bosnia and Herzegovina⁴⁹ (FB-H);
- and (2) The Republika

Srpska (RS); within one unified, internationally recognised, whole Bosnia and Herzegovina (B-H).⁵⁰

The B-H framework is also will be discussed in October 2005 at an international conference on Bosnia’s future.⁵¹ One of the options that may be discussed by the international experts discussed various options, majority of them agreed that central state institutions and municipalities are essential for future efficient and self-sustainable Bosnian state, however, among the experts, there is still no consensus on abolishment of entities. will be the creation of four or more economic re-

47 No women were among the representatives of the Bosnian counterparties. See UNIFEM Gender Profile – Bosnia and Herzegovina – Women, War & Peace, p. 4. Available on: <http://www.womenwarpeace.org/bosnia/bosnia.htm>

48 Despite the huge international involvement, the DPA was not a United Nations brokered peace agreement. As a consequence, the institutions set up by the DPA such as the High Representative or the Human Rights Chamber are international, not UN missions. (In addition to these institutions, the UN Mission that was established in Bosnia and Herzegovina (UNMBIH) was an autonomous UN mission and not foreseen by the DPA). The DPA clearly distinguishes the mandate and responsibilities of the military forces (Annex 1A) and the mandate and personnel responsible for the civilian implementation of the DPA provisions. Annex 10 to the DPA gives the Office of the High Representative (OHR) a very powerful mandate, which includes the authority to impose legislation when the domestic authorities do not comply with their obligations.

49 The Federation of Bosnia and Herzegovina was created by the Washington Agreement on 18 March 1994. The Washington agreement marks an end to the internal war between Bosnian Croats and Bosniaks in 1993 and represents a first step towards a political alliance between these two ethnic groups. The Agreement also suspends the earlier Zagreb-Belgrade rapprochement whose purpose was a two-way partition of Bosnia-Herzegovina. The undersigned parties (Bosnian Government, Croatian Foreign Minister Representative, and Bosnian Croat Representative) agreed on establishing a B-H Federation in the areas of the Republic of Bosnia and Herzegovina with a majority of Bosniak and Croat population.

50 Article I, paragraph 3 of the Constitution of Bosnia and Herzegovina. Both ‘BiH’ and ‘B-H’ are used to abbreviate Bosnia and Herzegovina. In this report, the abbreviation ‘B-H’ is used.

51 International Conference for Bosnia and Herzegovina, Bosnia and Herzegovina: Ten Years of Dayton and Beyond, 20-21 October 2005, Geneva. See: <http://www.bosnia2005.org>

gions, rather than ethnic borders. The discussion among the B-H political leaders on the constitutional changes and on future Bosnian institutional framework is still ongoing.

Governance Structure

Each Entity enjoys almost complete autonomy in its own internal governance. The Constitution lists those governmental functions and powers that are assigned to the central state institutions (Parliamentary Assembly, Presidency, Constitutional Court and Central Bank) of B-H; all other governmental functions and powers remain with the two Entities.⁵² Out of a total of 42 parliamentary seats in the lower house, 7 are taken by women (16.7%). Of the 15 senators in the upper house, none are women.⁵³

In the House of Representatives of the FB-H, 21 out of 98 members are women. Out of the 83 members of the RS National Assembly are women.⁵⁴

The FB-H is administratively subdivided into 10 cantons and 84 municipalities. The RS is a centralised Entity administratively subdivided into 64 municipalities, while the city of Brcko is an autonomous administrative unit or district.⁵⁵ In the municipal elections of October 2004, women were elected to 18.1% of 3,145 municipal councillor mandates, while 3 out of 148 mayoral races were won by women.⁵⁶

The B-H Law on Gender Equality, adopted in 2003, requires state and local authority bodies to ensure and promote equal

representation of women and men in management and the decision-making process.⁵⁷

Constitutional Provisions

Article II, paragraph 1 of the Constitution of B-H, as set forth in Annex 4 to the DPA, provides that “Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognised human rights and fundamental freedoms.” Article II, paragraph 2 specifies that the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and its Protocols are directly applicable and enjoy supremacy over all domestic law. Article II, paragraph 3 explicitly confirms that “all persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms referred to in paragraph 2” and enumerates *inter alia* (f) the right to private and family life, home and correspondence, (k) the right to property and (m) the right to liberty of movement and residence. Article II, paragraph 4 provides that all human rights and fundamental freedoms contained in the Constitution and in fifteen human rights treaties of the United Nations and of the Council of Europe shall be secured to all persons in B-H without any discrimination on any ground including sex, national or social origin and association with a national minority. The Law on Gender Equality furthermore prohibits indirect and direct discrimination on the basis of sex.⁵⁸

The recent Bosnian war, characterised by mass flight of refugees and displaced persons and abandonment of their property, forced the drafters of the DPA furthermore to include the repossession of property and the right to return as a constitutional principle in Article II, paragraph 5: “*All refugees and*

⁵² Article III, paragraph 2 (a) of the Constitution of Bosnia and Herzegovina.

⁵³ Inter-Parliamentary Union, *Women in National Parliaments: Situation as of 30 April 2005*, available on: <http://www.ipu.org/wmn-e/classif.htm>. There is no quota system in place for the National Parliament, although political parties in B-H are obligated to include 30% female candidates on their tickets. UNIFEM Gender Profile – Bosnia and Herzegovina, p. 4. Available on: <http://www.womenwarpeace.org/bosnia.bosnia.htm>

⁵⁴ *Ibid.*, p. 5.

⁵⁵ The status of Brcko was decided by international arbitration, as established by Annex 2 to the DPA. The Final Award of 5 March 1999 led to the creation of a Special District for the entire pre-war Brcko municipal territory, which comprises the territory of both Entities RS and the FB-H. An Annex to the Final Award, issued by the Arbitration Board on 18 August 1999, granted autonomy to the Brcko District Government in judicial affairs, internal affairs and education.

⁵⁶ UNIFEM Gender Profile – Bosnia and Herzegovina, p. 5. See *supra* note 10.

⁵⁷ In order to achieve this, the relevant authorities shall draw up special programmes and plans to improve the gender representation in the bodies of governance at all levels. Article 15 of the Law on Gender Equality in Bosnia and Herzegovina, Official Gazette of B-H, No. 16 June 2003. The B-H Ministry for Human Rights and Refugees is responsible for monitoring the implementation of this law. The Agency for Gender Equality of B-H, established under this law (Article 23), is to draft a state action plan on gender equality and coordinate its implementation. This law also foresees the establishment of gender centres in FB-H and RS (Article 24) who are to adopt and monitor gender balanced policies in their Entities. See for full text of the law: http://64.233.161.104/search?q=cache:sdW69ThkXW0J:www.fgenderc.com.ba/txt/equality_law_in_bh.doc+Bosnia+and+Herzegovina+Law+on+Gender+Equality+of+2003&hl=en

⁵⁸ Article 3 of the Law on Gender Equality.

displaced persons have the right freely to return to their homes of origin. They have the right, in accordance with Annex 7 to the General Framework Agreement, to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any such property that cannot be restored to them. Any commitments or statements relating to such property made under duress are null and void'.⁵⁹ However, neither the Constitution of B-H nor the DPA provide explicitly for the right to adequate housing.

Demographic and Socio-Economic Data

Due to the recent conflict and the mass internal displacement of the Bosnian population, the number of inhabitants can only be estimated. As of 30 June 2001, the current population was estimated to be around 3.7 million.⁶⁰ The official available data is based on the censuses conducted in 1971, 1981 and 1991, as shown in the table below.

Table 3.1.1 Population of B-H according to Censuses

Census	Area/ km ²	Total	Males	Females	House- holds	Popula- tion per km ²
1971	5,1197	3,746,111	1,834,600	1,911,511	848,545	73,2
1981	5,1197	4,124,256	2,050,913	2,073,343	1,030,689	80,6
1991	5,1197	4,377,033	2,183,795	2,193,238	1,207,098	85,5

Source: SRB-H Republican Institute for Statistics, Statistical Bulletin No. 220, page 11.

The population disaggregated by sex and age in percentages is presented in the table below.

Table 3.1.2 Population of B-H disaggregated by Age and Sex in percentages

Age Groups	1971			1981			1991		
	Total	Males	Females	Total	Males	Females	Total	Males	Females
0 – 14	34.4	35.9	33.1	27.5	28.3	26.7	23.5	24.1	22.8
15 – 64	60.5	59.5	61.3	66.2	66.3	66.1	67.7	68.7	66.7
Over 64	4.7	4.2	5.2	6.1	5.2	7.0	6.5	5.0	8.0
Unknown	0.4	0.4	0.4	0.2	0.2	0.2	2.3	2.2	2.5
TOTAL	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Source: FB-H, Federal Office for Statistics, www.fzs.ba/eng/population

59 The significance of the right to return was to annul the results of the mass displacement and property abandonment of the Bosnian population during the war. This right is not only referred to in the Constitution but also in several other provisions of the DPA such as in Annex 7 to the DPA on Refugees and Displaced Persons.

60 Agency for Statistics of Bosnia and Herzegovina, Statistical Bulletin No. 2/2003, p. 5.

Table 3.1.3 shows the Bosnian population, disaggregated by ethnic groups until 1991. Before the war, Bosnia and Herzegovina was one of the most ethnically diverse republics of former Yugoslavia.

Table 3.1.3 Population of B-H by Ethnic Groups (in alphabetical order)

Ethnic Group	1961	1971	1981	1991
Albanians	3,642	3,764	4,396	4,925
Croats	711,665	772,491	758,140	760,852
Czechs	1,083	871	690	590
Ethnically undeclared	...	8,482	17,950	14,585
Germans	347	300	460	470
Gypsies	588	1456	7,251	8,864
Hungarians	1,415	1,262	945	893
Italians	717	673	616	732
Jews	381	708	343	426
Macedonians	2,391	1,773	1,892	1,596
Montenegrins	12,828	13,021	14,114	10,071
Muslims	842,248	1,482,430	1,630,033	1,902,956
Poles	801	757	609	526
Romanians	113	189	302	162
Russians	934	507	295	297
Ruthenians	6,136	141	111	133
Serbs	1,406,057	1,393,148	1,320,738	1,366,104
Slovaks	272	279	350	297
Slovenes	5,939	4,053	2,755	2,190
Turks	1,812	477	277	267
Ukrainians	...	5,333	4,502	3,929
Yugoslavs	275,883	43,796	326,316	242,682
Other	811	602	946	17,592
Unknown	1,885	9,598	26,576	35,670
Total	3,277,948	3,746,111	4,124,256	4,377,033
Regional affiliation	3,649	224

Source: adapted (from alphabetical order in local language into alphabetical order in English language) from SRB-H, Republican Institute for Statistic, Population, Statistical Bulletin No. 220.

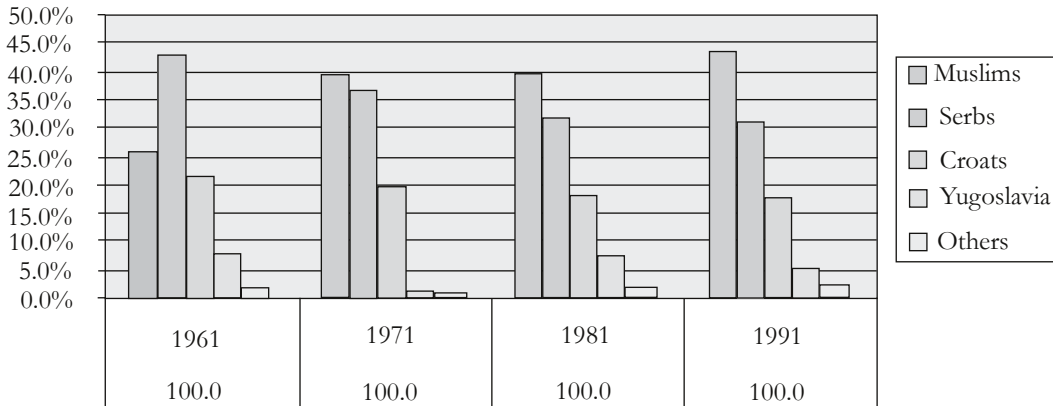
Prior to 1971 it was not possible for people in former Yugoslavia to declare their belonging to a specific ethnic or religious group in terms of a national group. Therefore many Muslims in the 1961 census expressed themselves as “other nationalities” (Croats, Serbs, Others). The 1971 census for the first time considered Muslims as a “nationality”, which is

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why many of them passed from Yugoslavs in 1961 to Muslims in 1971.

Recent surveys show that there has been an increase in both

Table 3.1.4 Ethnic groups in Bosnia and Herzegovina during the past four decades in percentage



the rural and urban population after the war in 1995. The urban population is expected to grow while the rural population is likely to start declining in 2005. If these trends continue, it is expected that the urban population will become larger than the rural one in 2014, reaching a total of 2.4 million by 2030. The rural population is expected to decline from 2.3 million in 2005 to 1.6 million in 2030.⁶¹

Some socio-economic indicators show the low economic status of the Bosnian population due to the recent conflict. The average net monthly salary, for instance in July 2002, was 353 KM in Republika Srpska and 484 KM in the FB-H.⁶² Data available on the territory of FB-H for the year 1997 provides for 131,914 beneficiaries of social care of whom 41,407 persons were considered to have completely inadequate housing standards.⁶³

61 US Census Bureau, December 2001, quoted in: FAOSTAT, FAO Statistical databases, retrieved January 2002.

62 Agency for Statistics of Bosnia and Herzegovina, Statistical Bulletin No. 12/2002, page 20; "Konvertibilna Marka" is the official currency in B-H; 1 KM is equal to 0.51 Euro.

63 FB-H, Federal Office for Statistics, Statistical Bulletin No. 266, June 1998, Category: Social welfare.

A World Bank Study of 1998 estimated that women headed 16% to 20% of all Bosnian households.⁶⁴ UNHCR reported in 2000 that women were the primary income-earners in 15% of all Bosnian households. Many women headed households

are living in acute poverty, given the high rates of unemployment, (44% among women) combined with the widespread displacement of persons throughout B-H and the dramatic changes in the demography (rural-urban shifts and vice versa).⁶⁵ The Helsinki Committee for

Human Rights in Bosnia and Herzegovina reported in January 2005 that women are estimated to constitute 80% of the 300,000 people employed in the "grey economy".⁶⁶ In 2000 the total number of missing persons whose fate had still not been clarified was over 17,467, of who 92% were men. Thus a large number of women lost one or more male family members during the conflict or is still missing family members. While war widows receive a pension and additional benefits that can sustain them, widows of civilian war victims receive so little that they cannot survive without other financial means. Therefore many widows of civilian husbands rely on their husband's work pension, to which they are not always entitled due to age limits.⁶⁷ Women whose husbands fled the country during the conflict and subsequently lost contact with their families are even less able to access financial assistance and may have problems accessing pre-conflict private property. Without collective returns involving community support for single headed households, and without inclusion

64 UNIFEM Gender Profile, p. 8. See supra note 10.

65 UNHCR, Daunting Prospects – Minority Women: Obstacles to their Return and Integration, Sarajevo, April 2000, pp. 3 and 6. Available on: <http://www.unhcr.ch/cgi-bin/texis/vtx/home/openssl.pdf?tbl=SUBSITES&id=3c3c60844>

66 Quoted in UNIFEM Gender Profile, p. 9. See supra note 10.

67 See supra note 22, pp. 7 and 8.

in reconstruction projects of the most vulnerable groups, many women (and some single men headed households) are effectively excluded from the return process.⁶⁸

In the following section the most relevant housing laws and policies, adopted during the war period will be described. Section 3.3 contains an examination of legislation related to private property repossession of refugees and other displaced persons, while also describing which measures were taken to accommodate former occupancy right holders. In section 3.4 the privatisation and denationalisation process in Bosnia and Herzegovina is analysed. Social housing policies and the specific housing issues of the Roma are described in sections 3.5 and 3.6 respectively. Legislation related to marital property and inheritance rights is described in section 3.7, which is followed by conclusions and recommendations.

3.2 Housing Legislation of the War Period

The character of the war in Bosnia and Herzegovina was aimed at controlling the territory to consolidate political and military power by one of the dominant ethnic groups through killing, mass expulsion and forcibly displacing members of the other ethnic groups, provoking waves of refugees and displaced persons.⁶⁹ The continuing flows of displaced persons created the need to provide housing for a growing number of displaced persons. To this end emergency housing and property legislation was adopted during the war period. The initial character of these laws was to grant temporary rights to new beneficiaries. However, that initial goal changed later towards a tendency to preserve the *de facto* situation created by the preliminary emergency legislation. Thus, subsequent adopted amendments aimed to reduce or even revoke the original property rights of both pre-war owners and occupancy right holders. Consequently, the temporary use rights

⁶⁸ *Ibid.*, pp. 7, 8 and 12.

⁶⁹ For more detailed information on the property legislation and policies in B-H during the war see Veljko Mikelić: *Property Issues as Human Rights Issues in Bosnia and Herzegovina - Legislation and Judicial Practice*, Masters Thesis, European Masters on Human Rights and Democratization, Padua, unpublished, but available in the library of the Ludwig Boltzmann Institute of Human Rights, Vienna, see <http://www.univie.ac.at/bim/>.

initially granted as a provisional measure to displaced persons became stronger in character and transformed themselves to a large extent in permanent property rights.

In this regard it should be emphasised that during the war period, the territory of the former Socialist Republic of Bosnia and Herzegovina was divided into three *de facto* legal Entities, which developed their own legislation and institutions.⁷⁰ This section examines the most significant provisions of the housing and real property legislation adopted by each of these Entities during the war.

3.2.1 Federation of Bosnia and Herzegovina⁷¹

In 1992 the Bosnian authorities tried to regulate abandoned socially owned property by introducing the *Law on Abandoned Apartments*. One year later they introduced legislation regarding privately owned abandoned property, the *Decree with the force of Law on Temporarily Abandoned Real Property under Private Ownership during the State of War or the State of Immediate War Danger*.

a) Occupancy Rights over Socially Owned Apartments

The transition process from socially owned apartments to private ownership⁷² in Bosnia had been interrupted by the war and had left tens of thousands of apartments in urban areas within the occupancy right regime. Through the revocation of these occupancy rights, the Law on Abandoned Apartments⁷³ aimed to regulate the emergency accommo-

⁷⁰ Different *de facto* legal entities emerged in the territory controlled by the Army of the Republic of Bosnia and Herzegovina (RB-H), the territory controlled by the Republika Srpska Army (Republika Srpska) and the territory controlled by Croatian Defence Council military force (Herceg Bosna).

⁷¹ While, as mentioned above, the Federation of Bosnia and Herzegovina was only established by the Washington Agreement on 18 March 1994, references to this term within this section are made with respect to the legal entity on the territory controlled by the Army of BiH until the signature of the DPA.

⁷² See Chapter Two, above.

⁷³ *Law on Abandoned Apartments*, Official Gazette of RB-H, No. 6/92, 15 June 1992. Initially, the Presidency of Bosnia and Herzegovina adopted this law in the form of a Decree, upon the proposal of the B-H Government. Subsequently, the B-H Assembly confirmed this Decree in 1994 in the form of a Law. It was amended several times, Official Gazette of RB-H, Nos. 16/92, 9/95 and 33/95.

ation needs of the growing number of displaced persons in urban areas.

Pursuant to the provisions of this Law, occupancy right holders temporarily lost the right to use the apartment if they or members of their household had abandoned and not temporarily used the apartment after 30 April 1991.⁷⁴ However, the Law provided for exceptions, especially in regard to apartments vacated because of immediate war danger and threat to personal security forcing the occupancy right holder to leave.⁷⁵ The municipal administrative organs for housing affairs were granted the authority to declare an apartment abandoned.⁷⁶ The Law foresaw that apartment buildings and apartments could be allocated to a temporary beneficiary up to one year after cessation of the “direct war danger”.⁷⁷ Once declared abandoned, the municipal administrative bodies usually allocated the apartments for temporary use, either to members of the Bosnian armed forces or to persons who remained homeless because of an immediate war danger.⁷⁸ These allocation decisions were thus often based on political and ethnic links.

A series of amendments to the *Law on Abandoned Apartments* tended, often for political reasons, to reduce the rights of the actual occupancy right holders. Predominant example of this tendency is the revised Article 10⁷⁹: it deprived thousands of Bosnian citizens of their occupancy rights by providing that as a *criterion* for continuity of the occupancy right, the occupancy right holders were obliged to repossess their apartments within seven days (if an internally displaced person) or fifteen days (if refugee elsewhere) after the proclamation of the end of war. Non-compliance with these deadlines could result in apartments considered as permanently abandoned

⁷⁴ *Ibid*, Article 2. An apartment was also to be considered abandoned if arms or ammunition were found in it.

⁷⁵ *Ibid*, Article 3, paragraphs 1 and 3.

⁷⁶ After receiving a proposal (from state bodies, political organisations, social organisations, citizen associations or the tenants' council of the building) for considering an apartment abandoned, these municipal bodies were obliged to issue the decision within seven days upon their own initiative. *Ibid*, Article 4.

⁷⁷ Officially, the end of the State of War was proclaimed on 22 December 1995.

⁷⁸ Article 7, paragraph 1 of the *Law on Abandoned Apartments*.

⁷⁹ Article 7 of the *Decree-Law on the Changes and Amendments of the Decree-Law on Abandoned Apartments*, Official Gazette of RB-H, No. 16/92.

and the cancellation of the holder's occupancy right. This provision became crucial for tens of thousands of occupancy right holders when the war ended in Bosnia and Herzegovina. When the Presidency of RB-H officially proclaimed the end of the war on 22 December 1995, many people were not aware that the end of the “State of War” had been officially proclaimed and that this declaration would have an immediate impact on their occupancy rights. Even worse, the proclamation of the end of the State of War was published in the Official Gazette of the RB-H only seven days after the actual proclamation. This timely delay prevented displaced persons even legally to preserve their occupancy rights.

Obviously this deadline was unrealistic and unachievable, especially for Bosnian refugees abroad. Furthermore, the amended Law did not provide any procedure for apartments, which had been allocated to new users for temporary use. Accordingly, previous occupancy right holders lost their rights even in situations in which they succeeded in meeting the imposed deadline, since the physical repossession of their apartments was not possible, due to undefined procedures for the repossession of the apartment within the imposed time limit.

For the above reasons, the *Law on Abandoned Apartments* could be considered as one of the main property rights violations, which prevented the repatriation of refugees and displaced persons to repossess their apartments. By imposing this unachievable deadline for repossession, it was directed to preserve the *de facto* situation and to revoke the occupancy rights in favour of the current occupants. In addition, it violated also the refugees' and displaced persons' right to free return to their homes pursuant to Article 1 of Annex 7 to the DPA.

b) Private Property Rights

The *Decree with the Force of Law on Temporarily Abandoned Real Property under Private Ownership during the State of War or the State of Immediate War Danger*⁸⁰ (hereinafter: the Decree) was ini-

⁸⁰ *Decree with Force of Law on Temporarily Abandoned Real Property under Private Ownership during the State of War or the State of Immediate War Danger*, Official

tially introduced as a temporary measure to use abandoned private real property. It allowed the municipal administrative body for housing to declare private real property abandoned after April 30, 1991⁸¹ and specified that abandoned private real property could be allocated to a beneficiary for use for a maximum period of one year with the possibility of an extension upon the beneficiary's request.⁸² The rights of the temporary beneficiary were restricted: they could not dispose of the property by any means, nor could they make any changes to the property.

The Decree did not foresee any effective remedy for the property owner. While s/he was formally entitled to file an appeal, mechanisms to consider that appeal were not provided for. In addition, the Decree did not provide any protection of the owner's rights while the property was declared abandoned; the possibility of any legal action as an expression of the will of the owner to use his/her property and not to abandon it was absent. Furthermore, the Decree did not foresee any provision for the case where where the owner did not return to the country or municipality in which his/her property was located. The lack of such provision was directed against the choice of destination of refugees and displaced persons in case of return.

In conclusion, the Decree intended to address the temporary housing needs of refugees and displaced persons who had fled to the territory of the Federation of Bosnia and Herzegovina. At the same time, it deprived those owners who had left the territory of the Federation of their rights. Effective remedies against this deprivation of ownership rights were not provided.⁸³

Gazette of RB-H, No.11/93, 10 May 1993.

81 *Ibid*, Article 5, paragraph 1. The legal presumption that an apartment was abandoned if not used after 30 April 1991 became effective upon the decision of the municipal body. An exception to this rule was provided in Article 5, paragraph 2 which specified that property assigned for use to someone by valid contract was not considered abandoned. Article 8 of the Decree gave the right to initiate the abandonment declaration to various subjects such as citizens, citizens associations, political organisations and state authorities.

82 *Ibid*, Article 13.

83 As this Decree did not cover the allocation of socially owned apartments but only dealt with private property, a deadline for property repossession could not be imposed.

3.2.2 Herceg Bosna⁸⁴

The Croatian Republic of Herceg Bosna provided a similar procedure for the reallocation of abandoned apartments through its *Decree on Deserted Apartments*.⁸⁵ The main difference was, however, that this Decree covered both socially owned apartments and private property. It established that occupancy rights could be temporarily revoked if the occupancy right holder and members of their household had left their apartment after 30 April 1992. Upon the same condition, it allowed furthermore for the temporary revocation of private ownership rights. Pursuant to this Decree, an apartment was considered abandoned when it had not been temporarily used, for an unspecified period of time. Article 3 provided an exemption by stating that the apartment would not be considered deserted, if the family abandoned the apartment due to immediate war danger, 'ethnic cleansing' or destruction of the home. The procedure for declaring an apartment abandoned was up to the administrative authority of the Municipal Council, which was obliged to issue a decision declaring the apartment abandoned within 7 days after such notification. If the Municipal Council did not issue such a decision, the Minister for Infrastructure Planning, Construction and Environmental Protection in the second instance was in charge of declaring an apartment abandoned. From a legal perspective, the main concern regarding the Decree on Deserted Apartments is that it did not include any effective remedy against decisions on declaring the apartment abandoned. Another Decree on the redistribution of property, the *Decree on Temporary Use of Military Apartments in the Territory of the Croat Community of Herceg Bosna*⁸⁶, allowed the taking over of all apartments and other immovable property that was declared abandoned, which previously belonged to the

84 The self-proclaimed Croatian Community of Herceg Bosna, later Croatian Republic of Herceg Bosna, was without international recognition; for the purposes of this study, this term refers to the territory controlled by the forces of the Bosnian Croats until the Washington Agreement was signed on 18 March 1994. The former Herceg-Bosna territory comprised mainly today's territory of Canton No. 7 (Hercegovsko-Neretvanski), Canton No. 8 (Zapadnohercegovački) and Canton No. 10 (Herceg-Bosanski) under the current DPA institutional framework.

85 *Decree on Use of Deserted Apartments, National Gazette of Croatian Community of Herceg Bosna*, No. 13/93, amended by No. 5/95.

86 *Decree on Temporary Use of Military Apartments in the Territory of the Croatian Community of Herceg Bosna, National Gazette of Croatian Community of Herceg Bosna*, No. 4/93.

former Yugoslav National Army and had become property of Herceg Bosna.⁸⁷

The provisions of these emergency decrees were similar to those of the RB-H; both were aimed at reducing basic property rights of those citizens who had left, through declaring their apartments abandoned and by subsequently providing for their redistribution, usually according to arbitrary criteria. By adopting such laws and decrees, both *de facto* entities indirectly prevented the displaced persons from their right to return, favouring the consolidation of a dominant ethnic majority over territory they controlled.

3.2.3 Republika Srpska 88

The RS, other than the FB-H, did not adopt any laws for the reallocation of apartments during the war period. By not providing even a basic legal framework for this issue, it paved the way for its local administrative organs for issuing highly arbitrary decisions on the distribution of property.

The first law related to abandoned property, the *Law on the Use of Abandoned Property*,⁸⁹ was adopted only after the DPA came into force. The Law applied both to property in private and social ownership. Article 2 of the Law defined property as abandoned if deserted by the owners. However, the Law did not provide any criteria or time frame upon which the decision to declare a property as deserted could be based. Pursuant to its provisions, the Municipal Commission for Refugees was the competent organ for the decision, whether the property was abandoned or not. The appeal against the decision of this Commission could be filed with the Ministry of Refugees. The abandoned apartment could be reallocated

for temporary use for an indefinite period, but not less than one year.

Some provisions of this Law allowed its arbitrary application by supporting the policy of ‘ethnic cleansing’ in a very direct manner. Article 49, for example, retroactively annulled by virtue of law all contracts on rent or use of real property concluded after 6 April 1992 between property owners or occupancy right holders who had left the RS territory. The retroactive annulment of property rights was contrary to the generally accepted principles of international law. In addition, Article 49 contributed to the policy of ‘ethnic cleansing’. Thus, it allowed owners of real property who had deserted their property in the territory of FB-H or other Republics of the former SFRY during the war period to sign a contract for exchange with the owners of the real property in the territory of RS. Furthermore, Article 17 allowed for the allocation of apartments with more than 15 square meters of “surplus living space” per member of the household to displaced persons who became homeless for other reasons than the war. Thus, this article could be used as a means to evict non-Serbian property right holders and to allocate this surplus living space to members of the Serbian community.

The provisions on the rights of owners permanently returning raised further concerns. Article 40 provided that the return of occupied property to those persons who had fled the RS depended on “reciprocity”: when the temporary occupant originally came from the FB-H or from the Republic of Croatia (usually Serb), the rightful owner or occupancy right holder (usually Bosniak) could only regain his/her home within 30 days after the temporary occupant returned to his/her pre-war home. If the temporary occupant could not return to such pre-war home, the rightful owner or occupancy right holder could only regain their home within 60 days of the temporary occupant having received compensation for the property s/he himself had owned before the war or over which s/he had had an occupancy right. This provision which entitled the occupancy right holder to “fair compensation” was unfeasible and without any legal significance in the specific Bosnian context at that time, because

87 The apartments that used to belong to the Yugoslav National Army had become the property of the Croatian Herzeg Bosnia by virtue of the *Decree on the Taking of the Goods of JNA and Yugoslav Ministry of Defence on the Territory of the Croatian Community of the Herceg Bosna in the Property of the Herceg Bosna*, National Gazette of Herceg Bosnia, n. 1/92.

88 The self-proclaimed Republika Srpska was without international recognition until the signature of Dayton Peace Agreement on 15 December 1995, which recognised it as one of two Entities of Bosnia and Herzegovina.

89 *Law on the Use of Abandoned Property of the Republika Srpska*, Official Gazette of RS, No. 3/96, 28 February 1996.

that kind of compensation required the economic and financial agreement among the RS, the FB-H and other Republics of former Yugoslavia. Since such agreements did not exist, Article 40 not only constituted an obstacle for the return of pre-war owners or occupancy rights holders but also contained explicit discriminatory intent in favour of the ethnic majority in the RS.

Because of their clearly arbitrary and openly ‘ethnic cleansing’ supporting content, the provisions of the *Law on the Use of Abandoned Property* have to be considered as the most flagrant breach of the explicit terms of the Agreement of Refugees and Displaced Persons, as set forth in Annex 7 to the DPA.

3.2.4 Conclusion

During the war, the three *de facto* entities within the Bosnia territory adopted “emergency” legislation in an attempt to regulate the use of “abandoned property”, allowing displaced persons to move into abandoned houses or apartments usually for periods of up to one year, which periods were subsequently renewed. The general characteristics of this legislation in all three Bosnian entities was that on the one hand the property rights of rightful owners were reduced or even completely revoked, especially of owners not belonging to the dominant ethnic group, while on the other hand the adopted legislation imposed insurmountable barriers to the right of refugees and internally displaced persons to return to their pre-war houses. In practice, the greatest obstacles affected the displaced persons attempting to return to areas where they now find themselves as a minority.

3.3 Repossession of Private Property and Socially Owned Apartments

3.3.1 Institutional Framework of the Dayton Peace Agreement

The Dayton Peace Agreement imposed a new institutional order on the territory of Bosnia and Herzegovina. It intro-

duced the Office of the High Representative (hereinafter: OHR), which is the final authority to interpret the agreement on the civilian implementation of the peace settlement. The Steering Board of the Peace Implementation Council (hereinafter: PIC), a group of 55 countries and international organisations that sponsor and supervise the peace implementation process, nominates the High Representative, whose nomination is subsequently endorsed by the United Nations Security Council. The mandate of the High Representative (HR) is set out in Annex 10 to the DPA. According to Article V of this Annex, the High Representative is the final authority regarding the civilian implementation of the DPA. In this function, the HR has to maintain close contacts with the involved parties and to promote their full compliance with all civilian aspects of the Agreement. The PIC subsequently elaborates the mandate of the High Representative, which includes the authority to annul and amend laws adopted by the legislative bodies of both Entities and the state of Bosnia and Herzegovina. The HR may also impose laws if Bosnia and Herzegovina’s legislative bodies fail to do so.⁹⁰

Beside the High Representative, the DPA provides for a Human Rights Commission, composed of the Ombuds-person and the Human Rights Chamber, a judicial body entrusted with the review of apparent or alleged discrimination or violations of human rights.⁹¹ Aware of the importance of solving the multitude of property conflicts, the DPA furthermore established a separate legal institution dealing with property: the *Commission for Displaced Persons and Refugees* with the exclusive mandate to restore property rights to the pre-war lawful possessors (whether occupancy right holders or owners).⁹² Considering the mandate of this Commission, it is generally referred to as the *Commission for Real Property Claims* (hereinafter: Commission or CRPC).

⁹⁰ The main decision-making instruments at the disposal of the HR are Decisions, which are published in the Official Gazette of both Entities and of B-H at state level. Amendments to domestic legislation are also issued through Decisions and are subsequently incorporated in the domestic law. Domestic B-H laws are required to be in line with all HR Decisions. For further information see <http://www.ohr.int/ohr-info/gen-info/>

⁹¹ Annex 6 to the DPA.

⁹² Article VII Annex 7 to the DPA. The Commission’s mandate was initially limited to five years and subsequently extended until 31 December 2003.

a) *The Commission for Real Property Claims*

Article XI of Annex 7 to the DPA envisages the mandate of the Commission in the following terms:

“The Commission shall receive and decide any claims for real property in Bosnia and Herzegovina, where the property has not voluntarily been sold or otherwise transferred since April 1, 1992, and where the claimant does not now enjoy possession of that property. Claims may be for the return of the property or for just compensation in lieu of return.”

Accordingly, the CRPC is responsible for establishing the rights of the owners, or occupancy right holders, who are dispossessed of their property as a result of the war in Bosnia and Herzegovina.⁹³ The Commission’s administrative decision gives them the official confirmation of their rights in the form of a legally binding document whose lawful effect must be recognised throughout the territory of B-H. Within its mandate, the Commission has an exclusive right of access to all property records for deciding on the property claims in B-H.⁹⁴

Pursuant to Article XII (7) of Annex 7 to the DPA, the Commission’s decisions have a legal supremacy over the decisions of other organs concerning the confirmation of property rights. In addition, the Commission’s decisions cannot be challenged or overturned in any domestic court or by other administrative organs. In adopting its rules, the Commission shall consider relevant domestic laws on property rights.⁹⁵

One of the basic principles of the DPA is the free return of refugees to their pre-war homes. Based on this principle, the Commission “shall not recognise as valid any illegal property transaction, including any transfer that was made under duress, in exchange for exit permission or documents”.⁹⁶ This provision gave wide-ranging powers to the Commission to nullify results of forced

93 The broad wording of the provisions (...receive and decide any claim ...) allowed also for the consideration of occupancy rights as one form of the Yugoslav property rights regime.

94 Article XII, paragraph 1 Annex 7 to the DPA.

95 The authority to make rules and regulations is laid down in Article XV Annex 7 to the DPA.

96 Article XII, paragraph 3 Annex 7 to the DPA.

transfers during the war which formally appear as lawful, but which were, however, concluded against the former owner’s free will.

The Commission’s work can be divided into two main activities:

- 1) *Technical-administrative functions*, which consist of registering claims from Bosnian citizens, and subsequently by formally recognising and confirming the property rights of those citizens with valid claims in the CRPC property records. During its mandate, the CRPC received 240,333 claims throughout Bosnia and Herzegovina.⁹⁷ Upon the end of its mandate in December 2003, the responsibilities were transferred to the local authorities.⁹⁸
- 2) *Procedural functions*, which are related to the Commission’s role of providing an alternative legal recourse for Bosnian citizens. While claimants could still file their claims with the competent municipal administrative bodies and local courts, they could alternatively seek recognition of their property rights through a request to the CRPC.⁹⁹ The decisions of the CRPC were final and, accordingly, could not be overturned by the local courts. In accordance with its power conferred by Annex 7 to the DPA, the CRPC became a supreme organ and final decision-making body for property issues.

Although Annex 7 to the DPA imposed an explicit obligation on the Entity authorities to respect and implement the Commissions’ decisions, it did not contain detailed provisions concerning the Commissions’ executive powers for enforcement and implementation of these decisions. Despite their obligation set out in Annex 7 to the DPA, the local administrative and law enforcement authorities, not being politically independent and accountable, were often not willing to be fully engaged in the implementation of the Commission’s

97 As per July 2003, CRPC had collected 319,013 property claims throughout Bosnia and Herzegovina and had issued 302,109 property decisions. CRPC Press release, 15 July 2003, <http://www.crpc.org.ba> (site no longer available).

98 For claims on occupancy rights, the municipal housing bodies became responsible; for private property, the local courts appear to have become competent.

99 This alternative legal recourse was open even after the review of the claim had been initiated at the municipal administrative organs or local courts.

decisions.¹⁰⁰ Consequently, the Commission produced only modest results at the beginning of its mandate. This lack of enforcement power in the implementation of the Commission's decisions was identified as the main obstacle for the effective repossession of claimed property.

b) Enforcement of CRPC Decisions

The above described problems concerning the enforcement of CRPC decisions prompted the High Representative to introduce *The Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees*.¹⁰¹ The main objective of this Law is the rapid implementation of the Commission's decisions. Accordingly, Article 2 provides that “*the Decisions of the Commission are final and binding from the day of their adoption*” and that the responsible enforcement organs shall take the necessary measures as set out in the law.

The Law laid down the following procedure: each person whose property right was confirmed in a Commission decision could request enforcement of this decision.¹⁰² Upon such request, the responsible body explicitly mentioned in the Law has a duty to enforce the Commission's decision. Two different deadlines were specified regarding the right to file a request for enforcement of the Commission's decision.¹⁰³ In case the Commission's decision regards the confirmation of occupancy rights, the enforcement request has to be submitted within one year from the date the Commission's decision was issued. With regard to Commission decisions that were issued before this Law entered into force, the enforcement request needs to be made within one year from the entry into force of this Law. A request to enforce a Commission's

decision that confirmed the right to private property is not subject to any time limitation.

In order to avoid unnecessary delay in claim proceedings, this Law specified that the responsible administrative organ cannot require any confirmation of the enforceability of the decision from the Commission or from any other body. Furthermore, the responsible organ is obliged to obtain all necessary information on the identity of the current occupant together with details on what legal ground - if any - the current occupant is using the claimed property. It must then issue the decision specifying the termination of the right of the temporary use of the property. Furthermore, the local administrative organ is obliged to specify a time limit for the current occupant to vacate the property. The same decision may indicate whether the current occupant is entitled to an alternative accommodation.¹⁰⁴

In order to increase efficiency, the Law specified that in case of a “double requests” for enforcement the responsible administrative organ is obliged to join the proceedings for enforcement of both decisions.¹⁰⁵

The new provisions have notably increased the effectiveness of the enforcement of the Commissions' decisions, including the enforcement of such decisions against current occupants. Article 9 provides for the enforcement of the Commission's decision also against the current occupant who is named in the enforcement decision or against any third person that uses the property regardless whether s/he occupies the claimed property with or without a valid legal title.

The Law provides for a limited appeals procedure in the form of a request for reconsideration of the Commission's decision.¹⁰⁶ However, such reconsideration request does not

¹⁰⁰ The difficulties were partly due to the wording of Article VIII Annex 7 to the DPA, which requires from the local authorities respect for and implementation of the CRPC decision without providing more detailed obligations and sanctions in case of non-compliance.

¹⁰¹ HR Decision published in the Official Gazette of RS, Nos. 31/99, 39/00, 65/01, 13/02 and Official Gazette of FB-H, Nos. 43/99, 51/00, 56/01, 27/02 and 24/03.

¹⁰² Article 4 of the HR Decision of 28 October 1999 on the Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees. For more information on the decisions of the High Representative, see: http://www.ohr.int/decisions/plipdec/default.asp?content_id=252

¹⁰³ Article 5 of the HR Decision of 28 October 1999.

¹⁰⁴ *Ibid*, Article 7.

¹⁰⁵ In the situation where the requestor has commenced enforcement proceedings of the decision issued by the responsible administrative organ under the *Law on Cessation of the Application of the Law on the Use of Abandoned Property*, and subsequently the same person has also submitted the request for enforcement before the Commission on the same property.

¹⁰⁶ Article 10 of the HR Decision of 28 October 1999 on the Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees allows the requestor referred to in the Commission's decision and/or any other

suspend the enforcement of the decision. The local organs in charge of enforcement shall only upon an official notification from the Commission suspend the enforcement procedure of the Commission's decision. Without such notification, the enforcement of the decision shall continue.¹⁰⁷

The abovementioned provisions restricted certain rights of current occupants, such as the right to due process. However, these restrictions must be seen in the context of the urgent need to introduce effective enforcement procedures, which were required by the specific circumstances in property repossession in the post-war situation in Bosnia and Herzegovina. The tremendous problems in the implementation of CRPC decisions that were faced in the first three years of its mandate required a more pragmatic approach and the introduction of more efficient measures seemed to be necessary, taking into account the Commission's specific mandate of resolving mass claims in a limited period of time.

c) Post-CRPC

At the end of the CRPC mandate in December 2003, no agreement on the handover had been reached. The responsibilities of CRPC were first transferred to the Government of B-H. Subsequently, B-H, the FB-H and the RS concluded an agreement on the transfer of competencies of the CRPC on 25 May 2004. This agreement established a "domesticated" CRPC, which started with reconsidering those CRPC decisions that were challenged. From October 2004 it also started issuing proper decisions.¹⁰⁸

Nevertheless, the competence of the "domesticated" CRPC has raised certain questions. For example, the fact that it considers reconsideration requests on the basis of current domestic legislation rather than the previous CRPC rules of

procedure opens the door for the possibility that previous CRPC decisions are reversed by applying the current legislation, which differs from legislation and procedural steps in force when the original CRPC decisions were issued. Additional concern derives from the recent suspension by FB-H of the execution of certain CRPC decisions, without clear legal grounds.¹⁰⁹

3.3.2 Federation of Bosnia and Herzegovina

In the early years of the Dayton constitutional framework, both Entities - the FB-H and RS - formally promised to make amendments to their property legislation in line with the international standards in order to enable pre-war owners and occupancy right holders to return to their homes. However, for many years no results were achieved. Only after strong pressure from the international donor community¹¹⁰ and efforts made by the Office of the High Representative, did the parliaments of both Entities adopt new property laws, which were in line with the demands of the international community.

In 1998 the FB-H adopted two laws on occupancy rights over socially owned apartments and one on private property, which superseded legislation that had been adopted during or before the war.

a) Occupancy Rights over Socially owned Apartments

As regards occupancy rights over socially owned apartments, the Federation of Bosnia and Herzegovina adopted the Law on Cessation of the Application of the Law on Abandoned Apartments and the Law on Superseding the Law on Housing Relations.

person with a legal interest related to the property in question to submit a "request for reconsideration".

107 *Ibid*, Article 11.

108 For further information see IDP Project of the Norwegian Refugee Council <http://www.db.idpproject.org/Sites/IdpProjectDb/idpSurvey.nsf/wViewCountries/CB414C2EEE57A32CC1256FCD0049E577>; Pursuant to this source, 754 reconsideration cases have been transferred to the CRPC reconsideration body, while 1,399 cases have been transferred to local authorities.

109 FB-H decided to temporarily suspend all CRPC Decisions issued after June 30th 2003. See Official Gazette of FB-H No. 23/04 (Bosnian), *Decision on the Temporary Suspension of CRPC Decisions Issued after 30 June 2003*, available on: <http://www.fbihvlada.gov.ba/indexx.html>

110 The Peace Implementation Council (PIC) called upon the FB-H and the RS to amend their housing legislation, stating that the international support for housing would be conditioned upon fulfillment of this obligation. See Political Declaration from Ministerial Meeting of the Steering Board of the Peace Implementation Council, 30 May 1997.

The Law on Cessation of the Application of the Law on Abandoned Apartments of 1998¹¹¹ was to supersede the Law on Abandoned Apartments. It declared all previous decisions determining the occupancy rights of refugees and displaced persons to be null and void. The entry into force of this Law and the consequent annulment of all previous decisions was of particular importance for the security of tenure of former occupancy right holders, whose apartment occupancy rights had been deprived by previous, arbitrarily issued, decisions.¹¹² Pre-war occupancy right holders, who wished to file a claim for repossession of their apartment, had to do so within six months upon entry into force of this Law (which meant before 3 October 1998).¹¹³ Once the occupancy right of the pre-war holder was determined by the CRPC, the competent administrative organs or the local courts, s/he was obliged to start using the apartment within one year from that decision. Non-compliance with one of these deadlines could cause the permanent loss of the occupancy right.

The Law allows for a period of 30 days for the authorities (the CRPC, the competent municipal organs or the local courts) to decide on the repossession claim. *The content of that claim may confirm the pre-war occupancy holder's rights and terminate the rights of current users of the apartments. Since there are different categories of current users of apartments, the decision establishes various criteria for vacation of the claimed apartment. If an apartment is occupied illegally, the pre-war occupant can repossess the apartment immediately, whereas the illegal occupant must vacate the apartment without delay and is not entitled to any alternative*

¹¹¹ Law on the Cessation of the Application of the Law on Abandoned Apartments, Official Gazette of FB-H, No. 11/98, 3 April 1998.

¹¹² In both Entities, the previous decisions had been mainly arbitrarily issued, depriving the former occupancy right holders of their apartments. The judicial practice of the Human Rights Chamber departs from the arbitrary decisions of the past: in consolidated case-law practice the Chamber took the view that occupancy right holders who had left their apartment as a result of the war maintained the apartment they previously possessed. The Human Rights Chamber in Bosnia and Herzegovina thereby directly applied the European Convention on Human Rights and its Protocols; see: *Kevesevic v. Federation of Bosnia and Herzegovina*, CH/97/46; *Gogic v. Republika Srpska*, CH/98/800; *Onic v. Federation of Bosnia and Herzegovina*, CH97/58. The Chamber's view that the prolonged absence cannot be reason for cancellation of occupancy right was confirmed in *Erakovic v. the Federation of Bosnia and Herzegovina*, CH/97/42. For a broad interpretation of the occupancy right as a possession and on the effectiveness of remedies see *M.J. v. Republika Srpska*, CH/96/28, paragraph 32. Available on: <http://www.hrc.ba>

¹¹³ Because of failure of implementation of the new legislation, i.e. obstruction of the municipal organs to accept the claims, the High Representative extended the deadline for filing the claims for another six months until 4 April 1999.

accommodation.¹¹⁴ If the apartment is temporarily occupied with valid legal title, the given period to vacate the apartment is 90 days, which can be extended if the pre-war occupant's announced return date is postponed.¹¹⁵ If a holder of a permanent occupancy right occupies an apartment, and such holder obtained this title before 7 February 1998, the competent cantonal administrative body has discretion on deciding additionally whether the pre-war occupant should be allocated another apartment.

Article 14 also explicitly recognises the legal supremacy of the CRPC by suspending all proceedings before the local administrative and judicial organs upon a request to the CRPC until its final and binding decision.

The *Law on Superseding the Law on Housing Relations*¹¹⁶ amended the general rules on the termination of a right to occupancy upon non-use of an apartment for more than six months, as set forth in the *Law on Housing Relations*.¹¹⁷

The Law established the new principle that all occupancy right holders, who had left their apartments after 30 April 1991 and for whom the local authorities started the occupation right cancellation procedure due to prolonged absence, are considered to be refugees or displaced persons with a right to return as guaranteed under Annex 7 to the DPA. Only if the abandonment of the apartment was entirely unrelated to the conflict, the general provisions of the *Law on Housing Relations* still apply and the cancellation of the occupancy rights due to prolonged absence would be confirmed. The legal presumption of abandonment of the apartment for war reasons overturned the burden of proof in favour of the occupancy right holders. They were considered by law to

¹¹⁴ Article 3 of the *Law on the Cessation of the Application of the Law on Abandoned Apartments*.

¹¹⁵ *Ibid*, Article 7. Upon issuance of the decision confirming the occupancy holder's right, the temporary user without a valid title had a maximum of 90 days to vacate the apartment. However, the occupancy right holder is also obliged to wait for 90 days deadline.

¹¹⁶ *Law on Superseding the Law on Housing Relations*, Official Gazette of FB-H, No 11/88 on 3 April 1998.

¹¹⁷ This is the difference with the *Law on Abandoned Apartments*, which provided for the cancellation of the occupancy right upon the abandonment of the apartment after 30 April 1991, whereas the generally applicable *Law on Housing Relations* provided for the cancellation of the occupancy right upon prolonged absence for unjustified reasons.

be refugees or displaced persons and, accordingly, they were entitled to initiate a request to receive their occupancy right back. The deadline for filing the claim was the same as in the two previous Laws - six months after the Law entered into force.¹¹⁸

b) Private Property Rights

The *Law on the Cessation of the Application of the Law on Temporary Abandoned Real Property Owned by Citizens*¹¹⁹ was adopted for the repossession of private property. It does not impose any deadline for filing a claim. Claims have to be submitted to the Municipal Administrative Authority responsible for private property. Once the claim is received, the Municipal Authority is obliged to make a decision within 30 days confirming the owner's right to return and to establish the date by which the current occupant is obliged to vacate the property. As mentioned above, the claimant could alternatively submit his/her claim to the CRPC. In case of illegal occupation of the apartment by the temporary user, the owner is entitled to repossess his/her property immediately. An authorised person who is occupying the property has 90 days to vacate it. If the authorities can give proof by detailed documentation to the OHR that there is absolutely no alternative accommodation available for the current occupant, this deadline can be extended up to one year.¹²⁰ This Law also explicitly recognises the legal supremacy of the final and binding decisions of the CRPC. Thus, a claimant could file a claim for repossession with the CRPC in which case all proceedings before the local administrative and judicial organs shall be suspended until the final and binding decision of the CRPC.

3.3.3 Republika Srpska

In December 1998, the National Assembly of the Republika Srpska adopted the *Law on Cessation of Application of the Law*

*on the Use of Abandoned Property*¹²¹ as a result of common efforts and pressure exercised by the OHR and the international community.¹²² This long awaited Law contains a series of substantial changes compared to the previous *Law on Use of Abandoned Property*, which was the main obstacle to return to and repossession of property located in the territory of the RS.¹²³ The adoption of this Law may be seen as a first positive step, creating the legal precondition for the return of displaced persons in this Entity as provided by Annex 7 to the DPA. This Law applies to both *socially owned* and *private* property. Article 2 of the Law provides that all judicial and administrative decisions enacted on the basis of the previous *Law on Use of Abandoned Property* shall be null and void. In general terms, the claims procedure is very similar to the procedure adopted in the FB-H, including the absence of a time limit for claims from private property owners.

The procedure for pre-war *owners* entitles them to file a claim to the competent organ of the Ministry for the Refugees and Displaced Persons ("Ministry"), which is obliged to issue its decision within 30 days from the date of the acceptance of the claim.¹²⁴ Once private ownership is confirmed, the Law allows 90 days for confirming the private owner's right to return¹²⁵ and for determining the date the current occupants have to vacate the property. In special circumstances, the Law recognises an exception to this deadline, for example if the competent organ can provide the Ministry with detailed documentation regarding the absolute lack of alternative accommodation for the current user. However, this delay cannot be prolonged for a period of more than one year.¹²⁶ An important improvement of this Law is laid down in Article 13, which recognises the competence of the CRPC in un-

118 This deadline was extended by the Office of High Representative until 4 April 1999.

119 *Law on the Cessation of the Application of the Law on Temporary Abandoned Real Property Owned by Citizens*, Official Gazette of FB-H, No. 11/98, 3 April 1998.

120 *Ibid*, Article 12.

121 *Law on Cessation of Application of the Law on the Use of Abandoned Property*, Official Gazette of RS, No. 38/98, 11 December 1998.

122 See e.g. Declaration of the Ministerial Meeting of the Steering Board of the Peace Implementation Council (PIC) of 9 June 1998, paragraph 27.

123 See *supra* note 69.

124 See Article 9 of the *Law on Cessation of Application of the Law on the Use of Abandoned Property*.

125 *Ibid*, Article 14 which explicitly mentions this right to return by referring to Annex 7 to the DPA.

126 *Ibid*, Article 11.

equivocal terms and obliges the competent local authorities to implement the decisions of the Commission.

The claims procedure for pre-war *occupancy right holders* is very similar to the procedure laid down in the FB-H law. Thus, all persons who abandoned their socially owned apartments in the Republika Srpska after 30 April 1991 are considered refugees and displaced persons entitled to repossess their apartments.¹²⁷ Claims for socially owned apartments had to be filed within 6 months from the entry into force of the Law, i.e. by 19 June 1999. The competent organ under the Ministry for Refugees and Displaced Persons had to issue the decision within 30 days upon reception of the claim.¹²⁸ In case of recognition of the pre-war occupancy holder's right over an apartment, the current user was obliged to vacate the apartment within 90 days. The Ministry for Refugees and Displaced Persons could extend this period up to maximum one year, if the competent organ provided documentary evidence that no alternative accommodation existed for the current users of the apartment. Deciding on each single case in such exceptional circumstances, the Ministry was bound to consider the rights of the occupancy right holder.

In conclusion it can be said that the adoption of this long awaited Law is a positive contribution towards establishing equal protection of property rights in the RS. Full recognition of these rights will however depend on appropriate interpretation and implementation.

3.3.4 Implementation Challenges and Strategies

With local authorities responsible for the enforcement and implementation of property rights, the risk of arbitrary decisions in handling repossession claims and enforcing eviction orders is quite realistic. In fact, hidden or sometimes even open arbitrariness in processing the claims became the determining factors in deciding which claims would be processed and when. This incoherent approach articulated by the local

authorities brought the temporary occupants to believe that occupying someone's property indefinitely was rather "normal". On the other hand the rightful owners and occupancy right holders had no precise indication on when their property would be returned. This situation of prolonged illegality diminished the trust in the rule of law.

The first response of the international community in Bosnia and Herzegovina to this problem was a mass information campaign on the implementation of the new property legislation, which was to inform all citizens on their rights to reclaim their property.¹²⁹ As both Entities had adopted regulations and instructions that were either clearly discriminatory or that left too much discretion and interpretation to local authorities for the application of the newly enacted laws, another response of the OHR was the issuance of accompanying instructions for the implementation of the new laws on property rights.

*The international organisations involved in the monitoring process on implementation of property legislation further realised that the filing rates for property claims were very low (less than 50 percent) in both Entities at the time of the envisaged deadline for claims of repossession of socially owned apartments. This prompted the High Representative to extend the deadline for filing claims in the FB-H until 15 September 1998 and subsequently until 2 July 1999. The same measures were adopted in the RS in June and December 1999, prolonging the final deadline until 18 April 2000.*¹³⁰

In general terms, the slow process of implementation of the housing and property legislation was explained by a lack of adequate resources provided to the local authorities. A detailed examination, however, also showed the absence of a

¹²⁹ The campaign started in 1998 after the adoption of the new legislation and was continuously updated.

¹³⁰ See: High Representative, *Decision of 4/1/1999 on Extending by Three Months the 4 April deadline for Filing Claims to Socially Owned Apartments in the Federation*; High Representative, *Decision of 9/15/1999 on Extending until 4 April the Deadline for Filing Claims to Socially Owned Apartments in the Federation*; High Representative, *Decision of 12/10/1999 on Extending by Four Months the Deadline for Claiming Socially Owned Apartments in the Republika Srpska*; High Representative, *Decision of 6/15/999 on Extending by Six Months the Deadline for Filing Claims to Socially Owned Apartments in the Republika Srpska*. Available on: <http://www.ohr.int/decisions/archive.asp>

¹²⁷ *Ibid*, Article 14.

¹²⁸ *Ibid*, Article 17.

real willingness to fully commit to the application of the new property provisions by the local authorities. Certainly, this local obstruction was guided by a general idea to consolidate the ethnic homogeneity throughout the territory they controlled and to diminish the hope of refugees and displaced persons to return. Another reason for the inefficient implementation of the laws was the weak mandate of the involved international organisations.¹³¹

Over time, it became obvious that the inefficient implementation of property laws was supported by the lack of available, effective tools for their implementation. Consequently, the urgent need for launching a new, more effective, strategy became evident. The first coherent attempt in property implementation policy might be seen in the effort of the international agencies¹³² to solve the problem of “double occupancy”.¹³³ The idea was to put an end to the widespread misuse of double occupancy because that practice represented the most flagrant violation of property legislation. Initial success in enforcing eviction orders against double occupants gave rise to the idea that only a coordinated approach between domestic and international actors could improve efficiency in property rights implementation. For that reason, Double Occupancy Commissions were established at municipal level, composed of local authorities as well as international organisations.¹³⁴ The main task of these Commissions was the assessment of possibilities of the current occupants to return to their pre-war home, the investigation of the property

of the pre-war legal owners who express the wish to return, and the review of the conditions of the inspected accommodation. The establishment of these Commissions could be regarded as a first systematic effort of coordination between the domestic and international actors in implementing property legislation. The significance of that effort was that it showed the necessity to establish a more comprehensive approach for a future strategy in managing this issue.

Such an approach was the establishment of Property Legislation Implementation Plan (hereinafter: PLIP) in September 1999 by the main international agencies in Bosnia such as UNHCR, OSCE, OHR, UNMBIH and CRPC. The PLIP was a permanent body, which coordinated the activities of the various agencies and which was tasked with training of the housing authorities, information campaigns for current occupants, initiatives towards reforms of property legislation, and sanctions against local officers obstructing the return process.

However, it became evident that the coordinated strategy of the international community would produce only modest results if their efforts were not supported by a structural change in the existing property legislation. Although the above described post-war property legislation could be considered as the essential legal basis for a more efficient enforcement of property rights, it nevertheless became clear that it was insufficient to accomplish the mass property restitution for displaced persons and refugees. Accordingly, further substantial amendments to these laws were needed in order to respond adequately to the growing demands for property repossession.

3.3.5 Further Amendments to Housing Legislation

The introduction of a comprehensive and more efficient legislation required the intervention of the OHR, the responsible body for the overall civil implementation of the DPA. Thus, in 2001 the OHR introduced the *Amendments to the Law on the Cessation of Application of the Law on Abandoned*

131 The Organisation for Security and Co-operation in Europe (OSCE) had a weak mandate in terms of enforcing eviction orders; according to Article XIII, paragraph 2 of Annex 6 to the DPA, its mandate was “to monitor closely the human rights situation”. The International Police Task Force (“IPTF”), which formed part of the United Nations Mission in Bosnia and Herzegovina (“UNMBIH”), had a mandate to train the local police force and not to intervene directly; on the IPTF mandate see Article III, paragraph 1 of Annex 11 (Agreement on the International Police Force) to the DPA.

132 International agencies dealing with property within their mandate and according to the DPA provisions are UNHCR, OSCE and OHR.

133 A double occupant is a person who occupies usually two or more accommodations available to him/her, where the pre-war rightful holder claims one of these accommodations.

134 In April 1999, the first Double Occupancy Commission was set up in Tuzla (FB-H). This Commission was composed of Representatives of the Ministry of Urban Planning and Environment, the Ministry of Displaced Persons, Refugees and Social Welfare together with UNHCR, OSCE and OHR representatives. In the second half of 1999 Double Occupancy Commissions were established throughout the FB-H. In the RS, these commissions were called Property Commission because their competence comprised the processing of all the claims, including those in relation to double occupancy.

*Apartments*¹³⁵ with respect to socially owned apartments in FB-H, while amendments to the FB-H *Law on the Cessation of Application of the Law on Temporarily Abandoned Real Property Owned by Citizens* concerned private property. In the RS, the exact same amendments were introduced in one single *Law on the Cessation of Application of the Law on the Use of Abandoned Property in the Republika Srpska*¹³⁶, which referred to property both socially and privately owned. While these amendments were made in the same wording in both Entities, their technical implementation was very different.

a) *Occupancy Rights over Socially Owned Apartments* The *Amendments to the Law on the Cessation of Application of the Law on Abandoned Apartments* in the FB-H and *Law on the Cessation of Application of the Law on the Use of Abandoned Property in the Republika Srpska* in the RS regulated issues concerning:

(1) *Continuity of Occupancy Right*

The recent war had halted the process of purchasing socially owned apartments. Until the conditions for the purchase of apartments were re-established, it was necessary to preserve the continuity of the occupancy right for some categories of temporary users. Article 18(c) specified that the administrative authority in charge of housing would allow the conclusion of new contracts of use for:

- (a) Surviving spouses or dependants of a deceased occupancy right holder;
- (b) Ex-spouses, following their divorce from the previous occupancy right holder;
- (c) Persons who obtained the occupancy right title through a valid contract on exchange of apartments.

¹³⁵ High Representative, *Amendments to the Law on the Cessation of Application of the Law on Abandoned Apartments*, Official Gazette of FB-H, No. 56/01.

¹³⁶ *Law on the Cessation of Application of the Law on the Use of Abandoned Property in the Republika Srpska*, High Representative Decision of 4 December 2001, published in Official Gazette of RS, No. 65/01, 21 December 2001.

(2) *Exchanges of Apartments*

Transactions on exchange of apartments, made in the period between 1 April 1992 and 7 February 1998, were now regulated as follows: 137

- (a) When the exchange of the apartment is uncontested and neither party to the contract on exchange lodged a claim for its repossession, the competent municipal authority is obliged to revalidate the contracts on use.¹³⁸
- (b) When only one party to the contract filed a claim for repossession, the other party is considered also to have lodged a claim for the repossession of the apartment. Therefore, the competent authority is obliged to inform in writing the corresponding competent authority in the municipality where the exchanged apartment of the claim is located. The receiving competent authority shall then deem a claim as filed within the prescribed time limit.¹³⁹ This important amendment stopped the widespread misuse of exchanged apartments, where it very often occurred that after concluding the apartment exchange, one party requested the repossession of the exchanged apartment, depriving the other party from actual repossession.
- (c) When both parties claim the contract on exchange to be invalid, the competent authority is obliged to suspend the proceedings and to refer the parties to the competent court. The court then has to establish whether the exchange of apartments was a voluntary exchange and if it was in accordance with the law.

(3) *Repossession of Damaged or Destroyed Apartments*

Requests for repossession of apartments, which were damaged or totally destroyed, were provided with a new deadline of 6 months from the entry into force of the amendment.¹⁴⁰ In fact, refugees and displaced persons who had occupancy rights to damaged or destroyed apartments mostly had not

¹³⁷ This period referred to the beginning of the war in B-H and to the date when it was no longer possible to acquire occupancy right titles.

¹³⁸ See Article 2(a), paragraph 3 of both the FB-H and RS Amendments.

¹³⁹ Article 5 of the FB-H Amendment and Article 32, paragraph 2 of the RS Amendment specified a period of fifteen months.

¹⁴⁰ See Article 18(e) of the FB-H Amendment and Article 21 of the RS Amendment.

filed repossession claims, thinking that would be useless. In the process of reconstruction of the housing fund, however, many of those apartments were reconstructed and became habitable again. Since before this Amendment no procedures for repossession of these apartments were provided for, it constitutes an important contribution to the return process.

(4) Conditions for Termination of Occupancy Right

The amended Article 5 provides for the conditions to terminate an occupancy right. Firstly, an occupancy right can be revoked if its holder does not file a claim for repossession to the competent administrative authority, to the competent court, or to the CRPC within a specified time limit. Secondly, an occupancy right can be revoked if the occupancy right holder fails to request the enforcement of the decision of the CRPC within the deadline specified in the Law on Implementation of the Decisions of the CRPC. 141

(5) Conditions for Temporary Use of Claimed Apartment

Article 12 provides the possibility to use the claimed apartment for temporary accommodation under certain conditions. 142 The current occupant was only authorised to use the claimed apartment temporarily. Article 12, paragraph 5 specified that the temporary permit could not be extended if the occupancy right holder, a member of his/her household in 1991 or an authorised proxy, requests to collect the keys. The provisions of this article sought to protect the public interest by reducing the empty housing stock in the post-war situation, when providing adequate housing to displaced persons was still difficult.

a) Private Property Rights

The Amendments to the Law on the Cessation of Application of the Law on Temporarily Abandoned Real Property Owned

141 Official Gazette of FB-H, Nos. 43/99, 51/00.

142 Article 12(a) of the Amendment specified the eligibility criteria for accommodation in the claimed apartments as follows: (1) the occupant must be entitled to alternative accommodation; (2) s/he must currently be a temporary user of an apartment or real property; (3) s/he must be required to vacate that apartment or real property following a decision on a claim for repossession under this Law or the *Law on Cessation of Application of the Law on Temporarily Abandoned Real Property Owned by Citizens*, or a request for enforcement of a decision of the Commission (CRPC).

by *Citizens*¹⁴³ in the FB-H and the *Law on the Cessation of Application of the Law on the Use of Abandoned Property* in the RS introduced more precise provisions regarding the position of current occupants in private property and clarified the competence of the local authorities in dealing with these issues. In summary, they provide as follows:

- (i) The competent municipal body has to provide alternative accommodation to current occupants with legal title who are being evicted. In case the current occupant has no legal title, the competent local authority must evict the user immediately, at the latest within 15 days from the date of the delivery of the decision confirming the owner's rights.¹⁴⁴ Article 8 establishes a minimum standard for alternative accommodation of five square meters per person. This provision resulted in a dramatic increase of current occupants voluntarily vacating the property they had occupied, thereby confirming the suspicions that many of them had actually been "double" or "multiple" occupants.
- (ii) Pursuant to Article 12, claims must be processed in chronological order, in order to ensure also the processing of the difficult cases and to allow the rightful owners to repossess their property without delay.
- (iii) The deadline to vacate the property was shortened to 15 days from the date of the delivery of the decision confirming the rightful owner's rights. Again, the current occupant with legal title can under restricted criteria qualify for alternative accommodation.¹⁴⁵
- (iv) Any person with a legal interest in the procedure is entitled to request enforcement of an eviction order. The competent administrative body shall, *ex officio*, or upon

143 High Representative Decision, Amendments on the Law on the Cessation of the Application of the Law on Temporarily Abandoned Real Property Owned by Citizens, Official Gazette of FB-H, No. 56/01.

144 See Article 7 of the FB-H Amendments and Article 35 of the RS Amendments.

145 Article 12(a) of the FB-H Amendments and Article 18(a) of the amended RS Law. Pursuant to Article 12(a), paragraph 2 the deadline could be extended up to 90 days for certain categories. This time limit, however, could be shorter if the current occupant ceased to fulfil the conditions for an alternative accommodation. These conditions are (1) filing a claim for repossession of private property within a new deadline of 60 days; (2) request to enforce the decision which confirms his property within the new deadline of 60 days; (3) current occupants' pre-war owned house was damaged or destroyed and he has applied for return or reconstruction. Only in exceptional circumstances, the established deadline of 90 days for vacation of occupied property may be extended to up to one year for certain justified reasons, (for example, documented absence of available housing in the municipality) which shall be agreed upon by the OHR, Article 12(a), paragraph 5.

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the request of a person with a legal interest in the procedure, adopt a decision to vacate the real property in all cases where the current user is a multiple occupant.¹⁴⁶

- (v) In order to avoid obstruction of the law and to make the competent local bodies accountable in applying the provisions of this amendment, high pecuniary sanctions are provided for the responsible officials who fail to act in accordance with it.

b) Effects of the Amendments

The amendments introduced by the OHR to the post-war property legislation and the joint efforts of the international agencies with their Property Legislation Implementation Plan significantly changed the property implementation rate of property repossessions at national level, as showed in the table below:

Table 3.3.5 Implementation of Property Laws in B-H by 2005

		Socially owned	Private property	Total
FEDERATION B-H	Closed Cases	63,047	44,288	107,335
	Percentage	90.32%	96.46%	92.76%
REPUBLIKA SRPSKA	Closed cases	22,136	60,856	82,992
	Percentage	87.81%	95.24%	93.14%
BRCKO DISTRIKT	Closed cases	1,939	4,778	6,717
	Percentage	95.24%	96.47%	96.11%
GRAND TOTAL	Closed cases	87,122	109,922	197,044
	Percentage	89.77%	95.78%	93.03%

*Implementation ratio: Total number of closed cases/total number of claims expressed in percentages.

Source: UNHCR Statistics-Implementation of the Property Laws in Bosnia and Herzegovina, February 2005, page 4.

It should be underlined that the above displayed repossession is supposed to be achieved when the legitimate pre-war owners/occupancy right holders signs the minutes of repos-

¹⁴⁶ See Article 16 of the FB-H Amendments and Article 24(a) of the amended RS Law.

session and collects the keys, which does not always coincide with the physical return. Consequently, the success announced by the international community, namely the return to their pre-war houses of a total number of one million returnees (refugees and displaced persons) in 2004 in B-H should be evaluated with a certain reservation.¹⁴⁷ Therefore, if the high rates of repossession are reviewed in light of minority returns, the general picture of return of pre-war possessed houses shows a less optimistic picture. This trend is also confirmed by monitoring activities in the field by human rights organisations.

Table 3.3.5 Minority Returns in/to B-H

Year	FB-H	Republika Srpska	Brcko District	Total B-H
1996-97	44,398	1,125		45,523
1998	32,605	8,586		41,191
1999	27,987	13,020		41,007
2000	34,377	27,558	5,510	67,445
2001	46,848	40,253	4,960	92,061
2002	51,814	41,345	8,952	102,111
2003	25,130	18,051	1,687	44,868
2004	5,881	8,045	273	14,199
2005	768	744		1,512
Total	269,808	158,727	21,382	449,917

Source: UNHCR Statistics-Implementation of the Property Laws in Bosnia and Herzegovina, Total Minority Returns in /to BiH from 1996 to 30 November 2003, UNHCR Representation in BiH, GIS Unit, <http://www.unhcr.ba>

¹⁴⁷ The fact that a person signs and collects keys does not mean that s/he is actually repossessing the house. In practice, security reasons, lack of employment in the area and a wish to sell the apartment for a better price are reasons for returnees to remain abroad. See *Helsinki Committee for Human Rights in Bosnia and Herzegovina, 2004 Annual Report*, p. 11, who estimated the real (physical) return to amount to approximately 30 % of a total of 2.2 million refugees and IDPs in Bosnia and Herzegovina.

The figures on minority returns are certainly not satisfactory.¹⁴⁸ Percentages are not available because there is no recent census due to the war. However, the above table shows a significant increase of returnees upon the establishment of joint efforts by the international agencies and the adoption of the amendment laws by the OHR. In fact, the common strategy on a better application of the post-war legislation contributed to more than a duplication of the total number of minority returns.¹⁴⁹

In summary, the amendments eliminated comprehensively the possibilities of an arbitrary and reluctant processing of property claims, by reducing the discretion of the local authorities to obstruct the implementation of the property legislation.

3.3.6 Conclusion

The housing legislation of the war period had significantly changed the property relations in Bosnia and Herzegovina. Initially introduced as emergency measures to allocate abandoned property to refugees and internally displaced persons, it finally resulted in a severe reduction, mostly even in a complete revocation of both occupancy rights and private property rights. This massive violation of the human right to the protection of property supported the establishment of “ethnically pure” territories. Once the DPA was signed, the international community actively pressurised both Entities, which resulted in the decision to annul the revocation of occupancy rights. This major step allowed refugees and displaced persons to repossess their apartments, which they had left during the war. As will be shown in the following chapter, Croatia never adopted such a policy and Croatian occupancy right holders permanently lost the occupancy rights to their

pre-war apartments. This development supports the conclusion that the international presence in Bosnia and Herzegovina forestalled this very negative approach on the return of former occupancy right holders.

Furthermore, the international community installed with the CRPC, a central authority to deal with the repossession of private and socially owned property. Upon the first lessons learnt, it vested this authority with significant powers to enforce its decisions. Again, the international influence actively supported the re-establishment of the pre-war property relations. It finally countered the unwillingness of the local authorities to implement the revised housing legislation with joint efforts of all involved international agencies to overcome the perceived shortcomings. The concerted actions of all international stakeholders thus led to the adoption of legislation on property repossession and its implementation. Even if the influence of the international community may have been only sub optimal, it is still an example of how a co-ordinated action on the adoption and implementation of required laws can at least partly overcome the injustices of the previous discriminatory legislation. In this respect, the chances of the further implementation of the revised housing legislation and the enforcement of decision based on it after the end of the CRPC’s mandate are still debatable.

3.4 Privatisation and Denationalisation

3.4.1 Privatisation of Socially and State Owned Apartments

a) Federation of Bosnia and Herzegovina

In the FB-H, the privatisation of socially owned apartments was governed by the *Law on Sale of Apartments with Occupancy Rights*¹⁵⁰, adopted in 1997 and amended four times since then. This Law specifies that the occupancy right holder has the right to purchase and the allocation right holder the ob-

¹⁴⁸ See Helsinki Committee for Human Rights in Bosnia and Herzegovina, *2004 Annual Report*, p. 1. This Organisation sustains on the basis of their monitoring field presence that the real minority return does not exceed 20% of the total number of returnees.

¹⁴⁹ However, the formal property return is often not followed by the physical return of pre-war legitimate owners/possessors. This inconsistency is caused by multiple factors such as the lack of safety, remaining persistent discriminatory treatment by the local authorities and difficult economic perspectives. As a consequence, the non-significant minority return contributed to the territorial homogenisation, creating almost ethnically pure territories, remainders of the worst relics of the ‘ethnic cleansing’ process in Bosnia and Herzegovina. *Ibid.*

¹⁵⁰ Law on Sale of Apartments with Occupancy Right, Official Gazette of FB-H, Nos. 27/97, 11/98, 22/99, 7/00, 32/01.

ligation to sell a socially owned apartment. The purchasing procedure is initiated upon the occupancy right holder's written request, to be submitted within two years after the Law entered into force.¹⁵¹ In case of a dispute over the apartment during this period, the written request must be made within three months from the date of the final court decision. If the seller refuses to conclude the purchase contract, the occupancy right holder is entitled to initiate a judicial procedure to determine his/her purchasing right. The court judgement then replaces the purchasing contract entirely.¹⁵² This alternative way to purchase an apartment through a court decision constitutes an additional guarantee in case the purchaser faced problems with the local administrative bodies, which still have to make significant efforts to become professional and impartial organs at the service of the citizens.

By intervention of a High Representative Decision in 2001, 153 Article 8(a) of the Law was amended to entitle occupancy right holders, whose apartments were declared abandoned or who had left their apartments during the war, to purchase their apartments after repossessing them. 154 In addition, by the same HR Decision, Article 8(b) obliged the occupancy right holder and all members of his/her family household to provide documentary evidence that they have vacated any accommodation where they were residing as legal

or illegal users before. This provision meant to stimulate the real return to pre-war owned property.

Pursuant to Article 11, paragraph 1 spouses jointly registered as common holders of the occupancy right may purchase an apartment together. 155 The purchasing contract indicates that both spouses, with their names and identity card numbers, are the new owners and they are both registered as common owners of the apartment in the Land Register. 156 The Decision of the Land Register confirms the joint ownership rights of both spouses. A further sale of the apartment requires the approval of both spouses.

According to a local NGO, however, women are disadvantaged in the privatisation process, as in practice women do not appear as titleholders and are therefore not included in reconstruction projects that only benefit pre-war property owners. Another problem they face is lack of access to credit to repair homes or to buy property. 157 UNHCR reports that physical return to pre-conflict property is more difficult for women headed households, and that exclusion of women from the reconstruction process has been a problem. 158

Article 16 provides for a sophisticated schedule for calculating the final purchase price for the apartment. This price is basically determined through the market value of the apart-

151 Ibid, Article 7.

152 The alternative to replace the purchase contract by a court decision is recognised by many privatisation laws. See for example Article 9 of the Law on the Purchase of the Apartments on which Occupancy Rights Exists, Official Gazette of Republic of Croatia, No. 43/92.

153 HR Decision of 17 July 2001, published in Official Gazette of FB-H, No. 32/01.

154 Article 8(a) specified that an occupancy right holder over an apartment which has been declared abandoned according to the Law on Abandoned Apartments, or an occupancy right holder who had left the apartment between 30 April 1991 and 4 April 1998 in cases where the apartment was not officially declared abandoned, shall have the right to purchase his/her apartment immediately after entering into its possession and at the latest within either one year from the date of his/her reinstatement in the apartment, or within one year following the publication of this provision in the Official Gazette of FB-H, whichever date is later. By its Decision of 17 July 2001, the High Representative abolished the previous norm by which an occupancy right holder was obliged to stay in that apartment at least two years before purchasing it. The argument of the FB-H Representative was that such norm was to avoid the ethnic homogenisation and to support the persons who are really willing to stay in FB-H permanently rather than purchasing an apartment in order to sell it immediately. However, the HR was of the opinion that the rule of 2 years of effective use constituted excessive control and led to abuse, and that such norm was against the free disposal of an apartment.

155 As a principle, the occupancy right holder over one apartment could be only one physical person. If only one spouse concluded the Contract of Use, the other spouse in the same household automatically became occupancy right holder too. Thus, in situations where both spouses were occupancy right holders and one of them died afterwards or the other spouse stopped using the apartment for other reasons, the other spouse remained the occupancy right holder.

156 Article 27 of the Law on Sale of Apartments with Occupancy Right.

157 Mualic, Mirela from "ReDo", a Norwegian funded NGO working on reconstruction, and member of the Women for Peace Network, Presentation during the Seminar "Regional Consultation on Secure Tenure and Good Local Governance in South East Europe", organised by UN-HABITAT and the Council of Europe, Belgrade, 25 and 26 February 2002. Based on these findings, the NGO has developed several models for increased participation of women and vulnerable groups in reconstruction and housing projects, and has developed a model for integration projects that treat all residents equally, regardless of their ethnicity, sex, or ability to participate in reconstruction. Reconstruction combining a self-help approach, contracted labour and equal participation enables women headed households, the handicapped, and the elderly to benefit from and contribute to the reconstruction process.

158 No systematic gender analysis was applied in the identification of potential reconstruction beneficiaries. See UNHCR, Daunting Prospects – Minority Women: Obstacles to their Return and Integration, Sarajevo, April 2000, p. 12. Available on: <http://www.unhcr.ch/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=SUBSITES&id=3c3c60844>

ment from which a number of personal discounts have to be deducted. Such a personal discount was especially provided for the accumulated work period and time spent in the military service.¹⁵⁹ The Law allocated such personal discounts also for years of service of the occupancy right holder's spouse.¹⁶⁰ Further personal discounts were granted to war veterans.¹⁶¹

Article 24 provides for payment in cash and by certificates (state bonds) issued by the FB-H.¹⁶² In case of payment of the entire amount, the price of the apartment was reduced by 20% of the determined purchase price. The apartment could also be paid over a period of up to 25 years in equal annual instalments including 1% of annual interests. Article 38 allocates 80% of the sales revenues to the Cantons and 20% to the Federation, whereby 70% of the cantonal revenues shall be allocated to the cantonal fund for construction of apartments for family members of killed soldiers, disabled war veterans, demobilised soldiers and expelled persons.

Finally, the Law transforms the occupancy rights system for apartments, which have not been purchased by the occupancy right holder, to lease agreements. Article 42 obliges the Cantons to issue lease laws, which shall also include provisions on the maintenance of the common space of apart-

¹⁵⁹ Article 21 allowed for a personal discount of 1% on the construction value per full year of service for a legal and physical person from the area of SFRY until 6 April 1992.

¹⁶⁰ Pursuant to Article 21, the amount of the personal discount for services of the occupancy right holder's spouse was limited to 75% of the total reduction. Article 21 also provided a personal discount to the beneficiary of a family pension, who is the current occupancy right holder, for the years of service of the deceased holder of the occupancy right. However, Article 21 is unclear about the possibility to combine the years of work of the spouses in order to raise the final personal discount rate. This issue will be explained in more detail below in Section 3.7.1.a on Marital Property Rights in FB-H.

¹⁶¹ Article 23 provides for personal discounts between 25% to 100% for war victims of *inter alia* the following groups: (1) minor children, both of whose parents were killed in war; (2) military or civil war invalids with 60-90% of physical damage; (3) persons who lost two or more members of the family household who were killed as soldiers in war; (4) occupancy right holders whose spouse was killed in the war (6) parents whose children living with them in a family household were killed in the war; and (7) camp inmates and political prisoners who were in camps or prisons during the aggression on Bosnia and Herzegovina.

¹⁶² The state bonds were issued by virtue of *Law on Determining and Realising Citizen's Request in the Process of Privatisation* (FB-H Official Gazette n. 27/97). Such certificates determined the citizen rights deriving from frozen deposit (bank deposits of B-H citizens in foreign currency who were unable to freely dispose of those savings), and from unpaid salaries of police and army forces members, etc. Art. 15 of this Law explicitly recognised that the certificates could be used *inter alia* for purchasing socially owned apartments.

ment buildings. At the time of this review, only a Draft *Law on Lease* adopted by the Canton of Sarajevo in 2003 was available. The provisions of this Draft Law correspond in general to European standards.¹⁶³

As in Croatia, Montenegro and Serbia, all former occupancy right holders who were unable or unwilling to purchase their apartment under very favourable conditions, have become lessees.

In FB-H the purchase of former socially owned apartments was possible by investing the cash or by using the general state bonds issued by the state. Immediately after the end of the war, the FB-H had problems with the currency that it had issued and then offered state bonds for purchasing to its citizens, with state guarantee. Unfortunately, an unstable financial system drastically diminished the market value of those bonds.

While the FB-H recognised the various discounts for purchasing the apartments, because of diminished value of the state bonds (certificates) issued, this Entity remains without available "fresh" financial means to be invested in maintenance or construction of new apartments. (Federal ministry estimated the loss at KM 150 million).

b) Republika Srpska

In the RS, the privatisation of socially owned apartments was regulated through the Law on Privatisation of State-Owned Apartments.¹⁶⁴ While the Law followed the same intention as the FB-H privatisation law, it distinguishes itself from the latter by the fact that the RS had previously transformed its socially owned property into state property. The authori-

¹⁶³ However, two provisions of the Draft Law may raise concern. Firstly, Article 20 enables the lessee to evict other household members with justified reason not caused by his/her action. This provision may be at odds with the legal obligation of the lessee to support his/her spouse and dependants. Secondly, Article 33 refers to the situation, where the lease agreement has been concluded between the lessor and the former occupancy right holder of a privately owned apartment. In this rather unusual situation, the lease agreement expires upon the death of the lessee without the possibility for the remaining household members to conclude a new contract under the same conditions.

¹⁶⁴ *Law on Privatisation of State-Owned Apartments, Official Gazette of RS, Nos. 11/00, 18/01, 47/02.*

ties of the RS had accomplished this transformation as an emergency measure during the war through adoption of the *Law on the Transfer of Goods in Social Ownerships into State Ownership*.¹⁶⁵ For this reason, the Law on Privatisation provides a broader definition of what kind of dwellings are subject to privatisation.¹⁶⁶

The Law entitles all occupancy right holders to purchase state owned apartments. Article 10 specifies that in case both husband and wife have an occupancy right, they shall have the right to jointly purchase an apartment. If only one spouse purchases the apartment, he or she needs the consent of the other spouse.¹⁶⁷ Family household members may also purchase an apartment with the consent of the occupancy right holder.

Since socially owned apartments were transformed into "state apartments", the entities of the allocation right holders, i.e. the sellers, had also transformed their legal capacity from socially owned enterprises to "state institutions" (Republic, cities, municipalities etc.).

Article 13, paragraph 3 provides for the same right to judicial review in case of the seller's refusal to conclude the purchase contract as the FB-H law. Pursuant to Article 19, the actual ownership of the apartment is acquired by registration in the real property cadastre¹⁶⁸, or by depositing the purchase contract with the administrative organ responsible for affairs related to the real property cadastre and the subsequent registration in the records on deposited contracts. Once the ownership right was acquired, the purchaser's occupancy right ceased to exist.

¹⁶⁵ *Law on the Transfer of the Goods in Social Ownerships into State Ownership*, Official Gazette of RS, No. 4/93. Article 3 of this Law refers to the transformation of socially owned immovable property, including apartments, into state property.

¹⁶⁶ *Ibid*, Article 8 which specifies that "state owned apartments, in terms of this Law, shall be understood to be those apartments for which the ownership right has been transferred under the law to the Ministry responsible for housing affairs, as well as the apartments constructed, or acquired on a different basis, by the Republika, city, municipality, enterprises and other legal persons, as investors, with socially or state owned funds".

¹⁶⁷ The explanation on the joint registration of spouses as common occupancy right holders as given above for the FB-H *Law on Sale of Apartments with Occupancy Right* applies here as well.

¹⁶⁸ If spouses acquire the ownership jointly, they are both registered as common owners.

Similarly as in the FB-H, the Law provides various criteria for the calculation of the apartments purchase price.¹⁶⁹ It provides also for a number of general and personal discounts,¹⁷⁰ whereby the personal discounts are especially recognised for disabled war veterans and the civil victims of the war. Article 29 limits the accumulated discounts to be granted to 75% of the apartment's value.

Upon the payment of the entire amount, a further reduction of 30% of the determined purchase price is granted, whereas in case of payment in monthly instalments interests of 1% per year have to be added.

Since the RS allowed the purchase price to be paid only in cash or in one part by "frozen deposits"¹⁷¹, it received more financial means for the establishment of a Housing Fund in support of the housing needs of vulnerable groups than FB-H. This fund is financed from the revenues of the privatisation of state owned apartments, business premises and garages, from the lease of apartments, business premises and garages owned by the state and from interests. The revenues shall be used for the allocation of credits to resolve housing needs of certain vulnerable groups such as military and civilian war invalids, refugees, displaced persons and persons whose houses or apartments were destroyed in the course of war.¹⁷²

For apartments which were not purchased by the occupancy right holder within two years after the Law entered into

¹⁶⁹ Article 21 provides for the following criteria for determination of the purchase price: (1) value of the apartment established according to the provisions of this Law; (2) advantages derived from the location of the apartment; (3) depreciation of the apartment; (4) amount of the funds invested in the apartment; (5) discounts granted to the purchaser.

¹⁷⁰ Article 24 recognises general discounts, based on depreciation at the rate of 1% per year and a maximum of 60% of the construction value. The depreciation rate for prefabricated buildings with wooden construction shall be 2% per year. Pursuant to Article 25, the purchase price shall be reduced proportionately to the assets which the purchaser invested in the apartment, specifically: (1) personal contributions for the acquisition of occupancy right; (2) assets which were deducted from the compensation paid to him/her for expropriated real property for the purposes of acquisition of the occupancy right; (3) assets with which the occupancy right holder repaired direct war damages. The deduction for invested assets shall not exceed 30% of the apartment's value.

¹⁷¹ Frozen deposits were bank deposits in foreign currency from BiH citizens, who were unable to freely dispose of their savings because all banks had gone bankrupt due to the war events. Now evidence of such deposits could be used for the purchase of one part of the apartment.

¹⁷² See also below: Section 3.5 on Social Housing.

force,¹⁷³ Article 37, paragraph 1 specifies that the competent administrative authority, i.e. the city or municipality, and the occupancy right holder shall conclude within 60 days a lease contract for an indefinite period. If the administrative authority does not conclude such a contract, Article 38, paragraph 2 protects the lessee against inefficient administrative organs by providing that the occupancy right holder and potential lessee is entitled to submit a proposal to the competent court to issue a decision which may substitute the lease contract.

Furthermore, Article 37, paragraph 4 provides for a standardised lease contract for those persons who did not have the financial means to purchase the apartment at the moment this Law entered into force. Although this standardised contract does not contain specific protective provisions for certain vulnerable groups, it nevertheless imposes some general restrictions in favour of the lessees. For instance, Article 39, paragraph 2 provides that cities and municipalities, as competent organs to determine the lease, must stay within certain parameters, upon which the yearly lease cannot be higher than 2.5 % of the apartment's value.

The subsequently adopted *Law on the Changes and Amendments of the Law on Privatisation of State-Owned Apartments*¹⁷⁴ granted the purchase discount for certain categories of vulnerable persons: 40% for persons permanently unable to work and a total exemption from purchase for certain categories of heavy invalids. This amendment also specified that the seller cannot make previously unpaid rent by the purchaser an obstacle for purchasing the apartment; purchasing in such cases must be allowed and the seller is entitled to bring a civil lawsuit action related to the unpaid rent before the competent court.¹⁷⁵ Additional amendments of this law adopted in 2004 and 2005 only prolonged the period for purchasing the apartments until the end of June 2005.

¹⁷³ This period was reduced to one year through HR Decision of 17 July 2001, Official Gazette of RS, No. 35/05.

¹⁷⁴ *Law on the Changes and Amendments of the Law on Privatisation of State-Owned Apartments Official Gazette of Republika Srpska*, No. 65/03 of 11 April 2003.

¹⁷⁵ *Ibid*, Article 70a.

3.4.2 Denationalisation in Bosnia and Herzegovina

As described in the previous section, the process of property restitution has taken almost one decade. Therefore, the Bosnian lawmakers were forced to solve more urgent issues before they could focus their attention on denationalisation. As described in the next chapter on Croatia, the denationalisation process is a very sensitive issue, because of the risk of creating new injustices.

a) *The Federation of Bosnia and Herzegovina*

The FB-H differentiates between 'genuine' occupancy right holders (over socially owned apartments) and the occupancy right holders over nationalised apartments. A definitive solution for occupancy right holders over nationalised apartments is expected with the entry into force of the Denationalisation Act. The draft *Denationalisation Act*¹⁷⁶ has been in the FB-H Parliament procedure since 1999. So far 96 amendments to the draft have been submitted. Obviously this law will have a difficult task to reconcile two opposite interests, those of the former owners - the majority of them in urban areas are composed of religious communities¹⁷⁷ - and those of occupancy right holders. These opposite interests are reflected in different opinions on the modality of restitution and even on the number of apartments in question.¹⁷⁸

The draft *Denationalisation Act* seems to be oriented towards the solution that the occupancy right holder should have the right to purchase that apartment whereas the former owner of the nationalised apartment should be entitled to compensation.¹⁷⁹ Occupancy right holders should be entitled to purchase that apartment under the same conditions specified

¹⁷⁶ The FB-H *Denationalisation Act* - Draft proposal published in "Zemljovlasnici Bosne", (book n.4) author Mustafa Begic, page 379.

¹⁷⁷ Prior to nationalisation, the majority of the most attractive buildings in the city centres of, for example, Sarajevo was owned by various religious communities, (Islamic, Orthodox and Roman Catholic). Now these communities under the *Denationalisation Act* will be entitled to restitution or compensation.

¹⁷⁸ The president of the Association of inhabitants in nationalised apartments "Dom" retained that in the FB-H there are 18,000 apartments, whereas the President of the Association of the Owners of Nationalised and Confiscated Property stated that such property is less than 3000. Source: B.H Dani (Bosnian magazine) n. 226 of 5 October 2001.

¹⁷⁹ Art.18 of the FB-H draft *Denationalisation Act*.

in the *Law on Sale of Apartments with Occupancy Right*. This approach appears to be the more fair solution. The Federal Ministry for Urban Planning and Environment, which is in charge of drafting this proposed law, also confirmed this orientation.¹⁸⁰

b) Republika Sprska

In 2000 the RS tried to regulate this issue by adopting a set of three laws.¹⁸¹ However, the High Representative declared all three laws null and void by its Decision of 31 August 2000, on the grounds of lack of financial support and capacity building resources for the implementation of these laws.¹⁸²

Although the process of denationalisation has not yet started, the position of the former occupancy right holder is already defined by the above-described *Law on Privatisation of State-Owned Apartments*, adopted in the RS in 2000.¹⁸³ As all socially owned apartments in the RS had previously been transformed into state owned apartments, this Law authorises all occupancy right holders over state owned apartments to purchase these. In terms of privately owned apartments, this Law provides two options: the owner may either repossess his/her apartment (in which case the occupancy right holder has the possibility to purchase another apartment) or the owner may claim real market compensation (in which case

the occupancy right holder has the possibility to purchase the same apartment).¹⁸⁴

c) Bosnia and Herzegovina

The FB-H draft law will probably be kept pending for a while longer, as the central B-H Council of Ministries decided to set up an *ad hoc* body, the *Commission for Restitution*, which is in charge of formulating a definitive and comprehensive version of the *Denationalisation Law*. By 1 June 2005 the Commission's preliminary tasks are to undertake an inventory on how many properties will be subject to restitution, the procedural steps for restitution and finally the financial support for accomplishing the denationalisation process.¹⁸⁵ This law will be a *framework law*, which means that RS and FB-H are obliged to enact their legislation strictly in line with it. This *Denationalisation Framework Law* is to be finalised by the end of 2005.¹⁸⁶

Thus, in the meantime, there are two different treatments regarding the position of the occupancy right holder in nationalised apartments: the RS allowed the purchase of those apartments, while the FB-H has still not adopted the law on denationalisation, which should define the position for this category. Such situation is creating a lack of legal certainty for the occupancy right holders in nationalised apartments in FB-H.

¹⁸⁰ See: Statement of Federal Ministry for Urban Planning and Environment, "Tenants in Nationalised Apartment have a Right to Purchase" on 30 March 2004, *Oslobodjenje*, (Bosnian newspaper)

¹⁸¹ *Law on Restitution and Compensation of the Nationalised Property; Law on Restitution of Nationalised Real Estate Property; and the Law on Restitution on Nationalised Land*.

¹⁸² The HR found that there was no evidence on funding sources for financing the implementation of such laws (e.g. the source for paying the compensation for nationalised property) bearing in mind that the RS budget had a deficit of 200 Million KM at that time. In addition, the laws envisaged establishing new administrative organs for implementation of their provisions, without mentioning whether the RS administrative framework possessed the specialised persons for accomplishing such tasks. HR retained that RS administrative institutions at that time were not completely impartial to value the restitution requests based on the facts and not based on ethnic grounds. In the opinion of the HR, the problem with the implementation of these laws was also connected to lack of reliable sources of documenting the evidence, since many records were destroyed during the recent war.

¹⁸³ *Law on Privatisation of State-Owned Apartments*, Official Gazette of RS, Nos. 11/00, 18/01, 47/02. See Section 3.4.1(b) above.

¹⁸⁴ Article 53, paragraph 1 specifies that in case of an occupancy right over a privately owned apartment "the apartment shall be given back in possession of the owner within 5 years from the effective date of this Law." Article 53 further reads: "The city or municipality shall be obliged, within the time limit referred to in paragraph 1 of this Article, to allow the occupancy right holder referred to in paragraph 1 of this Article to purchase another appropriate apartment, but not bigger than the apartment that he used, under the same conditions that he had as the holder of the occupancy right to the apartment. Instead of the apartment repossession, the owner shall be entitled to the compensation by the city or municipality equal to the market value of the apartment. In the case referred to in paragraph 3 of this Article, the occupancy right holder shall acquire the right to purchase the apartment under the conditions stipulated by this Law. If the owner intends to sell the apartment, he shall be obliged to offer it firstly to the occupancy right holder (the right of pre-emption). For the duration of the time limit referred to in paragraph 1 of this Article, the lease relation shall be established under the terms of this Law".

¹⁸⁵ The Steering Board of the PIC (Peace Implementation Council) with its Statement on 25 June 2004 supported and welcomed the establishment of the *Commission for Denationalisation* on the B-H state level in charge to draft the comprehensive Framework Law on restitution in B-H.

¹⁸⁶ "Oslobodjenje," Bosnian newspaper, 23 May 2005.

3.5 Social Housing

The current Bosnian legislation in both Entities provides no specific protective measures related to the needs of certain vulnerable groups. The absence of governmental support in the social sector must be connected to the transition period of post-war Bosnia. With only limited funds, the State is not able to provide a full range of social benefits for housing needs. However, a few social benefits for housing have been introduced.

In the **Republika Srpska**, the *Law on the Republika Srpska Housing Fund*¹⁸⁷, adopted in 2000, includes a housing policy for certain vulnerable groups. Pursuant to this Law, the financial means collected through the privatisation of state owned apartments shall be used for meeting the housing needs of citizens. The Law specifies that 20 percent of the available financial funds are reserved for loans for housing needs of certain groups. Among these groups are: soldiers, military war invalids and family households, refugees, displaced persons, persons receiving material assistance, and persons whose houses or apartments were destroyed in the course of the war activities.¹⁸⁸

The *Law on Social Welfare*¹⁸⁹ enacted during the war period in 1993 did not mention any kind of social benefits for housing needs. The emergency priority during the war was to accommodate displaced persons on a temporary basis, leaving more permanent social housing needs aside due to lack of funds. Pursuant to this Law, revenues out of property (i.e. lease) were, and are still now, to be deducted from the granted material social assistance.¹⁹⁰

Similarly, in the **Federation of Bosnia and Herzegovina** there is almost no policy on the social housing sector. The FB-H *Law on the Basis of Social Welfare, Protection of Civilian*

*War Victims and Families with Children*¹⁹¹ provides only the basis for formulating general policies in this matter, whereas its legal enactment is under the competence of the regional administrative units (Cantons). An example of such cantonal legislation is the *Sarajevo Canton Law on the Basis of Social Welfare, Protection of Civilian War Victims and Families with Children*.¹⁹² This Law establishes that the owner of a property exceeding a certain size, which is considered to exceed the needs of the household, is excluded from the social care programme.¹⁹³ The same rule is applied when potential social care beneficiaries sell or rent out their property, which would allow them to sustain themselves by using those assets. The Law contains only one specific provision regarding the social contribution for housing needs. Article 22 foresees that the households eligible for receiving permanent social contribution could obtain financial support for the payment of public utilities at municipal level (electricity bills, water supply, etc.).

Furthermore, the *Sarajevo Canton Law on the Additional Rights of the War Veterans—Defenders of Bosnia and Herzegovina*¹⁹⁴ provides for housing benefits for specific groups. Its Chapter II lists several benefits for veterans, such as (1) the exemption from payment of contribution for allocated urban construction land, (2) the right to own an apartment¹⁹⁵, and (3) the right to construct an apartment. The latter right is granted by the Housing Fund of the Canton of Sarajevo, established for tackling the housing needs of household members of deceased soldiers and war invalids. Article 30 of this Law further allows all persons eligible for social care benefits who permanently resided on the territory of the Canton at the moment the hostilities in B-H ended, to receive a finan-

187 *Law on the Republika Srpska Housing Fund*, Official Gazette of RS, No. 11/00.

188 *Ibid*, Article 8.

189 *Law on Social Welfare*, Official Gazette of RS, No. 5/93.

190 *Ibid*, Article 23, paragraph 3 and Article 24, paragraph 2.

191 *Law on the Basis of Social Welfare, Protection of Civilian War Victims and Families with the Children*, Official Gazette of FB-H, No. 36/99.

192 *Sarajevo Canton Law on the Basis of Social Welfare, Protection of Civilian War Victims and Families with Children*, Sarajevo Canton Official Gazette, No. 16/2002.

193 *Ibid*, Article 20, paragraph 1.

194 *Sarajevo Canton Law on the Additional Rights of the War Veterans—Defenders of Bosnia and Herzegovina*, Sarajevo Canton Official Gazette, No. 2/2002.

195 Pursuant to Article 37 of this Law, the full ownership over the apartment is granted only to certain restricted individuals, such as war invalids of category I, invalids injured during the war and unable to work, and orphans whose father died in the war.

cial contribution in form of a lump-sum or long term loan - without interest - to satisfy their housing needs.

In summary, it can be said that in the particular Bosnian post-war circumstances with the still ongoing property restitution process, both Entities enacted very limited provisions containing social protective measures on housing needs and rights. The provisions enacted were furthermore limited to specific vulnerable groups, mainly war veterans. The main reason for this virtual lack of social policies is the extremely weak economic situation and accordingly only limited financial funds for providing social assistance in housing. Various surveys confirmed that the B-H economy in present conditions will need almost one decade to reach the pre-war GDP.¹⁹⁶ The privatisation of economic subjects produced very limited results.¹⁹⁷

The privatisation process provided a good opportunity for most B-H citizens to purchase socially owned apartments under favourable conditions, which guaranteed their security of tenure. A remaining problem has been the maintenance and management of common areas, for which “owners” bodies have been established according to the law.¹⁹⁸ Another problem today is housing affordability, especially for young people. An organised approach to housing as during the previous regime does not exist. The devastating war and the general impoverishment of B-H citizens as well as the non-functioning of the B-H state (according to recent surveys e.g. only FB-H spends 35% of its budget to maintain a sophisticated administrative structure which does not work) these factors diminished significantly the possibility to approach social housing in an organised way.¹⁹⁹

196 European Stability Initiative Report “Governance and Democracy in Bosnia and Herzegovina, Post-Industrial Society and the Authoritarian Temptation” indicated that by 2000 growth in B-H had covered only 50% of its pre-war GDP output, p. 19. Report available on: <http://www.esiweb.org>

197 Document of the European Bank for Reconstruction and Development, “Strategy for Bosnia and Herzegovina,” Approved by the Board of Directors on 29 April 2003, p. 17.

198 The NGO “ReDo” provides assistance in the establishments of these ‘owners’ bodies’ while encouraging women to participate in these bodies. See *supra* note 114.

199 European Stability Initiative Report “Making Federalism Work-Radical Proposal for Practical Reform”, p. 4. Report available on: <http://www.esiweb.org>

3.6 Housing and Property Rights of the Roma

When examining the position of the Roma population in Bosnia and Herzegovina, the first obstacle that is faced is the absence of reliable census data on it. This lack of data could be partly explained by the fact that Roma traditionally used to change their place of residence without formal registration and without participation in censuses. Officially, according to the last census in 1991, 8,864 Roma lived in Bosnia and Herzegovina.²⁰⁰ However, the Roma representatives claimed that the real number of Roma population in that period was around 17,000 members.²⁰¹

According to research conducted in 1996, the Roma community members that lived in Bosnia and Herzegovina before the 1992-1995 war was between 50,000 and 60,000.²⁰² The NGO “Save the Children” reported that the estimated number could have amounted up to 80,000 members.²⁰³ Thus the real number of Roma in Bosnia is surely higher than officially confirmed by the 1991 census.

In comparison to other Bosnian ethnic groups, the war in B-H was particularly disadvantaging for the Bosnian Roma. The particularly aggravated position of the Roma was caused by the general features of the war in Bosnia which was based on ethnic and territorial homogenisation by the three main dominating ethnic groups of Bosniaks, Croats and Serbs. The Roma population, neither having a home country nor a “reserve” state, were seen as “others” by all three ethnic groups who compelled them to leave “their territory”. The fact of not having their own home country was particularly penalising for the Roma people and its direct consequence nowadays is that a large majority of Roma in Bosnia and Herzegovina has

200 According to the official data of the 1991 census in Bosnia and Herzegovina, the Roma people constituted the second biggest ethnic minority after Montenegrins (10,070 persons). The census showed also that, before the war, the Roma population was mostly concentrated in territories, which nowadays belong to the Republika Srpska.

201 Center for the Protection of Minorities’ Rights, *Position of Roma in Bosnia and Herzegovina*, Sarajevo, 1999, p. 13.

202 Council of Europe, *Fact-finding Mission to Bosnia and Herzegovina on the Situation of the Roma/Gypsies, 16-2, 1 May 1996*, pp. 2 and 3.

203 Save the Children, *Denied a Future? The Right to Education of Roma Children in Bosnia and Herzegovina*, 2001, p. 8.

been extensively displaced on the territory of the “others.” In addition, there is no precise data available to clarify either how many Roma left the country, or how many Roma were internally displaced. Estimates indicate that the distribution of Roma in the territory of Bosnia and Herzegovina is uneven. The highest concentration is to be found in the FB-H Canton of Tuzla with approximately 15,000 Roma. The Roma in the Republika Srpska do not account for more than 10,000 persons, whereas it is considered that before the war the majority of Bosnian Roma lived on this territory.²⁰⁴

The current Roma property issues in Bosnia and Herzegovina could be summarised under the following three main categories:

Illegal Settlements on Former Sociallystate and socially oOwned Land: In the pre-war period in Bosnia, a majority of 50% to 70% of the Roma population used to live in informal settlements, i.e. in houses built by themselves *on socially owned land, usually in the suburbs of towns or villages. This illegal practice was generally tolerated under the previous socialist regime. However, although the Roma settlers often lived in those communities for decades, they were unable to acquire any property title: ownership, occupancy right or right of use. In fact, the official cadastre records showed no evidence of these settlers. This situation had an extremely negative impact on the Roma communities during the post-war reconstruction process in Bosnia and Herzegovina.* Post-war laws and policies focused on property restitution to rightful owners and occupancy right holders. The lack of documentary evidence that could demonstrate legal titles to any of the informal settlements previously inhabited by the Bosnian Roma, now excluded them from both the repossession and reconstruction process. For the same reasons they are excluded from receiving post-war reconstruction assistance. It is well known that, as condition for eligibility for reconstruction assistance, the international donors required the proof of legal title over the damaged or destroyed house. *A recent survey undertaken by the OSCE Mission in Bosnia and Herzegovina found the existence of approximately one hundred illegal settlements distributed among thirty*

*municipalities; the estimated Roma population living in such settlements being around 22,000.*²⁰⁵

Informal Romani settlements are less tolerated than before the war and accordingly the demolition of such settlements is increasing. Since socially owned land on which most informal settlements are established is increasingly subject to privatisation for industrial or other economic purposes, the settlers live under the constant threat of forced evictions.²⁰⁶

To overcome these serious problems, the regularisation or formalisation of these informal settlements is an urgent necessity. Different approaches could be considered:

- Acquisition of ownership titles through adverse possession. The laws of both Entities already provide for this option for individuals, but since permanent, uncontested possession for 20 years is necessary before adverse possession is an option, this will not be a tool that can be used by many Roma persons.²⁰⁷
- The creation of special zones which isolate the informal settlements from the municipalities’ land use plan, which subsequently allows for the application of more flexible building standards in those areas;
- The acquisition of the land for public interest purposes combined with mechanisms to provide security of tenure to the inhabitants of these settlements, such as for example leases, special use concessions etc.

In cases where forced evictions are considered inevitable, the UN Committee on Economic, Social and Cultural Rights lists the following steps that must be taken to ensure that the

²⁰⁵ *Ibid.*, Chapter 10.2.1 Repossession of Personal Property, page 128. However, it is likely that this report does not provide an exhaustive list. Many of these settlements have no access to public services, like garbage collection, sewage systems and electricity, *ibid.*, p. 147 ff.

²⁰⁶ For a number of examples for the demolition of Roma settlements and the evictions of the Roma inhabitants, see *ibid.*, p. 128 ff.

²⁰⁷ *For ownership title through adverse possession on immovable property, a permanent possession of 20 years is required (under the condition that the original land owner has not claimed the disturbance of the possession over that land in the meantime). The request for inscription of the ownership title in the land register could be made as an individual option only.*

Article 32 of the *Real Estate Act and Basic Principles*, Official Gazette of FB-H, No. 6/98; Article 28, paragraph 2 of the *Real Estate Act*, Official Gazette of Republika Srpska, No. 38/03. See *supra* note 161, p. 129.

²⁰⁴ European Roma Rights Center, Country Report, *The Non-Constitutionals; Rights Deprivation of Roma in Post Genocide Bosnia and Herzegovina*, p. 20. Available on: <http://www.errc.org/publications/reports/bosnia/>

human rights of the persons concerned are not violated: prior to carrying out any evictions, and particularly those involving large groups, all feasible alternatives must be explored in consultation with the affected persons, with a view to avoiding, or at least minimising, the need to use force. Legal remedies or procedures should be provided to those who are affected by eviction orders. All the individuals concerned should have a right to adequate compensation for any property, both personal and real, which is affected.²⁰⁸

Former Social Welfare Housing Beneficiaries: The specific employment conditions of Bosnian Roma before the war also had their negative impact on the realisation of their property rights at present. For many reasons, such as their lack of social integration and their traditional way of living, only a very insignificant number of Roma were employed in socially owned enterprises. Since an employment for a certain number of years was a prerequisite for obtaining an occupancy right, only a very low number of Roma succeeded in obtaining such occupancy right before the war.²⁰⁹ Unfortunately, the current legislation allows the restitution of property only to those who acquired a valid legal title before the war. Since repossession is limited to owners and occupancy right holders, the Roma community in urban areas is excluded from the restitution process.

208 See paragraph 13 of General Comment No. 7 on "The Right to Adequate Housing (Article 11.1): Forced Evictions", issued by the Committee on Economic, Social and Cultural Rights on 20 May 1997. This Committee monitors compliance with the International Covenant on Economic, Social and Cultural Rights, adopted in 1966. According to paragraph 3 of this General Comment, the term "forced evictions" is defined as "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection." The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights.

See: http://www.bayefsky.com/general/cescr_gencomm_7.php

The B-H Constitution declares both Covenants (International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights) to be directly applicable on its territory. The right to adequate housing includes access to land (see paragraph 8 paragraph 3 of General Comment No. 4 on "The Right to Adequate Housing", adopted on 13 December 1991.

Available on: http://www.bayefsky.com/general/cescr_gencomm_4.php

209 During the previous regime the Roma people were neither excluded from social integration nor excluded from free access to work. The main reasons for the low number of occupancy right holders among Roma are probably the specific prerequisite of usually 10 work years for obtaining an occupancy right title which was incompatible with the traditional Roma nomadic way of life.

The most frequent way for the Roma community members to obtain housing in socially owned property was its allocation by municipalities within social welfare programmes. The beneficiaries thereby received the right to use such property and were allowed to stay in the apartments for an indefinite period, but such property benefits did not allow them to acquire the occupancy right.²¹⁰ Consequently, the use of such property cannot be reclaimed throughout the current property legislation, which thus excludes former Roma users of socially owned property from repossessing their apartments.

Elements of Discrimination in Repossession of Property: The legislation of Bosnia and Herzegovina includes openly discriminatory elements; for instance, the law bars Roma from holding key political offices, including the presidency.²¹¹ Until today, an anti-discrimination law has not been adopted. Such legislation is further supported by the perceived discriminatory behaviour on the part of the local authorities. Thus, local organs often do not provide the necessary information to adequately consider the housing needs of the Roma community. Furthermore, there have been numerous cases where claims of Roma for repossession of their private property in rural areas were rejected without any legal basis and explanations.²¹² Furthermore, current occupants required to vacate (rural) property, repossessed by Roma persons, often demolish it.²¹³ Finally, the local authorities have not processed property claims of Roma community members within a reasonable period of time.²¹⁴

210 In this respect, it is necessary to distinguish the two existing alternatives for social housing. On the one hand, the so-called "solidarity fund" supported employees in socially owned enterprises who despite their years of work were unable to acquire an apartment without the help of the municipalities. Those persons were entitled to acquire the occupancy right title over that apartment (for more details, see Chapter Two). On the other hand, municipalities allocated within their own housing fund apartments for social purposes as a temporary or emergency measure. The beneficiaries received thereby a right to use an apartment without an occupancy right title.

211 See Articles IV and V of the B-H Constitution, which explicitly provide for members of different ethnic groups in the Presidency and Parliamentary Assembly, but which do not mention the Roma at all. B-H is the only country in Europe where this implicit discriminatory rule exists. See *supra* note 161, pp. 51 and 54.

212 See *supra* note 161.

213 *Ibid.*

214 However, the amendments to the current property legislation as introduced by the OHR now provide for the review of property claims in chronological order. It is therefore reasonable to hope that some of the current problems for property restitution of the Roma community members may be resolved.

Thus, there have been numerous violations of housing rights of Roma population, among which were forced evictions by the police force and destruction of Roma temporary settlements in Banja Luka without providing any alternative site to set up their accommodation.²¹⁵

On December 1 and 2, 2003, in Kozarusa, a town near Prijedor, a group of Roma returnees who had received a plot of land to rebuild their houses from the municipality were blocked from construction activities by both local Serbs and Bosniaks, unwilling to allow the Roma to settle in their neighborhoods. The reaction of local population against the Roma returnees was so strong that the Municipality of Prijedor was forced to find a new location for the housing project of the Roma returnees.

In August 2003, the local authorities of Zenica evicted several Roma settlements without providing any alternative accommodation for them, provoking a written protest to the local authorities by the European Roma Center.²¹⁶ All abovementioned cases show that the security of tenure for the Roma population is still a daily challenge in Bosnia Herzegovina.

While bearing in mind that Bosnia and Herzegovina is still far from economic sustainability, an analysis of the current property legislation, policies and practices shows that the housing and property needs of the huge majority of Roma community members have not yet been solved. The lack of specific provisions and the lack of alternatives lead many of them to live in informal settlement conditions. To resolve the specific housing issues of this group, the national and local governments could consider legitimising the informal settlements. After all, the right to adequate housing provides also for security of tenure, including informal tenure types such as found in informal settlements.²¹⁷

A positive impact on the future housing conditions of the Roma minority could derive from the Budva Declaration of

215 "Nezavisne Novine", Bosnian independent newspaper, 24 March 2004.

216 See *supra* note 161.

217 See Article 11 of the International Covenant on Economic, Social and Cultural Rights. In its General Comment No. 4 regarding an authoritative legal interpretation of

October 2004, attached to this report as Annex II. In this Declaration, Bosnia and Herzegovina agreed to secure "basic utilities" to the local population, namely access to water, energy and housing.²¹⁸ The Declaration also recognised the need for improved municipal financial funding in order to provide adequate housing for refugees and internally displaced persons and further confirmed the commitment to resolve the issue of informal settlements.²¹⁹ It remains to be seen how this political declaration will be implemented.

3.7 Marital and Inheritance Legislation

3.7.1 Marital Property Rights

In general terms, the current real property legislation in both Entities does not contain obviously discriminatory provisions against women. It implicitly guarantees equal property rights of men and women. As per housing legislation, however, some unclear provisions and ill-defined procedures could create disadvantages for women.

a) Federation of Bosnia and Herzegovina

In the FB-H, Article 21(a) of the Law on Sale of the Apartments with Occupancy Right 220 grants a discount on the purchase price to the occupancy right holder, based on the

the right to adequate housing, the Committee on Economic, Social and Cultural Rights specified in its Paragraph 8 (a) on Legal Security of Tenure that: "*Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner occupation, emergency housing and informal settlements (emphasis added) including the occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure, which guarantees legal protection against forced eviction, harassment and other threats. States Parties should consequently take immediate measures which aim to confer legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups*". Bosnia and Herzegovina ratified the Covenant in 1992. In addition, it is to be kept in mind that the B-H Constitution guarantees the direct applicability of certain human rights treaties including *inter alia* the International Covenant on Economic, Social and Cultural Rights.

218 Article 3.2 of the Budva Declaration, adopted on 11 October 2004 at the Fifth Forum of Cities and Regions of South-East Europe – 11th Economic Forum at the initiative of the Congress of Local and Regional Authorities of the Council of Europe as part of the Stability Pact for South-East Europe. See Annex II for full text.

219 *Ibid*, Article 5.

220 *Law on Sale of Apartments with Occupancy Right*, Official Gazette of FB-H, Nos. 27/97, 11/98, 22/99, 27/99, 32/01.

number of years of work. As a general rule, Article 21, paragraph 2 allows the spouses to combine their years of work in order to raise the personal discount rate for the purchase price. Additionally, Article 21, paragraph 3 allows the beneficiary of a family pension to take the discount based on the years of service of the deceased spouse who was the previous occupancy right holder. This provision, however, is unclear because there is no explicit provision allowing the surviving spouse to combine the working years of the deceased spouse with his or her own in order to increase the personal discount rate for the purchase price. This unclear provision worked to the disadvantage for women due to the unfavourable interpretation of the competent implementing body, the FB-H Ministry for Urban Planning and Environment, which issued the following interpreting opinion²²¹:

“Where the recipient of the family pension has his/her own years of work experience, these years cannot be accumulated to the years of the work experience of the other spouse. The cumulating years of work experience are foreseen only for cases in which the spouses, according to the Law, purchase the apartment jointly.”

This opinion had its particularly negative impact on women in the Bosnian context, where a larger number of women survived their spouses, many of them soldiers killed in the war.

This disproportion in treatment prompted the intervention of the Ombudsmen of the FB-H, who considered this vague provision contrary to Article 1 of Protocol No. 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.²²² The Ombudsmen recommended an amendment to this Law, by allowing each spouse to combine the accumulated work years of the other spouse as a basis for the personal discount for the purchasing price of the apartment. Pursuant to the recommendation, joint accumulated work years should be allowed, regardless of whether one spouse died, or whether one spouse is receiving family

pension or not, and finally whether the surviving spouse is employed or not.

The recommendation was sent to both Houses of Parliament and the Government, and according to last available information, the Government drafted the amendments in line with the Ombudsmen recommendations²²³ but because of lack of political will, the Parliament of FB-H never adopted such amendments.²²⁴

Another concern regarding the equal protection of property rights for women regards the *Marriage Law*²²⁵ of the FB-H. This Law recognises two kinds of property: (1) common property and (2) separate property of each spouse. Common property is defined as property which is the result of the spouses' work collected during their marriage. Article 266 allows in very generic terms for a mutual agreement between the ex-spouses on the determination and division of their common property. However, even if the ex-spouses reach a common agreement, the only way to divide their property is through a regular civil court procedure. If the spouses have not defined their common property in advance, Article 267 provides the criteria for the courts to determine the amount of the allocated common property by the contributions of each spouse to it during the marriage. These criteria include explicitly non-financial contributions, i.e. contributions not based on salary but in form of managing the common household or raising children. However, these criteria give the courts a wide discretion on the determination of the allocated common property. Without established decisions of the appeal courts and without further authoritative guidelines,

²²³ Ombudsmen of the Federation of Bosnia and Herzegovina, *Report on Human Rights Situation in the Federation of Bosnia and Herzegovina for 2001*, Sarajevo February 2002.

²²⁴ In 2002 the Parliament of the FB-H adopted the "Decision on Temporary Determination on Apartment Purchase" (Official Gazette of FB-H n. 32/02). This Decision determined only the apartment purchase located on the territory of the FB-H whose owners are from other former Yugoslav republics and from Republika Srpska. Point X.b of this Decision allowed the discount in the purchasing price as per accumulating working years of the deceased spouse. However, the real effects of this decision were none because the process of purchasing was accomplished, and the above-mentioned norm, Point X, did not take retroactive effect. The Ombudsmen of the FB-H maintained that despite their proposals there was no political willingness to remedy the discriminatory effect of Article 21 paragraph 3.

²²⁵ In the territory of the FB-H, *the Marriage Law of the SRB-H*, Official Gazette of SRB-H, No. 21/79, is still in force.

²²¹ FB-H Ministry for Urban Planning and Environment, Interpreting Opinion No. D/02-37-1200/98 of 21 October 1998.

²²² Ombudsmen of the Federation of Bosnia and Herzegovina, *Special Report*, March 1999.

the decisions of the local courts on the extent non-financial contributions of women have to be considered for the determination of the common property might be made in their disfavour.²²⁶

The decision on the wife's contribution to the common property plays a crucial role for its distribution. Other than for example in the Croatian law, the *Marriage Law* of the FB-H does not explicitly provide for joint ownership over the common property in equal parts for both spouses. Accordingly, the courts may exercise great discretion in allocating the common property. In fact, they may allocate the ex-husband a bigger share by considering his financial contributions to the common property higher than the non-financial contributions of the wife. Accordingly, the applicable *Marriage Law* bears the risk for women to be deprived of their property rights. This gap in the applicable Law will be filled by a more precise provision in the *Draft Marriage Law*, which is currently in the parliamentary process and which will be soon adopted.²²⁷ The proposed Article 365, paragraph 1 specifies explicitly that upon marriage the spouses shall be co-owners in equal parts of their common property. Thus, the proposed law confirms the equal share of the woman in the common property.

Another gender-based concern regarding equal real property rights is the length of the civil proceedings for the division of the marital common property of the ex-spouses. While the separate legal proceedings for the divorce itself are quite quickly completed, the proceedings for the division of the marital common property usually take several years. The unreasonable length of these procedures could have a negative impact by putting the divorced women in an insecure economic position, especially if she is a homemaker or if she is unemployed.²²⁸ In fact, divorced women may not have

226 This is all the more true if it is considered, that the rule of law and an independent and efficient judiciary in B-H are still far from international standards. However, interviewed women representatives confirmed that the courts in Sarajevo and Tuzla generally consider women's non-financial contributions equal to those of their spouses.

227 Draft-proposal of the new FB-H Marriage Law was given to the author by Sarajevo women's group "Zene Zenama."

228 Although sex-disaggregated data on unemployment rate in urban and rural areas are still not available, Bosnian women are still largely engaged in what is generally considered the non-productive sector, such as unpaid labour on family farms, in the home,

sufficient means to follow up a civil court proceeding for several years.²²⁹ However, since the long duration of these proceedings is mainly due to the inefficiency of the judicial system, any ad hoc solution for this problem is difficult to envisage.

b) *Republika Srpska*

In the territory of the Republika Srpska, the recently adopted *Marriage Law* governs the legal relations between spouses.²³⁰ This Law also distinguishes between common property and separate property of each spouse.²³¹ Article 270 stipulates that the property owned by the spouses at the moment of marriage remains their own separate property. Property, which the spouses obtain during the marriage on other legal grounds than their own contribution to the common property, e.g. an inheritance or a gift, also remains separate property. If the common property has to be divided upon a divorce, the spouses may decide by mutual consent on its distribution.²³²

Compared to the FB-H *Marriage Law*, the *Marriage Law* of the Republika Srpska contains more protective provisions for women. Article 272, paragraph 1 for example, specifies that in case of a division of the common property, each spouse is entitled to one half of the common property. Article 273, paragraph 1 further specifies that each spouse may request the court to allocate a higher share in the common property if he or she proves that his or her contribution to the common property was higher than the contribution of the other spouse. In contrast with the FB-H *Marriage Law*, the courts accordingly do not have full discretion in deciding on the total proportion of the contribution of the spouses to

or in the underground parallel market; see International Helsinki Federation for Human Rights, *Women 2000-An Investigation into the Status of Women's Rights in Central and South-Eastern Europe and the Newly Independent States*, page 87.

229 Pursuant to Article 265, paragraph 2 of the *Marriage Law*, one spouse can neither dispose entirely of the common property nor stipulate mortgage over the common property. Accordingly, the legal proceedings cannot be financed by a disposal over the common property.

230 *Marriage Law*, Official Gazette of RS, No. 54/2002, 27 August 2002.

231 *Ibid*, Article 269.

232 *Ibid*, Article 272.

their common property in common. Instead, they may only decide upon the proportion of the contributions, if one of the spouses claims and proves that his or her contribution was in fact higher than 50%, as presumed by the Law. The explicit allocation of an equal share in the common property for both spouses provides unemployed women especially with a higher level of social security and a better protection of their property rights.

In general, the marital legislation in Bosnia and Herzegovina does not contain explicit discriminatory provisions or intents. However, much attention should be paid to the imprecise and ambiguous provisions applicable in the specific context, which could result in *de facto* discrimination.

3.7.2 Inheritance Law

Both Entities in Bosnia and Herzegovina have incorporated the *Inheritance Law*²³³ of the former Socialistic Republic of Bosnia and Herzegovina in their own legislation. Accordingly, the provisions of this Law are still applicable in both Entities.

The Inheritance Law contains similar or identical provisions as the respective applicable laws in Croatia or Serbia and Montenegro. As a basic rule, it provides for the principle of equality of all citizens for inheritance.²³⁴ Also, family parentage and non-family parentage deriving out of wedlock are equal for inheritance purposes.

The Inheritance Law recognises two forms of inheritance: inheritance based on law and inheritance based on testament. Concerning the inheritance based on law, the following persons are listed as heirs: deceased person descendants, his/her surviving spouse, deceased person's parents, brothers and sisters and their descendants. Those descendants are entitled to inheritance according to degrees of inheritance.²³⁵

²³³ *Inheritance Law*, Official Gazette of SRB-H, No. 7/80, 24 March 1980, amended by No. 15/80.

²³⁴ *Ibid*, Article 4.

²³⁵ *Ibid*, Article 9, paragraph 2.

- 1) The first degree includes the descendants and the spouse of the deceased person; they inherit in equal parts.²³⁶ Children (both sons and daughters) also inherit in equal parts, as do widows and widowers.²³⁷
- 2) If the deceased does not have children, the second degree of inheritance applies, and includes the deceased person's parents and his/her spouse. Parents receive one half of the inheritance in equal parts, while the second part is given to the surviving spouse.²³⁸
- 3) If the deceased does not have any descendants, spouse or parents, the third degree of inheritance applies and includes the paternal and maternal grandparents, who each inherit one half.²³⁹

When the deceased person's children or parents do not have sufficient means to survive, they can ask the courts to enlarge their inheritance part. In deciding on this request, the court is bound to consider all relevant facts, such as e.g. the material status of the requesting party, the duration of the marriage and the amount of the inheritance.²⁴⁰

The Law also includes provisions for the termination of the spouse's inheritance upon the divorce of the marriage. Furthermore, a spouse's right to inheritance terminates if (a) the deceased person initiated a court procedure for divorce and after his/her death the request is granted; (b) the marriage is declared null and void or non-existent before the death of the deceased persons; and (c) the common life of the spouses has permanently ceased by fault of the surviving spouse as determined by court, or their community has ceased by mutual consent.

²³⁶ *Ibid*, Article 10. According to Article 19, adopted children inherit equally to natural children, unless their inheritance rights were limited or excluded at the moment of adoption.

²³⁷ *Ibid*, Article 4, which states that "citizens are equal and subjected to the same conditions in inheritance."

²³⁸ *Ibid*, Article 12. If there is no spouse, the parents inherit in equal parts. In specific cases, when one parent of the deceased person dies before him/her and that person is without descendants, the part which would have been inherited by him/her if alive belongs to the other parent. If both parents have died before the deceased person, the inheritance falls to their descendants.

²³⁹ *Ibid*, Article 16.

²⁴⁰ *Ibid*, Articles 22 and 24.

The Law contains some provisions in favour of descendants, which guarantee the so-called compulsory inheritance by law, regardless of the deceased person's will.²⁴¹

The compulsory inheritance establishes that direct descendants and spouses have the right to one half, other descendants to one third, of the amount that would have been inherited by law pursuant to their inheritance degree.²⁴² Other relatives and brothers and sisters of the deceased person are entitled to compulsory inheritance only if they are permanently unable to work or if they do not dispose of their basic financial needs.

Regarding the existing inheritance provisions, special attention should be given to Article 23, paragraph 2 of the *Law on Sale of Apartments with Occupancy Right*, which entitles children who lost one parent in the war to the common ownership over the apartment with the surviving parent.²⁴³

3.8 Conclusions and Recommendations

The recent war in Bosnia and Herzegovina was characterised by massive violations of housing and property rights of Bosnian citizens. Mass displacements and the deprivation of property were the basic features of the notorious process of “ethnic cleansing”, which shattered Bosnia's heterogeneity and which significantly altered the ethnic picture of the country up to today. The violation of property rights throughout the war was strongly supported by sophisticated discriminatory legislation, which deprived the respective ethnic minority groups in each part of the country of their homes. Despite the intervention of the international community, the housing legislation of the war period continues to have a major

²⁴¹ Ibid, Article 28.

²⁴² Ibid, Article 29, paragraph 2.

²⁴³ Article 23, paragraph 2(b) of the FB-H Law on Sale of Apartments with Occupancy Right stipulates the following: “An occupancy right holder whose spouse was killed in the home guard-defensive liberation war as a member of the Armed Forces or was killed as a victim in that aggression, if s/he lives in a family or household with a pre-school child including an adopted child receiving full time education or with a child, including an adopted child, who is the holder of the family property. In that case the apartment shall be jointly owned by the spouse and the child (including adopted child)”.

impact on the property rights of Bosnian citizens today. As the majority of Roma lived in informal settlements in urban or peri-urban areas and had neither occupancy rights nor ownership titles, the post-war restitution and reconstruction processes excluded them. The privatisation process got caught up in the war and has by now resulted in the sales of all socially owned apartments and in the transformation of occupancy rights into leases. Very few provisions on social housing exist in current laws and policies. While Bosnia's housing and property legislation enshrines equal rights for women and men, women reportedly have not been able to access reconstruction assistance and credit because their names were not on the property register. Remaining gaps in the Marriage Law may be (partly) responsible for these gender inequalities.

The development of the Bosnian housing legislation since the segregation of former Yugoslavia gives reason to the following conclusions, lessons learnt and recommendations:

1) Prevention and early warning of future discriminatory housing and property laws

Although the housing legislation was initially designed to meet the urgent need for accommodation for refugees and internally displaced persons, it was subsequently used to permanently deprive ethnic minority groups of their occupancy rights and private property. This emergency legislation in disguise may be considered as a blueprint for any country to withdraw property rights from unwanted or underprivileged citizens. The international community should be alert to the mechanisms and features of such legislation in order to detect and possibly prevent in the future the introduction of property rights violations through discriminatory laws.

2) International unified monitoring approach

Realising that the housing legislation of the war period forestalled the right of refugees and displaced persons to return and repossess their property, the international community successfully pressurised the FB-H and the RS Entities into repealing legislation that revoked property rights. This important measure opened the

possibility to repossession of pre-war homes and as such provided the legal basis for the return process. Such a unified and straightforward international approach is to be recommended. This finding is supported by the post war legislation of Croatia which did not face the same pressure and which accordingly never allowed for a fully-fledged repossession of pre-war socially owned apartments.

- 3) Importance of strong mandate for neutral property restitution body, including for the implementation of its decisions** The legislation on property repossession was not successful without proper implementation. Based on its powerful mandate, the OHR adopted secondary legislation, which significantly improved the proper implementation of the amended property laws. This measure was based on a common effort of all involved international but also of local stakeholders. Again, the co-ordinated approach of the international community turned out to be quite effective. While the Bosnian post-war context was unique, lessons learnt such as the need for a strong mandate of a neutral body in charge of property restitution (legislation), the importance of proper (ethnically neutral) implementation and a co-ordinated approach - need to be highlighted and disseminated.

4) Monitor and Facilitate Physical Return

Annex 7 to the Dayton Peace Agreement guarantees the right of refugees and displaced persons to return and to repossess their pre-war property. This guarantee should be interpreted in a wide sense as constituting physical return. If the international community's effort in property repossession focuses only on its formal aspect without monitoring physical return to the pre-war owned property, the real risk is that formal repossession would be completed but de facto the situation on the ground would be of territorial ethnic homogenisation, which is contrary to the DPA principles. Furthermore, in order to include single headed households in the return process, collective returns involving community support for single headed households, and

ensuring inclusion of the most vulnerable groups in reconstruction projects are recommended.

5) Transfer of responsibilities related to return of properties

Since the local authorities are often reluctant to allow the return of properties to pre-war owners, the transfer of responsibilities to central B-H institutions should be considered. Such a transfer of responsibilities should be based on the notion that repossession and return are an integral part of the safe return process. To achieve this goal, it is necessary to facilitate inter-entity and inter-cantonal communication. Currently, the lack of inter-entity communication is a major obstacle, which derives from the very complex administrative structure of a weak central state and two parallel entities (pseudo-states), whereby one is centralised and the other subdivided into 10 cantons, which reportedly do not function well. Ten years after the end of war, discussions on the current constitutional framework and on improving the self-sustainability of B-H in economic and institutional terms are to be supported.

6) Adequate Housing for All

The introduction of private ownership over apartments deprived vulnerable groups of the well-established system of state assistance for housing. While many former occupancy right holders have become private property owners, young persons now face a lack of affordable housing, and the maintenance and management of common spaces of private apartments is a problem across the region. Without such instruments of social housing and a rental market that is better regulated, underprivileged groups face a significant insecurity of tenure. Therefore, the future housing legislation should not only embrace the principles of the market economy but also (re) consider mechanisms to protect the housing of the poor and socially vulnerable groups. This governmental responsibility may be all too easily forgotten in the post-war reconstruction process of Bosnia and Herzegovina. The right to adequate housing, which under international law also includes affordability and accessibility, should be in-

cluded in the Constitution of Bosnia and Herzegovina and its entities.

7) Special Attention to Adequate Housing for the Roma

The housing of the Roma minority in Bosnia and Herzegovina is of special concern. Without being a part of the three major ethnic groups and often without formal property titles, the interests of the Roma are at risk of being excluded in the new housing legislation and its implementation. In the course of privatisation-privatization of statesocially owned land, the Roma communities are especially at risk of being removed from informal settlements. In this respect, various options should be considered: such as the creation of special zones for romani settlement which could allow the application of more flexible building standards in those areas. Other possible solution would be the acquisition of the land for public interest purposes combined with mechanisms to provide security of tenure to the inhabitants of these settlements, such as for example leases, special use concessions etc.acquisition of property titles through adverse possession should be considered (which would require amendment of the law to allow for collective adverse possession and for a shorter period of uncontested permanent possession) as well as options such as special zoning and state acquisition of privatised land and prohibition of sales of socially owned land in the public interest. Upon privatisation of land used by the Roma community

In all cases of land privatisation which could affect Roma settlement, an , alternative accommodation should be provided to this minority. The international community should further supervise the proper implementation of political commitments of the recent past.

8) Special Attention to Women's Rights to Adequate Housing and (Marital) Property

Widows, women whose husbands are still missing, abandoned women, survivors of sexual violence and torture, other severely traumatised women and Roma women are among the most vulnerable in post-conflict Bosnia and Herzegovina. Many of them have had to take up the roles of caretaker and breadwinner si-

multaneously, but with few of the resources that were available to them in the socialist era. Unemployment is particularly high among women. They are in need of secure housing, education and training and health assistance. While in the immediate post-conflict years there was much international attention and aid, such international support has been largely withdrawn, as a result of which local women's organisations have discontinued or are about to discontinue due to funding cuts. It is recommended that both international organisations and the government institutions continue to pay specific attention to the plight of these groups of women.

As regards women's marital property rights, the FB-H should adopt the new draft Marriage Law on a priority basis in order to introduce a better protection of women upon divorce. In order to shorten the judicial procedure for the distribution of marital property upon divorce, the efficiency of the judicial system should be improved.

9) Continue to Increase Women's Participation in Decision-Making Bodies

Compared to 2000, the 2004 elections saw the number of women elected at all levels increase, even though the increase for higher-level decision-making positions (e.g. mayors and ministers) was very limited. Further efforts should be made to combat gender stereotypes and increase the number of women in decision-making positions.

10) Create Social Housing Projects

Formulation and implementation of social housing projects, at least in urban areas, similar to the Croatian POS project (see Chapter Four), in order to improve the housing affordability for young persons and other persons in need of social housing.

11) Improvement of judicial and administrative system

The present situation confirms that a weak judicial system and the underdeveloped rule of law deprive especially the disadvantaged members of the society, including women. Thus, the improvement of the housing legislation should be embedded in the overall

improvement of the judicial and administrative system of Bosnia and Herzegovina.

12) Review Civil Laws related to Housing and Property

The “emergency legislation” enacted during the war derogated the basic civil law principles on residential property. This emergency legislation replaced the general applicable property legislation pursuant to the principle *lex specialis derogat lex generalis* and thus significantly reduced the value of the basic civil law provisions. Post-emergency, it is necessary to review the basic civil laws (e.g. the Law on Ownership, the impact of which was greatly diminished during the war because of the adopted laws on use of abandoned property). The post-war property legislation that has been adopted so far, with its focus on the restitution of abandoned property and the privatisation of socially owned apartments, did not fulfil this requirement. The reform should also review whether the transformation of the existing socialist-based real property rights legislation into a modern civil real property rights regime

requires the adoption of new laws. The same is true for the current administration of real property rights by the cadastral and real property rights registration systems.

13) Enactment of Denationalisation Law

Support the B-H efforts to enact the comprehensive Denationalisation Framework Law and to allow the occupancy right holders in FB-H to purchase the apartments where they live, while ensuring that former owners are entitled to compensation.

CHAPTER FOUR

Croatia

4.1 Introduction

In the early 1990s the governing Yugoslav communist party accepted the idea of free democratic elections in all Yugoslav Republics, from which new political groups emerged. Within the already complex institutional context, their main political issue became the future institutional set-up of the Yugoslav federation. Upon the failure to redefine a new Yugoslav constitutional framework²⁴⁴, the Republics of Slovenia and Croatia proclaimed their independence in June 1991 and international recognition followed in 1992.

By the end of 1990 the Serbian minority leaders of Croatia proclaimed the so-called “*Serbian Autonomous Region of Krajina*”²⁴⁵, which comprised one fourth of the present Croatian territory. In the second half of 1991, the armed incidents between Croats and Serbs deteriorated into an open armed conflict and led to expulsion of over 80,000 ethnic Croats from this region.²⁴⁶ In the summer of 1995 Croatia regained full military and political control over the entire Croatian territory²⁴⁷, with the exception of the region of Eastern Slavonia, where the United Nations had assumed transitional authority.²⁴⁸

244 Two former Yugoslav Republics of Slovenia and Croatia proposed the end of June 1991 as deadline for the redefinition of new relationships among Yugoslav Republics. In line with the results of two referenda in which more than 90% of their citizens supported the independence in case of failure of negotiations, the two republics proclaimed their independence in June 1991.

245 The “Serbian Autonomous Region of Krajina”, later “Serbian Republic of Krajina” (hereinafter former “*Krajina*”) was the self-proclaimed entity of Serbian leaders of Croatia who did not recognise the Croatian authority. It comprised the territory where the Serbs from Croatia were in the majority. In this study the former “*Krajina*” refers to the territory controlled by the Croatian Serb forces from 1991 to 1995.

246 See Commission on Human Rights, *Preliminary report of the Special Rapporteur, Paulo Sergio Pinheiro, submitted in accordance with Sub-Commission resolution 2002/7 on Housing and Property Restitution in the context of the return of Refugees and Internally Displaced Persons* (E/CN.4/Sub.2/2003/11), p. 6, paragraph 14.

247 According to UNHCR, these military operations caused the flight of more than 200,000 Serbs to Eastern Slavonia, Bosnia and Serbia and Montenegro. See: <http://www.unhcr.ch/cgi-bin/texis/vtx/balkans-country?country=croatia>

248 United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES).

In 1996 Croatia joined the Council of Europe and ratified the European Convention for Protection of Human Rights and the additional protocols 1997.

Constitutional Provisions

The Croatian Constitution was promulgated in 1990 and amended in 2000. Its Article 3 provides explicitly for justice, ethnic and gender equality, pacifism, social justice, respect for human rights, the preservation of nature and human environment, the rule of law, a democratic pluralist political system and the “*inviolability of the right to property*” as the highest values of the constitutional order of the Republic of Croatia. Additionally, Article 48 paragraph 1 explicitly guarantees the right to property.²⁴⁹ The rights guaranteed in the Constitution may be restricted only by virtue of a law in order to protect the freedom and rights of other people, the legal system, public morality and health. Such restrictions in the public interest must be proportional to the nature of the restriction.²⁵⁰ The right to inheritance is laid down in Article 48 paragraph 2. While the Croatian Constitution does not explicitly provide for the right to adequate housing or to equal access to land, its Article 14 paragraph 1 endorses the principle of equality.²⁵¹

War and post-war Legislation

During the war, housing and property legislation was adopted, including abandonment laws, which favoured displaced persons of Croat ethnic origin while making it virtually impossible for persons of other ethnic groups who had abandoned their home to access their property rights.²⁵² Only

249 Article 48, paragraph 1 of the Constitution of the Republic of Croatia: “The right to ownership is guaranteed. Ownership obliges. Ownership right holders and his/her users have the duty to contribute to the common good. Foreign citizens shall obtain ownership according to the conditions stipulated by law. The right to inheritance is guaranteed.”

250 For the restriction of the right to property see Article 50 of the Constitution: “Ownership may be restricted by law in the interest of the Republic, or property expropriated against compensation equal to its market value. Entrepreneurial freedom and property rights may exceptionally be restricted by law for the purposes of protecting the interests and security of the Republic, nature, human environment and health.”

251 Art 14, paragraph 1 of the Constitution: “*Everyone in Republic of Croatia has rights and obligations; regardless of his/her race, colour, sex, language, religion, political and other belief national and social origin, material status, naissance, education, social status or other characteristics.*” Additionally, Article 48, paragraph 2 of the Constitution stipulates: “*Everyone is equal before the law.*”

252 See *supra* note 3, p. 6, paragraph 17.

after continued international pressure were some of these issues resolved.

Upon its independence in 1991, Croatia started the privatisation of socially owned property. Occupancy right holders of socially owned apartments were allowed to purchase their apartments. Remaining occupancy rights were transformed into lease agreements. However, due to the military conflict in the region of former “Krajina” the newly adopted privatisation laws were not applied in this area, which resulted in the continuance of the occupancy right regime in this part of Croatia until the termination of the war by the end of 1995.

The Croatian restitution programme for abandoned private property started out very slow in the immediate post war period, but gained momentum in the new millennium with a government commitment to return all private property by the end of 2002. However, this commitment was not fulfilled and the current goal for the final restitution of private property is by the end of 2005.

In October 2001 Croatia signed the Stability and Association Agreement with the European Union, thereby formally undertaking the obligation to consolidate its entire legislation with the European Union’s standards.²⁵³ In April 2004 the European Union Commission expressed the positive opinion (Avis) on the application of Croatia for membership of the European Union.²⁵⁴

Governance Structure

Croatia is a parliamentary democratic republic, headed by a president.²⁵⁵ The parliamentary elections of 2000 resulted in a coalition government of six political parties of centre-left orientation.²⁵⁶ The Croatian Democratic Union (HDZ),

which had ruled the country from 1990 to 2000, managed to win the 2003 elections. Its new leadership claimed to have rejected the nationalist approach and promised to concentrate on economic prosperity, Croatia’s admission into the European Union and resolving all questions with Croatia’s neighbours.²⁵⁷ Article 15 of the *Law on Local Elections*²⁵⁸ obliges political parties to ensure the principle of gender equality, but does not include any safeguards to ensure that this obligation is met. During the national elections of 2000, the percentage of women in Croatian Parliament increased to 21.2%, a major improvement compared with 1995 (5.7% of women in Parliament) and 1997 (7.8%).²⁵⁹ However, in the 2003 elections this percentage dropped to 17% (constituting 28 women out of a total of 140 parliamentarians).²⁶⁰

In December 2002 the Croatian Parliament adopted the *Constitutional Law on the Right of National Minorities* (hereinafter: CLNM).²⁶¹ Pursuant to this law, national minorities are guaranteed the right to elect a minimum of 5 and a maximum of 8 representatives to Parliament.²⁶² In addition, Article 20 guarantees national minorities with a certain population threshold the right to elect minority representatives to local

²⁵⁷ See *supra* note 12.

²⁵⁸ *Law on Local Elections*, Official Gazette of Republic of Croatia, n. 44/05.

²⁵⁹ Be Active Be Emancipated (B.a.B.e), *Women in Election Campaigns, Summary* <http://www.babe.hr/eng/research/eleksum.htm> B.a.B.e, together with other women’s groups from all around Croatia, joined the Women’s Ad Hoc Coalition, which monitored the election and promoted various gender issues, such as women’s participation in decision-making bodies.

²⁶⁰ See *supra* note 12.

²⁶¹ *Constitutional Law on the Right of National Minorities*, Official Gazette of Republic of Croatia, n. 155/02.

²⁶² Article 19, paragraphs 1 and 2 of the CLNM. After the amendments to the Election Law, and based on the 2001 census, the minority electorate has elected the following representatives:

- Serbs (4.54%) elect 3 representatives;
- Italians (0.44%) elect 1 representative;
- Hungarians (0.37%) elect 1 representative;
- Albanians (0.34%), Bosniacs (0.47%), Montenegrins (0.11%), Macedonians (0.10%), and Slovenes (0.30%) together elect 1 representative;
- Czechs (0.24%) and Slovaks (0.11%) together elect 1 representative;
- Austrians (0.01%), Bulgarians (0.01%), Germans (0.07%), Poles (0.01%), Roma (0.21%), Romanians (0.01%), Russians (0.02%), Ruthenians (0.05%), Turks (0.01%), Ukrainians (0.04%), Vlachs (0.00% total of 12 in Croatia), and Jews (0.01%) together elect 1 representative.

²⁵³ Committee on the Elimination of Discrimination Against Women, *Reports of Croatia*, 19 January 2005, p. 2. Available on: <http://www.unis.unvienna.org/unis/pressrels/2005/wom1478.html>

²⁵⁴ See www.europa.eu.int/comm/external_relations/see/sap/rep/cr_croat/pdf

²⁵⁵ European Forum for Democracy and Solidarity, *Croatia Update*, 10 March 2005, available on: <http://www.europeanforum.net/country/croatia>

²⁵⁶ See Norwegian Institute of Human Rights/Nordem, *Republic of Croatia: Local Government Elections 2001*, Working Paper, 2001:19. Available on: <http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN019183.pdf>

and regional representative bodies.²⁶³ The CLNM provides for the first-time establishment of local and regional Councils of National Minorities and the National Council of National Minorities as consultative bodies.

Currently, the Republic of Croatia is administratively subdivided into 21 counties, 123 towns and 424 municipalities.²⁶⁴ Counties are defined as regional self-government units whereas municipalities and towns constitute units of local self-government.²⁶⁵ The percentage of women in local government in 1998 was insignificant.²⁶⁶ During the time of writing, no statistics were available on women local councillors.

The *Gender Equality Act* of 2003²⁶⁷ regulates the right to protection from discrimination on the basis of gender and the creation of equal opportunities for women and men in political, economic, social, educational and all other areas of public life. It defines discrimination on the basis of gender in all its forms, both direct and indirect. It also determines state mechanisms for the achievement of equality and non-discrimination, as well as the obligation to introduce principles of gender equality.²⁶⁸ Under this Act the Office for Gender Equality was established, among whose tasks are the monitoring of harmonisation of domestic laws with the relevant international standards in this matter and drafting the national gender equality policy. The Office for Gender Equality is autonomous but is inadequately equipped - both in terms of budgeting and personnel - to handle the ambitious agenda

it has been given.²⁶⁹ This Act also created the Ombuds-person for Gender Equality, whose main duties are to monitor the implementation of this Law and other norms concerning gender equality. It furthermore reviews information and claims on alleged violations of gender equality, advises, and makes recommendations for adoption of certain measures in favour of gender equality.²⁷⁰

Demographic and Socio-Economic Data

According to the 2001 census, Croatia had a population of 4,437,460 inhabitants, distributed according to sex and age as presented in the figures below:

Table 4.1: Population according to sex and age in 2001

	Population by age, '000				Population by sex, %				Population by age groups, %			
	Total	0 - 14 years	15 - 64 years	65 + years	Total	0 - 14 years	15 - 64 years	65 + years	Total	0 - 14 years	15 - 64 years	65 + years
	Men	2,136	388	1,482	266	48.1	51.2	49.7	38.2	100	18.2	69.4
Women	2,301	370	1,501	430	51.9	48.8	50.3	61.8	100	16.1	65.2	18.7
Total	4,437	758	2,983	696	100	100	100	100	100	17.1	67.2	15.7

Source: 2002 Statistical Yearbook of the Republic of Croatia, 5-5.

The census counted 1,477,377 registered households with an average number of 2.99 persons per household. The households were composed as follows: 20.8% single households, 23.6% two member households, 19.0% three member households, 20.6% for member households, and 16% households composed of five or more members.²⁷¹

The population mobility is characterised by a high immigration flux in both directions during the last years. The high immigration trend towards Croatia was caused by the consequences of the war. Thus, the majority of all immigrants

263 Each minority group that represents more than 5 but less than 15 % of the total population of a local self government unit should have at least one member in the municipal government, while each minority group that accounts for more than 15 % of the total population in a local self-government unit is entitled to proportional representation.

264 *Act on the Territories of Counties, Towns and Municipalities*, Official Gazette of Republic of Croatia, No. 90/92, 29 December 1992, as amended by Law No. 10/97 and 92/01. This Act is based on Article 89 of the Constitution of the Republic of Croatia, as promulgated on 22 December 1990.

265 *Law on Local and Regional Self-Government*, Official Gazette of Republic of Croatia, No. 33/01.

266 United Nations, Press Release, *Peace and Stability enable Croatia to focus on Social Development, Human Rights, Women's Anti-Discrimination Committee Told*, 21 January 1998, WOM/1007. <http://www.un.org/esa/agenda21/natinfo/countr/croatia/inst.htm>

267 *Gender Equality Act*, Official Gazette of Republic of Croatia No.116/03.

268 Committee on the Elimination of Discrimination Against Women, *Reports of Croatia*, 19 January 2005, p. 3. See *supra* note 10.

269 *Ibid*, pp. 1 and 4.

270 Articles 19 and 22 of the *Gender Equality Act*.

271 Republic of Croatia, *2002 Statistical Yearbook of Republic of Croatia*, 5-2, Population and Number of Settlements by Census.

were mostly Croats from Bosnia and Herzegovina and the Federal Republic of Yugoslavia, who came to live permanently in Croatia. The population of Croatia disaggregated by ethnic group is presented in the following figures:

Table 4.2: Population of Croatia by Ethnicity (in alphabetical order)

Ethnic group	Population			
	1971	1981	1991	2001
Albanians	4,175	6,006	12,032	15,082
Austrians	352	267	214	247
Bosniacs ¹				20,755
Bulgarians	676	441	458	331
Croats	3,513,647	3,454,661	3,736,560	3,977,171
Czechs	19,001	15,061	13,086	10,510
Ethnically uncommitted	15,798	25,790	118,869	89,130
Germans	2,791	2,175	2,635	2,902
Hungarians	35,488	25,439	22,355	16,595
Italians	17,433	11,661	21,303	19,636
Jews	2,845	316	600	576
Macedonians	5,625	5,362	6,280	4,270
Montenegrins	9,706	9,818	9,724	4,926
Poles	819	758	679	567
Roma	1,257	3,858	6,695	9,463
Romanians	792	609	810	475
Russians	1,240	758	706	906
Ruthenians	3,728	3,321	3,253	2,337
Serbs	626,789	531,502	581,663	201,631
Slovaks	6,482	6,533	5,606	4,712
Slovenes	32,497	25,136	22,376	13,173
Turks	221	279	320	300
Ukrainians	2,793	2,515	2,494	1,977
Vlachs	13	16	22	12
Others	103,427	404,450	152,803	21,801
Unknown	18,626	64,737	62,926	17,975
Total	4,426,221	4,601,469	4,784,650	4,437,460
Ethnically uncommitted but declared as regional affiliation		8,657	45,493	9,302

Source: adapted (from alphabetical order in local language to alphabetical order in English language) from 2003 Statistical Yearbook of Republic of Croatia, p. 98.

As of July 2003, some 353,137 persons had the status of refugee, displaced person or returnee – 189,240 of them were women.²⁷²

In the following section the most relevant housing laws and policies, adopted during the war period will be described. Section 4.3 contains an examination of legislation related to private property repossession of refugees and other displaced persons, while also describing which measures were taken to accommodate former occupancy right holders. In section 4.4 the privatisation and denationalisation process in Croatia is analysed. Social housing policies and the specific housing issues of the Roma are described in sections 4.5 and 4.6 respectively. Legislation related to marital property and inheritance rights is described in section 4.7, which is followed by conclusions and recommendations.

4.2 Housing Legislation of the War Period

The war situation in the former “Krajina” had significant impacts on the housing legislation of Croatia. Since 1991 the expulsion of Croats from the region of former “Krajina” resulted in a first mass arrival of displaced, homeless persons in Croatia. Upon the military and institutional collapse of the former “Krajina” in mid-1995, in turn the majority of Croatian Serbs left this area towards the Federal Republic of Yugoslavia and the parts of Bosnia and Herzegovina under control of Bosnian Serbs. At the same time, numerous Croats, mostly from Bosnia and Herzegovina, arrived in the areas where Croatia retook control.²⁷³

After the mass flight of the Serbian civil population, an urgent issue for the Croatian government was to administer the enormous quantity of abandoned residential property and temporarily allocate these to displaced persons with housing needs. This was officially declared as one of the main objectives, and a series of different laws was adopted in

²⁷² Committee on the Elimination of Discrimination Against Women, *Reports of Croatia*, 19 January 2005, p. 3. Available on: <http://www.unis.unvienna.org/unis/pressrels/2005/wom1478.html>

²⁷³ The mass arrival of Serbian refugees from Croatia from the areas of Western Slavonija, Kordun, Banija, part of Lika and Northern part of Dalmatia in the Federal Republic of Yugoslavia and the parts of Bosnia and Herzegovina under control of Bosnian Serbs provoked, in turn, the migration of the majority of the Croatian population of these areas.

the war and post war-period to achieve this purpose. Existing property rights, whether occupancy or ownership rights, came under threat from the rights granted to temporary users. The following section will provide an overview of the relevant legislation on occupancy rights over socially owned apartments and on private property until the end of the war in 1995.

4.2.1 Occupancy Rights over socially owned Apartments

Croatia introduced the privatisation of socially owned apartments in 1992.²⁷⁴ However, the outbreak of the military hostilities in 1991 preceded the privatisation process, which got caught up in the war situation. Furthermore, as the Croatian Government was not able to exercise its legislative and administrative powers in former “Krajina” until mid-1995, the privatisation of socially owned apartments was delayed in that area.

In order to allocate abandoned socially owned apartments to refugees and displaced persons, Croatia amended and introduced new laws with regard to the remaining occupancy rights over socially owned apartments. However, these laws applied only until the full implementation of the privatisation laws, which eventually replaced the existing occupancy rights. Since these laws were not implemented in the territory of former “Krajina” until 1995, they are still of predominant importance for this part of Croatia.²⁷⁵

a) Law on Temporary Use of Apartments 276

The Law on Temporary Use of Apartments, enacted in 1991, specified that apartments abandoned by occupancy right holders fall under the temporary administration of the Republic of Croatia, in order to provide accommodation to the growing number of displaced persons coming to Croatia. This first amendment of the pre-war housing legislation intended mainly to provide accommodation to homeless people.

²⁷⁴ Thus, the Law on Purchase of Apartments on which Occupancy Rights Exist and subsequently the Law on Lease of Apartments transformed occupancy rights into full-fledged ownership or lease agreements. Upon their introduction, the occupancy rights ceased to exist. These laws will be described below in Section 4.4.1.a on Privatisation.

²⁷⁵ For further details on the privatisation of socially owned apartments and the termination of occupancy rights see below: Section 4.4.1 on Privatisation of Socially Owned Apartments.

²⁷⁶ Law on Temporary Use of Apartments, Official Gazette of Republic of Croatia, No. 66/91, amended by the Law on the Amendments of the Law on Temporary Use of the Apartments, Official Gazette of Republic of Croatia, No. 76/93.

Accordingly and in contrast with the laws that were later adopted on this issue, it did not put in question the legal title of the previous occupancy right holders who had used and subsequently abandoned their apartments. Instead, this Law aimed for the temporary administration of abandoned apartments, which should be returned to the legitimate holders once the emergency situation would be over.

Pursuant to this Law, the “housing council”²⁷⁷ was entrusted to report the abandoned apartments within 8 days after the Law came into force to the competent municipal body for housing. After the inspection and registration of the respective apartments, the apartments were generally granted for temporary use for a period of one year.²⁷⁸ Once that period had expired, the specific decision on granting the temporary use could be renewed. However, the transfer of the occupancy right to the temporary user was explicitly precluded and the temporary user had to return the apartment to the legitimate titleholder upon expiry of the period for temporary use.²⁷⁹

This law explicitly mentioned that its provisions would not apply to occupancy rights over privately owned apartments.²⁸⁰ However the practice to grant temporary use rights to abandoned privately owned apartments with occupancy rights over them was also widespread. The courts of first and second instance found these decisions unlawful and decided in favour of the private owners claiming their property. Surprisingly, the Croatian Supreme Court overruled these judgements by saying that private apartment owners could not enjoy property protection because the restriction on their property right was based on a legally adopted law and not on an “illegal and deliberate act”.²⁸¹ In 1999, the Croatian Constitutional

²⁷⁷ The housing council was an assembly represented by the occupancy right holders of the apartments within a building as well as the allocation right holders.

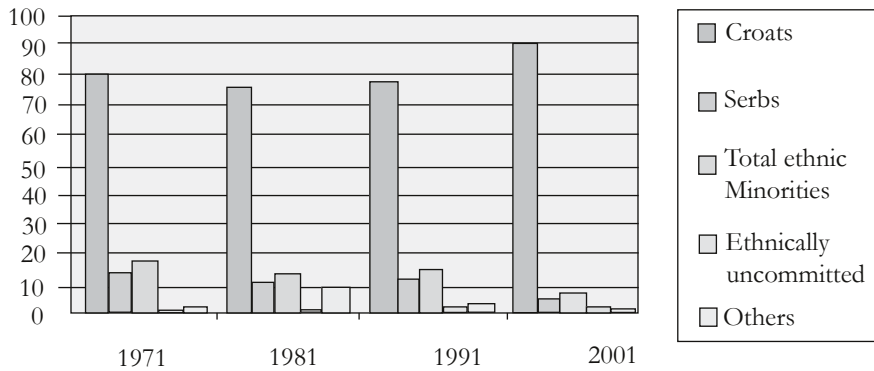
²⁷⁸ The Law did not provide for an appeal to the civil courts against the decision to grant a temporary use right. However, the initial occupancy right holders were entitled to initiate an administrative complaint against such decision.

²⁷⁹ Article 8, paragraph 1 and Article 9, paragraph 3 of the Law on Temporary Use of Apartments.

²⁸⁰ On this quite controversial situation of the previous socialist regime allowing the acquisition of an occupancy right even over privately owned apartment see details in Section 4.4.1 (c).

²⁸¹ The Supreme Court based its opinion on the position of the State Attorney and found that the restriction of property rights was in the public interest and that the taken measures were based on a legal and lawful act adopted by the competent organ. The Supreme Court of Croatia (Gzz 69/93 on 3 February 1994), available in Croatian on <http://sudskapraksa.vsrh.hr/supra>.

Figure 4.3 main ethnic groups in Croatia from 1971 to 2001 in percentages



ously it was not meant as a tool for the cancellation of occupancy rights during the war period, even though it was used as such.

In addition, the *Law on Changes and Amendments to the Law on Housing Relations*²⁸⁶, adopted during the war period in 1992, sought to broaden the already existing grounds for the termination of occupancy rights. Thus, it provided an effective tool to permanently revoke the property rights of those who left

Croatia, mainly Croatian citizens of Serbian ethnicity. The Law extended the application Article 99 (on the termination of a right to occupancy upon non-use of an apartment for more than six months) and thus justified the termination of occupancy rights of those persons who had abandoned their apartments during the war. For this purpose, it introduced a new Article 102 which provided that an “occupancy right will cease for all those persons who committed or commit acts or hostilities against the Republic of Croatia.” The newly introduced Article 102 was thereby used to also deny the household members the right to use the apartment once the main occupancy right holder had abandoned it. This practice was one of the flagrant breaches of the core element of the occupancy right category: its family character, which extended the right to the other household family members, even if the main occupancy right holder would be deprived of his or her title.²⁸⁷ Thus, Article 102 was also in violation of the constitutional principle that the family deserves particular care guaranteed by the state.²⁸⁸

Court found the position of the Supreme Court of Croatia contrary to Articles 3 and 48, paragraph 1 of the Croatian Constitution²⁸² and declared the respective provisions of the Law on Temporary Use of Apartments, providing for the allocation of privately owned apartments to third persons, unconstitutional.²⁸³

b) *Law on Changes and Amendments to the Law on Housing Relations*

The Law on Housing Relations²⁸⁴ was the overall organic law in the field of housing legislation. Adopted in 1985, it remained in force after Croatia gained independence and established the general conditions for the acquisition, use and termination of occupancy rights over apartments.²⁸⁵ Beside a number of other grounds for the termination of occupancy rights, the Law stipulated in Articles 95 to 99 that if the occupancy right holder and his/her household family members cease to use the apartment for a period longer than 6 months without a valid reason, the occupancy right would be terminated. In this case, the competent disposal right holders, i.e. socially owned enterprises, other non-economic institutions or municipalities where the apartment was located, had to initiate a lawsuit in order to revoke the occupancy right. The initial intent of this provision was the intervention of the state/society against unjustified non-use of an apartment by an occupancy right holder; obvi-

Furthermore, the court proceedings for the termination of the occupancy right were accomplished *in absentia* of the titleholders. Without their presence in the proceedings, the courts generally did not consider the general context of personal insecurity and fear of the titleholders having abandoned their apartments. Subsequently, these occupancy right holders

282 Article 3 of the Constitution of the Republic of Croatia guarantees the inviolability of the right to property and the rule of law as a basic principle of the Croatian society. See above Section 4.1: Introduction.

283 Decision of Constitutional Court of Republic of Croatia, No. U-III-578/1994, Official Gazette of Republic of Croatia, No. 19/99.

284 *Law on Housing Relations*, Official Gazette of SRC, No. 51/85.

285 For occupancy rights and its predominant function in the Yugoslav housing legislation, see above: Chapter Two, Section 2.2 on Types of Tenure.

286 *Law on Changes and Amendments to the Law on Housing Relations*, Official Gazette of Republic of Croatia, No. 22/92.

287 Article 64 of the *Law on Housing Relations*.

288 Article 61 of the *Constitution of the Republic of Croatia*.

were also excluded from the exercise of their legal remedies as provided in the *Law on Housing Relations*.²⁸⁹

As a matter of fact, the amendment introduced a presumption of guilt and criminal activity, which was in breach of the general accepted standards of civil procedure. Furthermore, the amendment violated Article 28 of the Constitution, which guarantees the presumption of innocence until a final and enforceable court decision is made. The Croatian Constitutional Court was the only court that introduced a new approach in this matter. In its decision of 24 June 1992, it stated: “*The assumption for the termination of the occupancy right for persons who committed or commit acts or hostilities against the Republic of Croatia is to be established in regular court disputes, whether or not an individual occupancy right holder participated in hostile activities against the state*”.²⁹⁰

Based on these above mentioned provisions, it is estimated that between 14,000 and 20,000 occupancy right holders lost their occupancy rights through court proceedings²⁹¹; the huge majority of those rights were cancelled by virtue of Article 99 of the Law on Housing Relations, addressed against persons who had fled during the war and who were consequently not in their apartments for more than six months.

c) Law on Lease of Flats in Liberated Territories

The *Law on Lease of Flats in Liberated Territories*²⁹² of 1995 (hereinafter: LLF) allowed on a large scale the permanent revocation of occupancy rights in the territory of the former “*Krajina*” upon the date it fell under control of Croatia. The Law, adopted immediately after the end of the military actions in summer 1995, still has an impact on the present property legislation of Croatia.

Articles 1, paragraphs 1 and 2 of the LLF revoked the still existing occupancy rights to socially owned apartments. Pursuant to these provisions an occupancy right ceased to exist, if the occupancy right holder had abandoned the apartment and had not used the apartment for more than 90 days after this Law came into force, without any further administrative or judicial decision.²⁹³ This short deadline made it almost impossible for occupancy right holders who had fled the region of former “*Krajina*” to maintain their titles.²⁹⁴

In contrast to the implications of the Law’s title, the former occupancy right holders did not become lessees of their apartments upon the termination of the occupancy right, but they lost all rights to them without any compensation.²⁹⁵ Once they had lost their titles, the Ministry of Reconstruction and Housing allocated the apartments to third persons, who

289 It could be argued that the legal proceedings for the termination of occupancy rights presents a violation of the right to due process and an effective remedy as set forth in Articles 6 and 13 of the European Convention on Human Rights (ECHR), although the Republic of Croatia only became a signatory to ECHR in 1997. So far, however, the jurisprudence of the European Court related to property rights cases has only found violation of Article 6(1) (fair trial-reasonable time) and Article 8 (right to respect for the home) in the *Cvijetic v. Croatia* (Application No.71549/01) and the *Pibernik v. Croatia* (application No.75139/01) cases. In both cases the Applicants (the occupancy right holders) had never abandoned their socially owned apartment, but illegal occupants had unlawfully and forcibly evicted them. While both Applicants succeeded in regaining the possession of their apartment through a regular court procedure, the violation of Articles 6 (1) and 8 was found because of failure of enforcement of the eviction order against the illegal occupant, which took several years (1995-2002 and 1995-2003).

290 Decision of the Constitutional Court of the Republic of Croatia, No. UI-116/92, 24 June 1992.

291 According to the OSCE Mission in Croatia, the estimated number of cases is 20,000, while according to Human Rights Watch, the estimated number amounts to 14,752. See OSCE Mission in Croatia, *Status Report No.12*, July 3, 2003, p. 6; Human Rights Watch, *Broken Promises-Impediments to Refugee Return to Croatia*, Tenancy Rights, pp. 34-39. Available on: www.hrw.org/reports/2003/croatia0903/

See also Section 4.3.2 below, on Accommodation for former Occupancy Right Holders.

292 *Law on Lease of Flats in the Liberated Territories*, Official Gazette of Republic of Croatia, No. 73/95.

293 The LLP shortened the deadline of 6 months of non-usage of an apartment as provided in the *Law on Housing Relations* for the termination of the occupancy right to only 90 days. In contrast with the termination of the occupancy right pursuant to the *Law on Housing Relations*, which required a respective court decision after a judicial proceeding, the provisions of the LLF introduced the termination of the occupancy right *ex lege*, i.e. without any further administrative or judicial decision. Thus, the LLF deprived the former occupancy right holders of an effective judicial remedy against the cancellation of their rights.

294 This unreasonable deadline for repossession of property could be considered a violation of Article 6 (fair trial), Article 8 (respect to home) of the ECHR and Article 1 of the First Protocol to the ECHR (peaceful enjoyment of possession). In a very similar situation of unachievable deadline the Bosnian Human Rights Chamber found violation of those Articles in *Kalinčević v. the State of Bosnia and Herzegovina and v. the Federation of Bosnia and Herzegovina* No. CH96/23 and in *Bulatović v. the State of Bosnia and Herzegovina and v. the Federation of Bosnia and Herzegovina* No. CH/96/22, available on: <http://www.hrc.ba> During this research, no Croatian court cases were found in which this short deadline was challenged and deemed in violation of international or national standards.

295 See also Section 4.3.2 below on Accommodation for former Occupancy Right Holders.

became lessees of the apartment.²⁹⁶ Clearly, this practice of re-allocating abandoned property to other persons (“secondary occupation”), made the process of return of refugees and internally displaced persons much more difficult.²⁹⁷

Furthermore, Articles 7 and 8 of the LLF allowed the lessees and their family members to purchase the allocated apartment after a period of three years, without mentioning any kind of compensation for the former occupancy right holders.²⁹⁸

Considering the quasi-ownership position of the occupancy right holder, the application of the 90 days deadline could be qualified as *de facto* expropriation. The lack of a reasonable basis for this short deadline excludes *per se* the justification of this state intervention as required by international human right standards.²⁹⁹

Although the LLF has ceased to apply since July 1998, the issue of the loss of occupancy rights pursuant to this Law is still not settled. However, the Croatian Government announced further proposals to resolve the still unresolved questions in this respect.³⁰⁰

296 Pursuant to Article 4 paragraph 1 LLF, the allocation decision should prioritise persons, who “will perform the duties in the interest of security, reconstruction, return of refugees and displaced persons.” Against this allocation decision, the former occupancy right holder could file an administrative appeal with the Ministry of Urban Planning, Construction and Housing within a deadline of 8 days. The decision of the Ministry was subject to further review within an administrative court proceeding. However, given the short deadline for such an appeal and given the fact, that the appeal did not suspend the allocation decision, the LLF did not provide for a really effective legal protection.

297 UN Special Rapporteur, Mr. Paulo Sérgio Pinheiro, expressed concern about this situation in his Preliminary report, submitted to the UN Human Rights Commission in accordance with Sub-commission Resolution 2002/7 on Housing and Property Restitution in the context of the return of Refugees and Internally Displaced Persons (E/CN.4/Sub.2/2003/11, paragraphs 45-48).

298 Such purchase was based on the *Law on Purchase of Apartments on which Occupancy Rights Exist*, which will be described below in Section 4.4.1 (a).

299 See for example Article 1 of the First Protocol to the ECHR. The European Human Rights Court practice confirms that this Article also applies in cases where informal but *de facto* expropriation took place, see: *Papamichalopoulos and others v. Greece*, 24 June 1993, Series A No. 260-B. para. 42. While this case does not specifically refer to occupancy rights, it explicitly confirms the right of possession as part of the ownership right. It further confirms the right to compensation in case of dispossession of the owner. Since the LLF revoked the former occupancy right holders’ right to possess their apartment without compensation, the reasoning of the European Court in the above Decision could be applied to confirm that the revocation of occupancy rights as envisaged by the LLF is a violation of the right to property.

300 For more details see Section 4.3.2 below, on Accommodation for former Occupancy Right Holders.

(d) Current Situation of Cancellation of Occupancy Rights

The Croatian authorities officially considered the cancellation of occupancy rights as a resolved issue, which was no longer in question.³⁰¹ In their view the process of termination of occupancy rights occurred in a lawful way; relevant domestic institutions and courts applied domestic legislation and their final decisions are final. Accordingly, in their view the former occupancy right holder must be provided with accommodation mostly on humanitarian grounds.³⁰²

On the other hand, many international NGOs in Croatia have repeatedly underlined this still unresolved issue.³⁰³ Since Croatia is bound by the supranational norms of international conventions, in particular the European Convention on Human Rights, the first judgement of the European Court on Human Rights on the applicant’s termination of the occupancy right in Croatia (*Blecic v. Croatia* case, 29 July 2004) was awaited with great interest.³⁰⁴

In this case the Applicant’s occupancy right had been terminated through a court procedure, based on Article 99 of the *Law on Housing Relations*: the ground used for termination was non-use of a socially owned apartment for unjustified reasons for a period longer than six months.³⁰⁵ This case is significant since the collected evidence shows that the majority of the occupancy rights losses were based on this ground.³⁰⁶

301 See: Statement of Mr. Lovre Pejčokovic-Assistant Minister of former MPWRC-ODPR on Radio Free Europe on 10 March 2002, available in Croatian on: <http://www.danas.org/programi/most/2002/03/20020310113941.asp>

302 On the proposed solutions for former occupancy right holders see Section 4.3.2 below on Accommodation for former Occupancy Right Holders.

303 OSCE, Mission to Croatia, “Return and Integration, Problems concerning Return”, in which one the main obstacles to sustainable return is addressed under “Occupancy/Tenancy Rights Issue still Unresolved”, available on www.osce.org/croatia/13153.html; Human Rights Watch, “Broken Promises-Impediments to Refugee Return to Croatia”, Tenancy Rights, pages 34-39. Available on www.hrw.org/reports/2003/croatia0903/

304 European Court of Human Rights, Application No.59532/00, 29 July 2004. This case is significant also because it succeeded in meeting the *rationae temporis* criteria of the European Court: while most tenancy rights were terminated before 1997, the year when the ECHR became applicable in Croatia, the Court deemed the case admissible.

Blecic v. Croatia, Application No. 59532/00.

305 *Law on Housing Relations*, Official Gazette of SRC, No.51/85.

306 Human Rights Watch stated that the court initiated termination of occupancy rights by virtue of Article 99 in 14,752 cases. See “Broken Promises-Impediments to Refugee

After termination of her occupancy rights by the first instance court, the applicant filed an appeal with the competent second instance court, which reversed the first instance judgment. The case was referred back to the first instance court, which once again terminated the applicant's occupancy right. Upon another appeal, the second instance court again ruled in favour of the applicant finding that "...escalation of war and the applicant's personal circumstances...justified her absence from the flat".³⁰⁷ Subsequently, the case appeared before the Supreme Court of Croatia, which reversed the second instance court judgment. It upheld the decision that the applicant had no justified reason for not returning to her apartment within six months. The Constitutional Court of Croatia as last instance did not find violation of the applicant's constitutional rights in the given case.

After exhausting the domestic procedure the applicant presented this case before the European Court on Human Rights, stating her rights guaranteed by Article 8 (respect for the home) of the ECHR and Article 1 of the First Protocol to ECHR (peaceful enjoyment of possession) had been violated.

In its judgment dated 29 July 2004, the European Court ruled that Croatia's courts were right in terminating the applicant's occupancy right. In substance the European Court concluded that the cancellation of the applicant's occupancy right was based on a legitimate aim to accommodate another family in need of housing under wartime conditions in the applicant's apartment.³⁰⁸ Consequently, the European Court found that there was no violation of Article 8 of the ECHR and Article 1 of the First Protocol to the ECHR.

However, from this judgment it appears that many issues were not sufficiently considered by the ECtHR, such as the applicant's minority membership, the particular conditions of fear and the personal insecurity during the wartime in the applicant's area, the cancellation of occupancy rights in this

given case, creating the applicant's permanent displacement, and the context of applicability of the legislation on social ownership during wartime in the context of institutional and legal discontinuity with the previous socialist regime.

The Grand Chamber considered the Request for Referral admissible. The Grand Chamber is a plenary chamber composed of 17 judges, and its competence is to reconsider the cases after final judgment if such cases raise a serious question of interpretation or application or a serious issue of general importance guaranteed by the ECHR. It will be very interesting to see whether the last European Court instance will consider some of the abovementioned motivations sufficient or not to overturn its previous decision. The Grand Chamber hearing was scheduled for 14 September 2005, after that, the Court will begin its deliberations and the final judgment will be done probably in the first part of 2006.

4.2.2 Private Property Rights

When Croatia assumed the control over former "*Krajina*" in summer 1995³⁰⁹, large numbers of Croatian citizens belonging to the Serbian ethnic minority fled Croatia, while on the other hand numerous Bosnian Croats fled from Bosnia and Herzegovina to Croatia. Accordingly, the Croatian Government had to administer large numbers of abandoned property. At the same time, it had to provide accommodation to the massive influx of Bosnian Croats. To accomplish the housing needs of this period, Croatia introduced an emergency *Decree*³¹⁰, which was subsequently adopted as the *Law on Temporary Take-Over of Specified Property*³¹¹ in September 1995 (hereinafter: LTTP). This Law permitted the Croatian Government to place "abandoned" *private* property, including movable property such as furniture and appliances, under state administration and to grant temporary use of that prop-

309 Apart from the region of Eastern Slavonia, which was under transitional authority of the United Nations (UNTAES). After the end of this mission mandate in 1998, Croatia peacefully assumed the control over this territory.

310 *Decree on Temporary Take-Over of Specified Property*, Official Gazette of Republic of Croatia, No. 63/95.

311 *Law on Temporary Take-Over of Specified Property*, Official Gazette of Republic of Croatia, No. 73/95, 20 September 1995.

Return to Croatia", Tenancy Rights, p. 34.

307 *Blecic v. Croatia*, Application No. 59532/00, para.21.

308 *Ibid*, para.58.

erty to persons in need, mostly refugees of Croatian ethnicity.³¹²

While the laws described in the above subsections were adopted to deal with abandoned socially owned apartments in urban areas, the LTTP was designed to administer huge quantities of abandoned rural residential private property, leaving whole villages and small cities deserted at the end of the war. However, the LTTP did not only apply to abandoned property in the newly controlled territories. Instead Article 2, paragraph 2 extended its application also to property located on Croatian territory whose owners had left Croatia after 17 August 1990³¹³ or who were living in the “occupied territory of Croatia”³¹⁴, the Federal Republic of Yugoslavia (hereinafter: FRY) or the “occupied territories of Bosnia and Herzegovina” (hereinafter: B-H).³¹⁵ Finally, it applied also

to property on the territory of Croatia, which was owned by citizens of the FRY and who did not use that property.

The above categories of application are, however, inconsistent. If the intention of the LTTP was to administer abandoned private property, it should have applied only to a specified territory such as the former “*Krajina*” with its massive abandoned property instead of including certain groups of individuals, such as persons having left Croatia after 17 August 1990. Indeed, the extension of LTTP’s applicability to specific groups and to all the territory of Croatia contributed to an unjustified use of the public interest, thereby breaching the general principles of international law.³¹⁶

312 Article 5 of the LTTP did not explicitly refer to ethnic groups. However, given the mass arrival of people of Croatian ethnicity, the reference to displaced persons and refugees basically applied to them.

313 Date of armed rebellion of the subsequently self-proclaimed “Serbian Autonomous Region of *Krajina*”.

314 This term refers to the territory of Eastern Slavonia, where the UN Mission (UNTAES) was not yet established.

315 This term refers to the territory of Bosnia and Herzegovina under control of the Bosnian Serbs. In so far it should be kept in mind that the LTTP was adopted before the Dayton Peace Agreement.

316 For denied access to property see: European Court on Human Rights, *Loizidou v. Turkey*, 18 December 1996-IV; for the notion of “fair balance” that must be struck between general public interests and the requirement to protect individual’s fundamental rights see ECHR, *Sporrong and Lonnorth v. Sweden*, Series A No. 52, p. 26 para. 69.

Article 4, paragraph 2 of the LTTP conferred the administration of abandoned property to the municipalities, which were required to establish a Commission for Temporary Take-Over and Use of Property (hereinafter: Commission).³¹⁷ The LTTP allowed owners to request this Commission for the restitution of their property, but this right was subject to a deadline of 30 days from the date of entry into force of the LTTP on 27 September 1990. This absurdly short deadline was subsequently extended to 90 days.³¹⁸ But even this extended deadline was obviously too short for those owners who had had to flee Croatia. It was in fact rather unlikely that persons who had abandoned their property in an area where the military conflict had just come to an end would have been able to meet the deadline to submit their restitution claim.³¹⁹

Although Article 7, paragraph 2 of the LTTP explicitly excluded the possibility for temporary users of abandoned property to acquire ownership over that property, the tight deadline for restitution claims, the general ambiguity of its provisions and the general post-war context certainly made it very difficult for the owners to return and repossess their property. On the basis of the LTTP, more than 19,000 almost exclusively Serb owned properties were taken over by municipal Housing Commissions. These properties were allocated for temporary use to internally displaced persons, refugees from B-H and FRY, as well as other persons of primarily Croatian ethnicity.³²⁰

4.2.3 Conclusion

Disguised as emergency measures to provide abandoned residential property to refugees and displaced persons, the emergency laws on socially and privately owned property in fact

317 This requirement was not limited to the territory of former “*Krajina*” but applied to all municipalities of Croatia.

318 Article 11 of the LTTP. Upon such a request within the deadline, the Commission had to discontinue the temporary use of the current occupant and to restitute the property to the owner.

319 The LTTP caused further confusion through the absence of a clear definition of when property is to be considered abandoned.

320 OSCE Mission in Croatia, *Croatia’s Progress in Meeting international Commitments since 18 April 96*, 24 May 2001.

deprived ethnic minorities who fled the territory of Croatia of their property rights. As regards occupancy rights over socially owned apartments, the amendments to the Law on Housing Relations and the Law on Lease of Flats in Liberated Territories revoked these occupancy rights permanently without providing fair compensation. Through the judicial revocation in absentia of the titleholders and through the introduction of deadlines that were far too short to contest the revocation, the occupancy right holders furthermore had no efficient legal remedies against the revocation of their rights. Given the fact that the already introduced privatisation of socially owned apartment allowed occupancy right holders to purchase their apartments, the termination of occupancy rights constituted a de facto expropriation without fair compensation. Accordingly, these Laws violated international standards on the protection of property and effective legal remedies. As regards private property, the Law on Temporary Take-over of Specific Property (LTTP) did not provide for a justifiable public interest, which would allow the limitation of private property. Moreover, the LTTP again imposed a deadline that was far too short for restitution claims, which excluded private owners from the repossession of their property. Accordingly, the LTTP provided for an unjustified restriction of private property without fair compensation and thus violated international standards on property protection. In 2001 the Action Plan on Property Repossession was issued and based on this Plan, the Croatian Government decided to compensate the owners who are still awaiting the completion of the repossession of their property. 321 While the emergency laws had intended to support the housing needs of refugees and displaced persons, they also confirmed the factual allocation of residential property in post-war Croatia and as such supported the policy of homogenisation of ethnic territory.

321 In 2001 the *Action Plan* on Property Repossession was issued, through which the Croatian Government decided to compensate the owners who are still awaiting completion of the repossession of their property. So far 1,602 owners have benefited from compensation, whereas 500 owners are still receiving compensation, while awaiting the completion of the repossession of their property. The year 2004 saw most progress in restitution of private property, with the highest rate of restitutions in one single year since 1998. See below in Section 4.3.1 under (e) on the *Action Plan* on Property Repossession.

Finally, they put a burden on the future development of the Croatian housing legislation as will be explained throughout this chapter.

4.3 Property Repossession and Accommodation for former Occupancy Right Holders

After the end of the war, the return of private property to the legitimate pre-war owners became a major challenge for the Croatian legislator. Furthermore, the accommodation of those occupancy right holders who had lost their titles pursuant to the housing legislation of the war period had to be addressed.

4.3.1 Repossession of Private Property

While the Croatian Government officially recognised the inviolability of private property, it generally prioritised the rights of current occupants (who were generally Croatian citizens of Croatian ethnicity) over the rights of pre-war legitimate owners (who were generally refugees and other displaced persons from minority ethnic groups) to repossession of their private property. The following section presents the laws and policies so far adopted in favour of owners of private property.

a) Amendments to the Law on Temporary Take-Over of Specified Property 322

The *Amendments to the LTTP* of January 1996 intended to facilitate the repossession of private property by the legitimate owners. Accordingly, the Law abolished the 90 days deadline for restitution claims. Moreover, it specified that the restitution process would be established in a definite manner through a future bilateral agreement between the Republic of

322 *Amendments to the LTTP*, Official Gazette of Republic of Croatia, No. 7/96, 23 January 1996.

Croatia and the Federal Republic of Yugoslavia.³²³ Accordingly, on 23 August 1996 both states signed the *Agreement of Normalisation of Bilateral Relations between the Republic of Croatia and FRY*.³²⁴ Subsequently, on 23 April 1997 the Republic of Croatia, the FRY and the United Nations High Commissioner for Refugees (UNHCR) concluded the tripartite *Agreement of the Joint Working Group on the Operational Procedures for Return*. This Agreement included detailed provisions concerning the process of restitution of abandoned property. Thus, it established that the owners, whose property was temporarily occupied, could submit a request for restitution. Upon such request, the municipal Commission for Temporary Take-Over and Use of Property had to issue a certificate indicating the date when the owner's property would be vacated.³²⁵ In cases where this date could not be promptly indicated, the Commission had to issue a certificate providing "corresponding accommodation". If such "corresponding accommodation" could not be provided either, the Commission had to offer the owner "temporary accommodation".³²⁶

These amendments led civil society actors to join forces in lobbying for further changes to the LTTP. Subsequently, the "Return Home Civic Committee", supported by the Ombudsman Office and Members of Parliament challenged the constitutionality of the LTTP before the Croatian Constitutional Court. Upon this motion, the Constitutional Court in September 1997 declared various articles of the amended LTTP

to be contrary to the Croatian Constitution and annulled them accordingly. The Court ruled as follows:

- (i) The return of property as envisaged by Article 11 paragraph 1 of the LTTP cannot be subject to a future bilateral agreement between the Republic of Croatia and FRY, as this is contrary to the principle of equality as envisaged in Article 14 and the principle of freedom of movement as laid down in Article 32 of the Constitution. This provision could only be acceptable for property located in Croatia and owned by FRY citizens, but not for Croatian citizens who left the territory of the Republic of Croatia. Thus, this provision places Croatian citizens outside Croatia in an unequal position as compared to citizens within Croatia, who may at any time leave the country without any consequences to their property rights.
- (ii) The restrictions on property rights, as laid down in Article 8 LTTP³²⁷, contradict Article 50 paragraph 2 of the Constitution on the limitation of property rights, since this provision does not provide for appropriate compensation and since the constitutional requirements for such limitations (interest of the state security, protection of nature and human environment or public health) are not met.
- (iii) Article 9 paragraph 2 and Article 11 paragraph 4 of the LTTP, which provide that "*a person whose right to possess and use temporarily administered property expires when the property is returned to the owner, cannot be actually dispossessed (and evicted) until the responsible commission provides the user with alternative accommodation*", are contrary to Article 48 of the Croatian Constitution. Article 48 paragraph 1 of the constitutionally guaranteed right to ownership includes not only the right of disposal but also the right of possession. The provisions of the LTTP prevent owners to exercise their rights, since they do not provide a deadline upon which the user of the property shall hand over the property to the owner.

After this decision of the Constitutional Court, the Government introduced the *Programme for Accommodating the Users of Property under Temporary Administration of the Republic of Croatia, which is to be returned to Original*

³²³ Article 11, paragraph 1 of the 1996 *Amendments to the LTTP*. At that time, the only agreement in force between these two states was the "Erdut Agreement" of 12 November 1995, which was the first post-war bilateral political agreement between the two states. Its Article 9 provides for the restitution of property in very generic terms by referring to "the right to recover property or to receive compensation for property that cannot be returned." However, Croatia never incorporated the provisions of this Agreement into its domestic law.

³²⁴ *Agreement on Normalisation of Bilateral Relations between the Republic of Croatia and FRY*, Official Gazette of Republic of Croatia, No. 19/96. This Agreement was still mainly of a political nature and expressed the commitments of both parties to develop mutual good neighbourly relationships.

³²⁵ As the Real Property Rights Registers were quite well-developed and maintained in Croatia (inherited from the Austro-Hungarian system) the determination of the rightful owner was not a problem for these Commissions.

³²⁶ Points 4, 5 and 6 of the Agreement of the Joint Working Group on the Operational Procedures for Return.

³²⁷ Article 8 of the LTTP specified that when privately owned property is under administration of the Republic of Croatia, the legitimate owner cannot exercise certain legal actions such as change, lease, mortgage, rent, real estate transaction, etc of such property.

Owners in November 1997. However, this Programme was never enacted in any legal form and therefore remained more a political guideline with some procedural steps for property return. The Programme provided that “returning owners” should submit a request for repossession of their property to the Office for Displaced Persons and Refugees³²⁸, a governmental office with regional sub-offices (hereinafter: ODPR). If a temporary user occupied the owners’ property (which was generally the case), the ODPR had to provide the owners with an “organised temporary accommodation” while looking for a permanent accommodation for the current occupant. Once this permanent accommodation was found, the returning owners could repossess their property. The procedures established under this Programme still provided a better treatment and protection to the current occupant than to the property owner. Accordingly, they gave rise to criticism of many international institutions.³²⁹

b) The 1998 Return Programme

Upon international diplomatic pressure, the Croatian Government considered more efficient remedies to return private property to refugees and displaced persons who wished to come back to Croatia. The initiative of the Croatian Government with participation of UNHCR and OSCE Mission representatives in Croatia resulted in 1998 in the adoption of the *Programme for the Return and Accommodation of Displaced Persons*³³⁰ (hereinafter: Return Programme) by the Croatian Parliament.

The Return Programme replaced the previous Commissions of the LTTP with municipal “Housing Commissions” and assigned them the responsibility to process repossession

³²⁸ The Office for Displaced Persons and Refugees (ODPR) was established in November 1991 as a separate administrative unit of the Croatian Government in charge of providing an adequate response to the growing needs of refugees and displaced persons. Following the change of Government in January 2000 this Office was incorporated into the Ministry of Public Works Reconstruction and Construction (MPWRC). After the last elections in November 2003 this Office is part of the Ministry of the Sea, Tourism, Transport and Development.

³²⁹ See Ms. Elisabeth Rehn, Special Rapporteur of the Commission on Human Rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia, *Final Report*, E/CN.4/1998, part II.

³³⁰ Programme for the Return and Accommodation of Displaced Persons, Official Gazette of Republic of Croatia, No. 92/98.

claims.³³¹ The implementing instructions adopted by the Ministry of Development and Reconstruction envisaged the following procedure for repossession:

Within five days after receiving a property repossession claim, the Housing Commission had to inform the applicant in writing on the status of his/her property. If the Housing Commission granted the claim it issued a “Decision on the Annulment of the Decision to the User” and had to provide alternative accommodation to the current user. If alternative accommodation was not available in the concerned area, the Housing Commission had to submit this information to the Government Commission on Return³³² and to the Office for Displaced Persons and Refugees (ODPR) within five days. The Government Commission on Return was then responsible for providing accommodation to the current occupant on a priority basis

If the current occupant refused to vacate the property within fifteen days upon such notification, the Housing Commission had to request the municipal court to issue an eviction order, which had to be executed within seven days on a priority basis. An appeal of the current occupant against the eviction order did not suspend its execution.³³³

Furthermore, Article 15 of the Return Programme allowed rightful owners who were unable to repossess their property to sell it at market value. The sale of the property could be realised through the mediation of the *Agency for Mediation and Transactions of Specific Real Estate Property of the Government*

³³¹ The composition of these Housing Commissions was slightly different from the previous LTTP Commissions: they were composed of five members with a quorum of two members of the predominant ethnic minority in the respective municipality. The decision-making mechanism of the housing commissions was based on the majority of votes with the consent of at least one vote of the ethnic minority members; see Return Programme, Article 14 Procedures for Return.

³³² The Government Commission on Return was an ad hoc governmental body, composed of representatives of various Croatian Ministries. It was responsible for the overall implementation and coordination of the Programme.

³³³ In addition, Article 10 of the Return Programme sanctioned double occupancies by allowing the immediate termination of an occupancy if the “current occupant is using the object for any purpose other than his/her primary accommodation.” However, ineffective procedural steps to terminate multiple occupancies and the absence of a clear definition of “primary accommodation” made these provisions against the illegal current occupant rather difficult to implement, thus preserving in many cases the situation of the illegal occupancy.

of Croatia (hereinafter: APN). Alternatively, any owner had the right to sell the occupied property immediately to this Agency. Property purchased by the APN could subsequently be used for providing alternative accommodation to current occupants.

The main criticism of this Programme was the strong connection between the restitution of property to the legitimate owners and the issue of providing alternative accommodation to current occupants. This often created the situation that the interests of the current users were better protected than those of the owners. In fact, the Programme did not distinguish between ownership as a question of private law and alternative accommodation as a question of social welfare. Another weak point of the Programme was its exclusive reference to privately owned property, without providing any remedy for occupancy right holders of (former) socially owned property, who had had to leave their apartments during the war period. The Programme specified this issue with rather generic terms, mentioning that the Housing Commission “will, where possible, try to find permanent accommodation for persons who do not own a house, especially those who were occupancy right holders of socially owned apartments in cases when this affects the return process”.³³⁴ Finally, the Programme was only adopted as a policy rather than an enforceable law.

c) Law on the Cessation of the Validity of the Law on Temporary Take-over of Specified Property

In 1998, the LTTP was finally repealed through the *Law on the Cessation of the Validity of the Law on Temporary Take-over of Specified Property*.³³⁵ This Law, however, did not include any provision on the return of abandoned property to the rightful owners. Regarding possible remedies for property repossession, it referred exclusively to the above described *Return Programme*. The ambiguous commitment to a definitive solution of the repossession of abandoned property could

constitute a direct violation of the right to property and the right to an effective remedy. Indeed, the complexity of property-related issues in the Croatian post-war context requires more legal certainty through the adoption of a repossession mechanism in the form of a law and not only in a political document as the above mentioned *Return Programme*.

d) Law on Areas of Special State Concern

The Law of the Areas of Special State Concern 336 (hereinafter: LASSC) of 1996 aimed at the economic and demographic recovery of specific territories which had suffered from economic depression before the war and which had been subsequently affected by material damages and depopulation. Article 2 specified: “areas of special state concern are established for the purpose of eliminating the consequences of war, rapidly returning displaced persons and refugees, motivating demographic and commercial advancement, and achieving the most equal level of development of all areas in the Republic of Croatia”.

To achieve this goal, the Law allowed the Ministry of Development and Reconstruction to place abandoned property under state administration and to grant temporary use rights of this property to specific categories of “settlers”.³³⁷ The Law applied to abandoned private property and socially owned apartments to which the respective occupancy rights had been revoked pursuant to the *Law on Housing Relations* (based on prolonged unjustified absence or enemy activities) or to the *Law on Lease of Flats in the Liberated Territories*. However, LASSC had a limited impact on socially owned apartments, as private property was predominant in that rural area. The application of this Law gave Croatian refugees - mostly from B-H and FRY - the possibility to occupy abandoned property in the region of former “Krajina”.

³³⁶ *Law of the Areas of Special State Concern*, Official Gazette of Republic of Croatia, No. 44/96, 17 May 1996, amended by Law on Amendments to the Law on Areas of Special State Concern, Official Gazette of Republic of Croatia, No. 73/00.

³³⁷ Article 7 paragraph 7 specified the following categories: (1) Highly qualified Croatian citizens who can contribute to the economic development; (2) Unemployed Croatian citizens with housing problems; (3) Croatian diasporas and returnees from abroad; (4) Croatian refugees who were forced to abandon Serbia and Montenegro; and (5) Bosnian Croats not coming from the Federation of Bosnia and Herzegovina who decide to live in Croatia until the conditions for their return are met.

³³⁴ *Return Programme*, Article 5 paragraph 2 of the Procedures for Return; the general provisions of the Programme on occupancy rights did not provide further procedural steps for this category.

³³⁵ *Law on the Cessation of the Validity of the Law on Temporary Take-over of Specified Property*, Official Gazette of Republic of Croatia, No. 101/98, 10 July 1998.

In order to encourage resettlement in the areas of special state concern, Article 8 (5) and provided for a period of occupation granted to temporary users under the LTTP³³⁸ up to 10 years, after which they were entitled to purchase the assigned property.³³⁹ This provision, which allows the temporary user to purchase the property without the consent of or compensation to the rightful owner, presents an obvious violation of the human and constitutional right to property.

Criticism from the international community led the Croatian Parliament in 2000 to adopt a first amendment to the LASSC. The Amendment provided that temporarily allocated private property should be returned to the owner within 6 months upon his/her written request for repossession, whereas the temporary user should receive an alternative accommodation. Again repossession was linked to alternative accommodation of temporary users. Another problem was that the Amendment provided this possibility only for private owners, whereas the restitution mechanism for socially owned property with its respective occupancy right was completely disregarded.

On 12 July 2002, the Croatian Parliament adopted a second amendment to the LASSC, the Law on Changes and Amendments to the 1996 Law on Areas of Special State Concern.³⁴⁰ This Amendment seeks to establish a more efficient repossession procedure for rightful owners, whose property had been taken into state administration and subsequently allocated to temporary users by virtue of the LTTP. For this purpose, it repeals the restitution procedure established by the 1998 Return Programme and abolishes the Housing Commissions, due to their inefficiency in providing adequate property repossession.

The State Attorney may issue eviction orders against the current occupants refusing to vacate the property. This extended competence of the State Attorney is a step forward with re-

spect to the implementation of the rule of law. However the new functions of this organ are still limited to the specific geographic territories for which the LASSC applies. Accordingly, the State Attorney can start an initiative for property repossession only on the territory of those areas, whereas the repossession of private property outside these areas is still subject to a civil lawsuit.

Applications from owners, who had initially offered their - still occupied - house for sale to the Agency for Mediation and Transactions of Specific Real Estate Property (APN) and subsequently applied for repossession of their property, because of the generally improved security and political conditions, are considered a priority case for property repossession. In such cases, the current occupant has to be provided with prompt housing care in order to make the house immediately accessible for the rightful owner. It is estimated that providing housing care for current occupants and the property repossession to owners costs the Croatian state approximately 80 million Euros in 2003.³⁴¹

The Amendment further confirms the Government's commitment to guarantee the inviolability of private ownership by providing compensation to the rightful owner, if the occupied property is not returned until 31 December 2002 and still used by the current occupant.³⁴² On the basis of the

³⁴¹ Among the beneficiaries of "housing care" ("stambeno zbrinjavanje") are eligible current occupants who have to vacate the occupied house returned to the private owners. A solution of "housing care" is also foreseen for the former occupancy right holders willing to return to the Areas of Special State Concern. See Section 3.3.2 on Accommodation for former Occupancy Right Holders for more details. Article 5 of the LASSC Amendments of 2002 (which amended Article 8, paragraph 2) provided the following solutions for the beneficiaries of housing care:

- Allocation of a lease to a state-owned family house or apartment;
- Allocation of a lease to a state-owned damaged family house with the allocation of building material;
- Allocation of a state-owned construction plot and the building material for the construction of a family house,
- Allocation of a state-owned construction plot and the building material for the construction of a family house with several housing units, or
- Allocation of the building material for repair, reconstruction of a family house or apartment.

³⁴² This right to compensation does not only derive from international standards but also from Article 50 of the Constitution of the Republic of Croatia. The Government proposed in the meantime compensation of 7 Kunas (0.92 Euro) per square meter, whereby the rightful owner may opt between a settlement agreement with a reduced

³³⁸ *Law on the Areas of Special State Concern*, Article 10, paragraph 2.

³³⁹ Pursuant to Article 9, the property fell under the administration of the Ministry, if the settler would abandon it before the 10-year period.

³⁴⁰ *Law on Changes and Amendments to the 1996 Law on Areas of Special State Concern*, Official Gazette of Republic of Croatia, No. 88/2002 of July 24, 2002.

Amendment, the Government expects 2,342 houses and apartments to be returned to rightful owners and 933 to be vacated by current occupants after 1 September 2002.³⁴³

e) Action Plan on Property Repossession

In 2001 the Government of the Republic of Croatia officially announced its commitment to accelerate and conclude the process of repossession of all occupied property by the end of 2002.³⁴⁴ This commitment was to be implemented through an Action Plan, which, according to the Croatian Government, contained concrete measures to settle this complex issue. With regard to the restitution of private property by the end of 2002, the Croatian government proclaimed its commitment to provide individual measures for temporary occupants of private property. The possibilities envisaged were (1) improved allocation of alternative accommodation, (2) return to Bosnia and Herzegovina,³⁴⁵ or (3) completion of reconstruction of damaged houses in the Republic of Croatia. If properly applied and adopted in the form of laws and regulations, these measures could effectively change the existing property policy in Croatia. However, in the meantime the envisaged deadline for restitution of all private property by the end of 2002 turned out to be too optimistic. The latest data confirms that at the end of 2004 this commitment had not been completed. The Croatian Government therefore currently considers compensating rightful owners who are still waiting for the restitution of their property after the deadline of December 2002. So far 1,602 owners have benefited from compensation, whereas 500 owners are still receiving compensation, while awaiting the completion of the repossession of their property.³⁴⁶ The year 2004 saw most

progress in restitution of private property, with the highest rate of restitutions in one single year since 1998.³⁴⁷

Based on the Action Plan, the Croatian Government decided to undertake a review of all occupied private property allocated by virtue of the LTTP.³⁴⁸ Furthermore, the Action Plan unified all activities for the repossession of property within the Ministry for Public Works, Reconstruction and Construction - Department for Returnees and Refugees (hereinafter: ODPR). Thus the municipal Housing Commissions, which were considered to be the main obstacle for the property repossession process, lost their decision-making role and maintained only their counselling function. The Action Plan confirmed the responsibility of the ODPR to issue instructions to be followed by the Housing Commissions. Indeed, the stronger commitment of the ODPR to property restitution probably had its impact on the progress of the repossession process, which resulted in 1,499 confirmed property repossessions (591 cases of repossession of property abandoned

[hrv.pdf](#)

³⁴⁷ In 2004 the number of occupied private property decreased from 3,500 to around 1,000. This progress could be due to the changed political environment: after the elections in November 2003, the main political party of Croatian Serbs (SDSS), as a condition for its support for the new Government, in December 2003 signed the *Agreement on Co-operation between the Future Government of the Republic of Croatia and the representatives of SDSS*. This Agreement envisaged two deadlines for private property restitution: 30 June 2004, for the illegally occupied properties and 31 December 2004 for all outstanding occupied private properties. While the Government succeeded in respecting the first deadline the second one has not yet been achieved.

³⁴⁸ According to an internal document of the Ministry of Public Works, Reconstruction and Construction, Report on "Results on Return of Displaced Persons and Refugees: Reconstruction and the Property Return 2000-2002", a revision of 21,098 inspected certificates on temporary allocation of property related to 18,342 privately owned housing units, showed that

- (a) 8,799 housing units were vacated and either overtaken by the Municipal Housing Commissions (4,948) or in possession of their owners (3,851);
- (b) 9,543 housing units were occupied by temporary occupants (61% from B-H, 29% from Croatia, 6% from FRY, and 4% from other countries);
- (c) 2,763 cases for which administrative and other necessary measures have already been taken, such as 705 cases of use of property without issued certificates, 1,198 beneficiaries of reconstruction assistance (523 occupants whose own housing objects have been reconstructed, 31 occupant that have received housing from other state bodies, and 644 occupants who waited for completion of reconstruction of their own houses), 480 temporary occupants who applied for return to B-H and 380 occupants who were not eligible for housing assistance; and
- (d) 6,780 cases of property occupied by temporary users whose case, according to current data, should be resolved through housing in Croatia or return to B-H. Differences in numbers of revised certificates and housing units relate to multiple issued certificates for the same house.

lump sum or a monthly instalment from 1 November 2002 until the physical repossession of the property. See *Decision on Compensation of Owners who suffered Damage*, Official Gazette of Republic of Croatia, No. 68/03.

³⁴³ Ministry of Public Works, Reconstruction and Construction, Report on "Results on Return of Displaced Persons and Refugees: Reconstruction and the Property Return 2000-2002", page 15.

³⁴⁴ Session of the Croatian Government on 20 September 2001, <http://www.hrt.hr/news>.

³⁴⁵ The large majority of the current temporary occupants in Croatia are refugees, internally displaced persons or immigrants of Croatian ethnic origin from Bosnia and Herzegovina.

³⁴⁶ Ministry of the Sea, Tourism, Transport and Development - ODPR, *Statement of 12 April 2005*, p. 1. Available on <http://www.mmtpr.hr/UserDocsImages/050401-povratak>.

by temporary occupants and 908 cases of repossession of previously vacated property).³⁴⁹

According to the Action Plan and in conformity with the amendments to the Law on Areas of Special State Concern (LASSC), the ODPR committed itself to review all individual decisions for the allocation of temporary use rights under the LASSC in order to understand the real figures regarding the persons in need of housing. Consequently, all current occupants of property allocated under the LASSC were invited to submit new applications for the evaluation of their housing needs.³⁵⁰ The ODPR was further responsible for collecting housing applications submitted by all temporary occupants of private property. The current occupants were thereby requested to confirm under material and penal responsibility that they were not in possession of another vacant house in Croatia or on the territories of other former Yugoslav republics. However, the legal effects of such statement are doubtful, since any efficient control of possession of another house, for example in the territory of Bosnia and Herzegovina, would require an agreement between two states.³⁵¹

The new governmental policy on repossession provided also for more effective measures against illegal occupants, by including legal actions as an option against temporary occupants who refused to abandon property upon receipt of the administrative order to vacate the house. The legal representation in court procedures was accordingly transferred from the Housing Commissions to the Office of the State Attorney, who upon his/her own initiative or upon request of the ODPR could take actions against the current occupant.

³⁴⁹ Ministry of Public Works, Reconstruction and Construction - ODPR, *Repossession, Statistical Data of 3 November 2001*; these figures are in addition to the numbers mentioned in the previous footnote.

³⁵⁰ By December 2001, 3,400 families had filed applications for revision of their status and for considering other forms of housing. Ministry of Public Works, Reconstruction and Construction, "Reconstruction and Repossession of Property 2000-2002".

³⁵¹ *The Ministry of the Sea, Tourism, Transport and Development and the Bosnia and Herzegovina Ministry for Refugees and Human Rights* "exchange information regularly", but no formal agreement seems to have been concluded between the two states. See: Ministry of the Sea, Tourism, Transport and Development - ODPR department, Press Statement dated 16 November 2004, available on <http://www.mmtpr.hr/default.asp?ID=543> (Croatian)

According to the latest data of the ODPR on occupied property the total number of potential beneficiaries of housing needs is estimated, after the revision of their status, to be around 6,000 families. This figure gives reason to reflect why such a relatively small number of persons with presumed housing needs could constitute such a huge obstacle for thousands of displaced Croatian citizens willing to return to their pre-war owned houses. The answer to this question is probably the fact that property repossession in Croatia was primarily regarded as a political and not as a legal question.

By completing the revision of occupied private properties in line with the new government policy for repossession, it was ascertained that the number of occupied properties has reduced to 9,543 occupied housing units.³⁵² For the temporary occupants who fall under the revised criteria the following solutions were envisaged:

- (i) *Purchase of vacant houses by the APN for allocation of temporary accommodation: The APN, the state agency authorised to purchase houses at market price from owners having fled Croatia and not willing to return to it, shall buy housing units which have been returned to the owners and which have been vacated by current occupants. Current occupants who have their own houses reconstructed or have other vacant property shall further abandon the temporarily occupied property. It is estimated that about 500 temporarily occupied APN-owned housing units should be vacated. In order to increase the number of housing units available for housing needs, the reconstruction of APN-owned damaged houses, which could then be allocated for temporary occupants, is planned.*
- (ii) *Direct support for the return of refugees to Bosnia and Herzegovina: The Croatian Government adopted in March 2001 the Programme of Assistance to Refugees Residing in Croatia. This programme envisages the allocation of 400 construction material kits in order to reconstruct damaged houses of Bosnian refugees residing in Croatia and willing to return to Bosnia and Herzegovina.*
- (iii) *Provision of additional temporary accommodation for current*

³⁵² Ministry of Public Works, Reconstruction and Construction, "Reconstruction and Repossession of Property 2000-2002", 30 October 2001.

occupants: In compliance with the Action Plan, the use of camps or collective centres for displaced persons and refugees was introduced as a last resort to provide temporary accommodation. The ODPR was in charge of organising this form of accommodation for temporary occupants who had to immediately abandon private property. As shown in Chapter II on Bosnia and Herzegovina, the announcement of allocation in collective centres significantly increased the voluntary vacation of occupied property. This development confirmed that many current occupants had already had their housing needs met before.

By launching the Action Plan, the Croatian Government tried to set up new standards for a more efficient process of property repossession. This welcomed effort should, however, be supported by precise and coordinated procedural steps in order to avoid the errors of the past. The process would require a different approach from the local authorities such as the municipal housing commissions, which used to slow down the process of property repossession by minorities through a lack of impartiality, independency and accountability. Their increased responsibility and accountability for the repossession process could support its successful implementation.

Since ethnic Bosnian Croats still remain the main category of the current temporary occupants, a permanent solution of property repossession in Croatia is required to solve their housing needs in a permanent way. A definite solution for them should be arranged in a two-way return, based on an Agreement on Return and Cooperation between Croatian and Bosnian authorities, in order to ensure the implementation of the above mentioned new repossession policy.

f) Recent Figures

According to ODPR statistics, in the period between 1995 and 2005 a total of 332,306 displaced persons returned to Croatia, composed of 216,207 Croatian returnees (65%) and 116,009 Serbian minority returnees (35%). Furthermore, the owners of 18,285 privately owned housing units allocated under the LTTP for temporary use have so far reposessed their properties. In the year 2004 a total of 2,312 of private properties were reposessed, while 203 owners reposessed their houses in the first semester of 2005. Reposession of

the majority of all remaining private houses is foreseen by mid-2005. Some 3,107 returned private houses have remained empty since their owners did not take over their property.³⁵³

According to the ODPR, currently 706 housing units are still occupied.³⁵⁴ Construction of alternative housing for current occupants is ongoing for 312 occupants who will vacate the property upon completion of the construction in 2005, whereas in 42 cases eviction is pending against the current occupant.³⁵⁵ In contrast, the OSCE Mission in Croatia reports 1,124 remaining occupied properties, out of which 804 are being claimed by their owners. The OSCE Mission Monitoring activities found that in 70% of these cases the owners wish to sell their properties through the APN, rather than to reposess them.³⁵⁶

Regarding the evictions against the non eligible occupants OSCE Mission Monitoring findings show that most cases are resolved without court decisions; around 680 occupants left the houses once a court claim was filed, by the end of 2004 approximately 100 cases were still pending. Only 12 cases were pending eviction by May 2005.³⁵⁷

4.3.2 Accommodation for Former Occupancy Right Holders

Beside the return of private property, the rights of former occupancy right holders who had lost their titles pursuant to the housing legislation of the war period had to be determined. The allocation of accommodation to these former occupancy right holders would significantly support their return to Croatia. Accordingly, this issue is of a more political than legal nature.

353 Ministry of the Sea, Tourism, Transport and Development- ODPR, Statement of 12 April 2005, p.1. Available on: <http://www.mmtpr.hr/UserDocsImages/050401-povratak-hrv.pdf> (Croatian language)

354 According to official figures from ODPR.

355 See *supra* note 111, p. 1.

356 OSCE Mission to Croatia, *Background Report, Property Reposession, Situation and Perspectives*, pp. 5 and 6.

357 *Ibid*, p. 7. It should be noted that the European Court for Human Rights found that the court orders in eviction procedure against the illegal occupants were inefficient in practice, see *Cvijetic v. Croatia* (Application No.71549/01) and *Pibernik v. Croatia* (application No.75139/01), in which cases both Applicants succeeded in regaining the possession of her apartment through a regular court procedure, but the European Court in both cases found violation of Art. 6, paragraph 1 (fair trial-reasonable time) and Art 8 (right to respect to home) because of the failure of the enforcement of the eviction order against the illegal occupant, which had several years (1995-2002 and 2003 respectively).

Although the *Law on Housing Relations* was never formally repealed, the *Law on Lease* had abolished 90% of its provisions, and the tenure type of occupancy rights as provided by the *Law on Housing Relations* ceased to exist upon the adoption of the privatisation laws.³⁵⁸ However, the provisions of the *Law on Housing Relations* still have an impact today with regard to occupancy rights, which were revoked pursuant to the housing legislation adopted during the war.³⁵⁹ Upon the termination of occupancy rights pursuant to these laws, the former titleholders also lost the opportunity to purchase or rent the apartments, which they had previously used.

Taking into consideration the strong legal position granted by the occupancy right, international monitoring organisations in Croatia viewed the cancellation of these rights as a violation of property rights.³⁶⁰ The European Court on Human Rights also expressed its view on occupancy rights in relation to the category of possession as set forth in Article 1 of Protocol No. 1 to the ECHR.³⁶¹ The Human Rights Chamber in Bosnia and Herzegovina took a rather progressive approach and decided that occupancy right holders who had left their apartment as a result of the war maintained the apartment they previously possessed.³⁶² The latest *Blecic v. Croatia* case of 29 July 2004, in which the European Court on Human Rights states that the cancellation of the occupancy right was justified, came as a surprise for all human rights organisations.

358 Pursuant to the *Law on Purchase of Apartments on which Occupancy Rights Exist*, the occupancy right holder acquired a full ownership right over the apartment. Remaining occupancy rights were subsequently transformed to lease agreements pursuant to the *Law on Lease of Apartments*. See below under Section 4.4.1

359 See above, Section 4.2.1 under (b) on the Law on Changes and Amendments to the Law on Housing Relations and (c) on the Law on Lease of Flats in Liberated Territories.

360 OSCE Mission in Croatia, *Croatia's Progress in Meeting International Commitments since 18 April 1996*, 24 May 2001, para. 24. It is estimated that around 20,000 occupancy right holders who had fled Croatia during the (1991-95) war lost their occupancy right by judicial procedure based on Article 99 of the Law on Housing Relation (prolonged, unjustified absence).

361 See Section 4.2.1 under (d) on the Current Situation of Cancellation of Occupancy Rights.

362 The Human Rights Chamber in Bosnia and Herzegovina applied thereby directly the European Convention on Human Rights and its Protocols; see *Kevesevic v. Federation of Bosnia and Herzegovina*, CH/97/146; *Gogic v. Republika Srpska*, CH/98/800; *Onic v. Federation of Bosnia and Herzegovina*, CH97/58. The Chamber's view that the prolonged absence cannot be reason for cancellation of occupancy right was confirmed in case *Erakovic v. The Federation of Bosnia and Herzegovina*, CH/97/42. For a broad interpretation of the occupancy right as a possession and on the effectiveness of remedies see *M.J. v. Republika Srpska*, CH/96/28, para. 32, www.hrc.ba. See also above, Section 4.2.1 under (c) on the *Law on Lease of Flats in Liberated Territories*.

tions. The case is currently pending at the Grand Chamber of this Court and further decision is eagerly awaited.³⁶³

The Croatian Government through its Ministry for Public Works, Reconstruction and Construction in October 2002 formulated a programme for a final solution in favour of the former occupancy right holders whose rights had been revoked pursuant to the Law on Lease of Flats in Liberated Territories and pursuant to the Law on Housing. This Programme on "Sustainable Return of Refugees and Displaced Persons - Restitution of Property and Housing Care"³⁶⁴ laid down various options of "housing care" for both former occupancy right holders and current occupants.³⁶⁵

Former occupancy right holders under this programme have two options, depending on whether they are willing to return to the Area of Special State Concern or outside of this area.³⁶⁶ In order to benefit from housing care, the former occupancy right holders cannot own or co-own a family house or apartment in Croatia or in the territories of former Yugoslavia. If such property has been sold, rented or changed title after 8 October 1991, or if the former occupancy right holders have already obtained the status of protected lessees, they may also not benefit from 'housing care' options.

363 See Section 4.2.1 under (e) on the Current Situation of Cancellation of Occupancy Rights.

364 This programme was a part of the Action Plan, See above, Section 4.3.1 under (e) on the New Policy for Property Repossession.

365 On housing care for current occupants see *supra* note 99.

366 According to the LASSC (consolidated version) Official Gazette of Republic of Croatia n. 26/03, the following solutions are provided for those former occupants who are willing to return to the territory of Area of Special State Concern:

- Allocation of a lease to a state-owned family house or apartment;
- Allocation of a basic building material for reconstruction of family house or for building a house on a proper plot;
- Allocation of a state-owned construction plot (gratis) and allocation of the basic building material for building the house;

For the former occupancy right holders willing to return outside of ASSC territory two solutions are foreseen:

- Allocation of a lease to a state-owned apartment under the same conditions for allocation and rent (protected rent) as an apartment in Area of Special State Concern territory;
- Acquire ownership over an apartment under the programme of Public Funded Housing Construction. (See below, Section 4.5.2). In this case beneficiaries may not possess other real property in Croatia or in the territories of former Yugoslavia.

However, the Programme made the physical return of the former occupancy right holders a prerequisite for these benefits. 367 The compensation of occupancy right holders who are not willing to return to Croatia is still an unresolved issue, due to the insufficient financial means of Croatia.

Finally, the Programme was never enacted as a formal law but remained a mere policy paper which expressed the Government's willingness to address the outstanding issue of revoked occupancy rights. As a humanitarian policy programme it never provided an effective restitution remedy in favour of refugees. The implementation of this policy is further subject to the availability of financial means, the lack of which renders its successful realisation rather unlikely. Additionally, the Programme of housing care is subjected to a deadline depending on whether the potential beneficiaries are willing to apply for this programme outside of the Areas of Special State Concern.³⁶⁸

4.3.3 Conclusion

So far, Croatia has addressed the process of property repossession rather reluctantly and contradictory. Initial vague efforts to support the return of private property to the legitimate owners within the amended Law on Temporary Take-over of Specific Property have favoured the interests of current occupants - mostly of Croatian ethnicity - over those of the legitimate owners. Upon diplomatic pressure of the international community, Croatia adopted with the Return Programme more efficient means to return private property to legitimate owners. However, the reluctant implementation of this policy did not support the return of refugees and displaced persons to their pre-war homes to the necessary extent. In contradiction to the Return Programme, Croatia gave then within the Law on Areas of Special State Concern current occupants a long-term use right over private property. This provision

³⁶⁷ According to the official position of the Croatian Government, the proposal is devoted to those returnees who really intend to stay permanently in Croatia and not for those who only wish to "capitalise" on their occupancy right. The Croatian Government stated that so far in Croatia for 3,323 empty reconstructed housing units the location of its title holders could not be identified; see: Ministry for Public Works, *Reconstruction and Construction, Return of Refugees and Displaced Persons: Restitution of Property*, Zagreb, 29 January 2003.

³⁶⁸ For the beneficiaries of the housing care programme inside the Areas of Special State Concern territory there is no application deadline, whereas for the beneficiaries of this programme outside of the ASSC the application deadline is 30 June 2005. See Government statement, available on <http://www.mmtpr.hr> retrieved on 30 May 2005.

supported once more the current occupants of residential private property of mostly Croatian ethnicity. Again only after international criticism, this provision has been replaced by more protective measures in favour of the pre-war owners. The more recently adopted Action Plan of the Croatian Government to support the repossession of private property provides, however, for a more comprehensive approach to solve this issue. Finally, the reluctant realignment of the housing legislation appears to reflect the political struggle in Croatia on return policies.

4.4 Privatisation and Denationalisation

4.4.1 Privatisation of socially owned Apartments

Upon the first free democratic elections in 1990, the privatisation of socially owned property became one of the major political issues in Croatia. To meet the general public desire to overcome the relics of the former socialist regime, the newly elected government proclaimed a rather fast structural transformation process and initiated subsequently the transformation of social ownership and the privatisation of socially owned enterprises. As regards the real property and housing legislation, the end of the socialist regime produced the demand to transform occupancy rights as the basic institute for residential property into the well-known basic property forms of the civil law system, i.e. ownership and lease. This transformation of the socialist property rights regime was introduced with the laws presented in this section.

*a) Law on Purchase of Apartments on which Occupancy Rights Exist*³⁶⁹

The *Law on Purchase of Apartments on which Occupancy Rights Exist*, adopted in 1992 shortly after Croatia's independence, intended to discontinue the social ownership regime in residential property and to transform occupancy rights into full-fledged private ownership.

³⁶⁹ *Law on Purchase of Apartments on which Occupancy Rights Exist*, Official Gazette of Republic of Croatia, Nos. 21/91, 33/92, 43/92 – Consolidated version, 69/92, 25/93, 48/93, 2/94, 44/94, 47/94, 58/95, 11/96, 11/97, 68/98, 96/99, 120/2000.

Pursuant to this Law, occupancy right holders could file a request to buy their apartments with the holder of the disposal right over the socially owned apartment within two years after this Law entered into force.³⁷⁰ Once the request was filed, the occupancy right holders (hereinafter: buyers) were obliged to conclude the purchase contract with the disposal right holder (hereinafter: seller) within six months. Before the signature of the purchase contract, the buyers had to acquire the consent from their family household members to buy the apartment.³⁷¹ If the seller refused to conclude the purchase contract, the buyers were authorised to initiate a court procedure, whereby the court decision in favour of the buyer substituted the purchase contract entirely.³⁷²

The Law provided detailed criteria for the determination of the apartment's market value, taking into consideration *inter alia* its location, its general condition and the buyer's investments in the apartment. For the determination of the final purchase price, Article 14 provided furthermore a number of "personal discounts" which had to be deducted from the market value.³⁷³ The accumulation of these discounts was limited to a maximum of 50% of the apartment's market value. Regarding the discount for a lump sum payment, the Law provided a deadline of 8 days for the payment. Considering that the purchase of an apartment is a major capital investment and bearing in mind that the Republic of Croatia is still facing the consequences of war that directly and indi-

³⁷⁰ The disposal right holders were the Housing Municipal Funds, who assumed the responsibility to maintain the housing funds from the previous Public Houses Enterprises upon their abolishment shortly before this Law entered into force. The deadline for filing the request to purchase an apartment was extended to 31 December 1995 through the Amendments of the Law on Purchase of Apartments on which Occupancy Rights Exist, on 3 June 1994, Official Gazette of Republic of Croatia, N. 44/94. In 1996, by virtue of the Articles 8 and 30, paragraph 1 of the Law on Lease of Apartments, all former occupancy right holders who were not authorised or unwilling to purchase their apartment became *ex lege* protected lessees. See below under (b) for more details on the protected lease.

³⁷¹ Due to the family character of the occupancy rights, both spouses could jointly acquire the apartment if they were both occupancy right holders. Otherwise, the spouse with the occupancy right had to obtain the consent of the other.

³⁷² *Law on Purchase of Apartments on which Occupancy Rights Exist*, Article 9.

³⁷³ Article 14 provided the following discounts: (a) 30% in case of purchasing the apartment under a lump sum formula; (b) 15% in case of payment by instalments; (c) 10% if the buyer's family is composed of three or more minors; (d) 0.5% for each year of work for a Croatian employer;

(e) 30% if the buyer is the widow or orphan of the occupancy right holder who was a victim of the "aggression war against the Republic of Croatia". Article 16 provided furthermore for the acquisition of the apartment without any payment for orphans, whose both parents were victims of the "aggression war against the Republic of Croatia."

rectly impoverished the majority of its citizens, the imposition of this short deadline is hard to understand. On the other hand, Article 20 provided a period of maximum 32 years for instalment payments.³⁷⁴

To avoid abusive practices by stipulating a lower price of the apartment than its current market value, the Law required the approval of each purchase contract by the Public Legal Office (public prosecutor).

Article 26 then specified the discontinuation of the social ownership regime, stating explicitly that upon the conclusion of the purchase contract the buyers become *ipso facto* owners and the respective occupancy rights consequently ceased to exist.

The dynamics of the apartments purchase process can be seen in the table below:

Pursuant to Article 3 paragraph 2, the Law did not apply to occupancy rights over privately owned apartments. Occupancy right holders of such privately owned apartments challenged this provision before the Constitutional Court of Croatia, claiming to be discriminated against as compared to occupancy right holders of socially owned apartments.³⁷⁵ The Constitutional Court rejected the claim, stating that the different treatment is justified because of the diverse nature of both ownership regimes.³⁷⁶ Occupancy right holders of privately owned apartments subsequently claimed discriminatory treatment before the European Court of Human Rights.

³⁷⁴ Additionally, Article 26, paragraph 2 allowed buyers whose salary fell below the guaranteed social salary rate to interrupt the payment of instalments for a maximum period of one year.

³⁷⁵ Already the Yugoslav legislator had recognised the difficulties in balancing the guarantees to private owners on the one hand and the interests of occupancy right holders on the other hand. Consequently, all housing laws adopted by the former Yugoslav Republics in the 1970s ended the practice of allocation of occupancy rights to privately owned apartments.

³⁷⁶ Constitutional Court Decision of 31 March 1998, Official Gazette of Republic of Croatia, No. 48/98, explained that the legal position of the occupancy right holders over privately owned apartments was different from the position of the occupancy right holders over socially owned apartments. The fact that the first group is not allowed to purchase the apartment derives from the consequence of the different ownership regime applying to the apartments over which they exercised their occupancy right. The legislator has recognised this difference and has introduced protective measures for occupancy right holders over private apartment within the *Law on Lease of Apartments*. See below, Section 3.4.1. under (b) on the *Law on Lease of Apartments*.

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This Court, however, declared their claim inadmissible considering the importance of protecting the right of the apartment owners.³⁷⁷ Thus, former occupancy right holders over privately owned apartments have become protected lessees. According to the “Association of Tenants” in Croatia,³⁷⁸ there are still approximately 7,000 former occupancy right holders over privately owned apartments who were unable to purchase their apartment. This issue is probably one of the major still unsolved issues, which affected Croatian citizens in the transitional period as a consequence of the transformation of the occupancy right. This issue and the proposal to overcome such situation will be addressed below under (c) *Proposed Amendments to the Law on Lease of Apartments*.

b) Law on Lease of Apartments 379

While the above Law on Purchase of Apartments on which Occupancy Rights Exist abolished the occupancy right through the purchase of socially owned apartments by its occupancy right

Table 4.3: *Purchase of Socially Owned Apartments*

Dwellings sold from 19 June 1991 to 31 December 2001				Dwellings sold from 1 January 2001 to 31 December 2001		
	Number	%	m2	Number	%	M ²
TOTAL						
Dwellings	315 316	100,0	18 620 971	1 422	100,0	82 959
BY NUMBER OF ROOMS						
One-room dwellings	61 642	19,6	2 200 443	392	27,6	15 205
Two-room dwellings	148 340	47,0	8 311 848	639	44,9	36 271
Three-room dwellings	85 816	27,2	6 225 069	289	20,3	21 110
Four-room dwellings	17 129	5,4	1 576 725	83	5,9	7 454
Five and more-room dwellings	2 389	0,8	306 886	19	1,3	2 919
BY SELLER						
Republic of Croatia	49 166	15,6	3 145 592	1 017	71,5	59 898
Towns/Municipalities	153 311	48,6	8 862 938	321	22,6	18 492
Other legal entities ²	112 839	35,8	6 612 441	84	5,9	4 569
BY WAY OF PAYMENT						
Single payment	115 496	36,6	6 748 544	386	27,1	21 840
Paid by instalments	196 251	62,2	11 649 076	811	57,0	47 791
SINGLE PAYMENT BY CURRENCY						
In national currency only	38 840	33,6	2 276 552	269	69,7	15 211
In convertible currency only	67 528	58,5	3 917 930	109	28,2	6 065

Source: *Statistical Yearbook of the Republic of Croatia 2002, Construction, 19.9.*

³⁷⁷ European Court of Human Rights, *Soric v. Croatia*, Decision on Admissibility, No. 43447/98. The European Court based its decision on the criteria established by its case law practice: (1) It denied a violation of the right to respect for privacy and family life as set forth in Article 8 of the European Convention on Human Rights, as the Court found that these rights do not include the right to buy a certain property. It held that the claimants had never been owners of the respective apartments and that their position was accordingly closer to that of a lessee. The privatisation laws would not have threatened their possession of the apartment. (2) As to the claimants' allegation to be deprived of the right to buy the apartment to which they had the occupancy right, the Court recalled that Article 1 of Protocol No. 1 to the ECHR does not guarantee a right to buy property, but only its peaceful possession. (3) The Court finally denied discriminatory treatment as prohibited by Article 14 of the Convention. It held that a treatment is discriminatory if "it has no objective and reasonable justification", that is, if it does not pursue a "legitimate aim" or if there is no "reasonable relationship of proportionality between the means employed and the aim sought to be realised". The Court recalled that the Contracting States enjoy in so far a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment and therefore denied a violation of Article 14 of the Convention.

³⁷⁸ On the Association of the Tenants in Croatia, or 'Udruga stanara Hrvatske', see <http://www.ussh.hr>

³⁷⁹ *Law on Lease of Apartments*, Official Gazette of Republic of Croatia, No. 91/96, 48/96, 66/98

holders, the 1996 Law on Lease of Apartments abolished the remaining occupancy rights through the introduction of the lease for those occupancy right holders who were not authorised or who were not able to purchase their socially owned apartments. According to Article 30 the remaining occupancy rights ceased to exist and the former occupancy right holders who had not purchased their apartments pursuant to the Law on Purchase of Apartments on which Occupancy Rights Exist became ex lege lessees, obliged to subsequently conclude a lease contract with the lessor.³⁸⁰

Article 6 of the Law on Lease of Apartments provides for two kinds of leases: the protected lease and the free lease. While the free lease is the regular form of lease, the protected lease applies only to certain vulnerable groups. Article 8 enumerates the persons entitled to a protected lease as follows: (1) users who live in apartments constructed for housing needs for low income citizens, (2) users of apartments who were accommodated by virtue of legislation for Croatian war veterans, and (3) persons whom the apartment use is granted by special legislation.

Apart from reduced lease payments according to the financial situation of the beneficiaries³⁸¹, the protected lease provides for a number of other benefits. For example, Article 24 paragraph 2 allows the spouse to assume the rights and obligations of the lease contract if the protected lessee dies or abandons the apartment.³⁸² In this case, the lessor is obliged to conclude the contract of protected lease for an indefinite period of time with the new lessee.³⁸³ Furthermore, Article 39 restricts the lessor's right to terminate a lease agreement if the protected lessee is older than 60 years or if s/he is benefiting from social assistance. In these cases, the right to terminate the lease requires that the protected lessee did not pay the rent as stipulated under the protected lease and that the local authorities have provided him/her an alternative ac-

commodation. Finally, the lessor has to submit a pre-emptive offer to the lessee if s/he intends to sell the apartment.

c) Proposed Amendments to the Law on Lease of Apartments

The provisions on protected lease within the *Law on Lease* have created rather unsatisfactory effects for both lessees and lessors. On the one hand, the lessors have been substantially restricted in their ownership rights over the apartments. On the other hand, the protected lessees could not purchase privately owned apartments under the same favourable conditions as former occupancy right holders of socially owned apartments.³⁸⁴

In the meantime, the security of tenure of one category of protected lessees - former occupancy right holders over privately owned apartments - was significantly decreased significantly after a Decision of the Constitutional Court.³⁸⁵ This Court Decision among others annulled two provisions of the *Law on Lease of Apartments*, which had required the lessor to provide the lessee with another apartment on conditions equally favourable, if s/he intended to terminate the lease in order to take over the rented apartment for him or herself, or for persons s/he was legally obliged to support.³⁸⁶ Upon the annulment of these provisions, several lessors initiated evictions against the lessees. These evictions received huge attention in the mass media, which in turn led to public demand for better legal protection of lessees.

While the European Court of Human Rights has distinguished between the position of occupancy right holders in socially owned apartments and that of occupancy right

380 If the lessor refuses to conclude a lease contract the lessee may, after 3 months from the lessee's request, file an urgent court procedure. The court sentence replaces the lease contract entirely. See *Law on Lease of Apartments*, Article 33, paragraph 3.

381 However, pursuant to Article 7 of the *Law on Lease of Apartments*, the minimum lease could not fall below the cost necessary for the maintenance of the building.

382 If the protected lessee has no spouse, this right is transferred to her/his children as mentioned in the initial contract.

383 Article 38, paragraph 4 of the *Law on Lease of Apartments*.

384 See above, Section 4.4.1(a) on the *Law on Purchase of Apartments on which Occupancy Rights Exist*. The controversial situation that occupancy rights were allocated over (parts of) privately owned apartments in the first place was a legacy from the previous socialist system (Articles 3 and 11, paragraph 1 of the *Law on Housing Relations*, Official Gazette of Republic of Croatia nos. 51/85, 42/86, 22/92, 70/93). In the 1970s the legislator recognised the contradiction and the impossibility to guarantee mutual protection for those two opposite institutes: private ownership (even if limited) and occupancy right as a constitutional category. Thus, from 1974 it was no longer possible to acquire the occupancy right over the privately owned apartment, but the rights acquired prior to that year were transmitted from the original occupancy right holder to his/her descendants.

385 Constitutional Court Decision published on Official Gazette of Croatia n.48/98 on 6 April 1998.

386 Article 40 paragraph 2 and Article 21 paragraph 2 of the *Law on Lease of Apartments* were annulled.

holders in private property³⁸⁷, the human right to adequate housing in international law entails legal protection against

forced eviction, irrespective of type of tenure.³⁸⁸ Thus the differentiation between occupancy right holders is contrary to Article 11(1) of the International Covenant on Economic, Social and Cultural Rights, to which Croatia is a party.

The so perceived deterioration of the housing standards on part of the lessees and the so perceived restrictions of ownership rights by the provisions on protected lease on part of the lessors prompted the Government to consider amendments to the Law on Lease of Apartments. In November 2002, the former Ministry of Public Works, Reconstruction and Construction introduced a *Draft Law on the Amendments and Changes to the Law on Lease of Apartments*.³⁸⁹ At the time of writing, this Draft Law had not yet been adopted.

The proposed amendments allow the protected lessees to purchase other apartments under favourable conditions and with the financial support of the state. At the same time, they allow the lessors to terminate the protected lease agreement if

387 In 2000 the European Court of Human Rights refused to review an application regarding the transformation of occupancy right into private property, finding no violation of the right to home, right to property, right to effective remedy or prohibition of discrimination with regard to the Convention's protected rights, see *Strunjak & Others v. Croatia*, Application n 46934/99, decision dated 5 October 2000 and *Soric v. Croatia*, Application n. 4344/98, decision dated 16 March 2000. The *Soric v. Croatia* case is described in more detail in footnote 136.

388 Committee on Economic, Social and Cultural Rights, General Comment No. 4 on the Right to Adequate Housing (Art 11 (1) issued on 13 December 1991, states that the human right to adequate housing includes, among others: "(a) Legal security of tenure. Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, (emphasis added) harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups." The Committee defines 'forced evictions' as "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection." It makes clear, however, that the prohibition on forced evictions does not apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights. See Committee on Economic, Social and Cultural Rights, General Comment No. 7 on Forced Evictions, issued on 20 May 1997. Available on: [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/CESCR+General+Comment+7.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/CESCR+General+Comment+7.En?OpenDocument)

General Comment No.4 on the Right to Adequate Housing is available on: [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/CESCR+General+comment+4.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/CESCR+General+comment+4.En?OpenDocument)

389 In the meantime, the Draft Law on Amendments and Changes to the Law on Lease of Apartments has been given into the parliamentary process.

they need the accommodation for themselves or their family members who they are legally bound to support in the rented premises, provided they are not able to solve their housing needs otherwise. In this case, the municipality has to provide the protected lessee with another apartment under the same protected lease conditions. Alternatively, the municipality has the possibility to construct new apartments under the Programme of Public Funded Housing Construction³⁹⁰ and to allocate such newly constructed apartments to protected lessees. If the protected lessee chooses to buy the newly constructed apartment under this programme, the State contributes 25% of the purchase price.

Based on the current number of 11,966 apartments with protected leases, the Croatian government estimates the costs for the envisaged solutions for protected lessees to amount to 133 million Euros over a period of six years.

It is difficult to understand why the legislator, seven years after the abolition of the protective measures in favour of the protected lessees, still has not enacted the procedural steps for making possible restitution of the apartments to the owners and to grant at the same time the minimum of tenure security for the protected lessees who are still under threat of eviction.

4.4.2 Denationalisation

As described in more detail in Chapter Two, the Yugoslav federal government had nationalised the economic domain after World War II. Nationalised residential property had then been transformed into state ownership and subsequently into social ownership. The former owners of nationalised residential property were entitled to compensation, which was, however, far from the real economic value of the property at that time. Once nationalised residential property had passed to social ownership, it was allocated to employees in the form of occupancy rights over the socially owned property.³⁹¹

390 See below, Section 4.5.2 on Public Funded Housing Construction (POS).

391 In exceptional cases, however, occupancy rights were allocated over privately owned apartments or parts thereof. According to the Ministry of the Public Works, Reconstruction and Construction, in 1991 there were still 13,522 privately owned apartments with occupancy rights in Croatia.

In the first free democratic elections of 1990/91, all political parties, including the former communist party, incorporated the denationalisation in their political programme as one of their priorities. Like many other post-socialist countries, the Republic of Croatia subsequently prepared laws to denationalise property nationalised after World War II. However, the process of denationalisation is one of the most complex and most challenging issues in post-socialist transitional countries, where the legislators faced the risk of creating new injustices through the establishment of remedies against previous injustices. After eight drafts laws between 1990 and 1995, Parliament in October 1996 eventually adopted the *Law on Compensation for Property Expropriated during the Time of the Yugoslav Communist Rule*.³⁹² This Law focused exclusively on the process of denationalisation of previously nationalised property and will therefore be referred to as the *Denationalisation Act*.

As described above in section 4.4.1, the privatisation of socially owned apartments was started already in 1992 on the basis of the *Law on Purchase of Apartments on which Occupancy Rights Exist*. This Law, however, did not apply to occupancy right holders over privately owned apartments and to occupancy right holders over apartments which were socially owned but which had been previously nationalised.³⁹³ The latter category of occupancy right holders had to wait until 1997, when Article 24 of the *Denationalisation Act* entitled them to purchase apartments under the same conditions as established by the *Law on Purchase of Apartment on which Occupancy Rights Exist*. The *Denationalisation Act*, similar to comparable laws adopted in other countries in transition, was a result of the process to find a compromise between the opposed rights and interests of the former owners and occupancy right holders to nationalised apartments. Article 22

of the *Denationalisation Act* gives one example of this compromise by providing that nationalised apartments, to which occupancy rights exist, may not be returned to their former owners. In such cases, the former owners shall obtain compensation, while the occupancy right holders have the right to purchase the apartment. If no occupancy or other tenancy right has been granted over the nationalised apartment, the former owners are entitled to restitution and may accordingly recover possession and ownership of the apartment. By providing the occupancy right holders the right to purchase the apartment, the *Denationalisation Act* prioritised the interests of the latter over those of the former owners.

For the compensation claims of the former owners, the so-called Fund for Compensation of Expropriated Property was established.³⁹⁴ This fund, outside the realm of the state budget, sold the apartments to the occupancy right holders, collected the purchase price payment of the occupancy right holders and forwarded these payments subsequently to the former owners.³⁹⁵ However, this purchase price was determined at only 25% of the apartment's market value.³⁹⁶

If the Compensation Fund refused to conclude the purchase contract, Article 25(1) of the *Denationalisation Act* allowed the occupancy right holder to initiate a court procedure before the competent municipal court. The court's decision in favour of the occupancy right holder replaced the purchase contract. This alternative judicial procedure protected the secure tenure of the occupancy right holders. If, on the other hand, the occupancy right holder did not purchase the apartment within three months after the *Denationalisation Act* entered into force, Article 26 provided for the restitution of the apartment *ex lege* to the former owner. In this case, the occupancy right holder was entitled to conclude a lease agreement with the owner and to continue the use of the

³⁹² *Law on Compensation for the Property Appropriated during the time of Yugoslav Communist Rule*, Official Gazette of Republic of Croatia, No. 92/96.

³⁹³ During the nationalisation process, the surplus of living space according to socialist standards was nationalised. Thereby it could happen that in big houses some parts remained with the owner and other parts were allocated to occupancy right holders, who received their right over a nationalised apartment which later fell under social ownership. Occupancy right holders to this kind of apartments could purchase them pursuant to the *Denationalisation Act*. However, apartments constructed in Yugoslav times, in fact the huge majority of apartments, fell immediately under social ownership *ab initio* without a prior nationalisation. Occupancy right holders to these apartments could purchase them in accordance with the *Law on Purchase of Apartments on which Occupancy Rights Exist*.

³⁹⁴ *Law on Expropriated Property Compensation Fund*, Official Gazette of Republic of Croatia, Nos. 69/97, 105/99, 64/00.

³⁹⁵ For nationalised commercial property, the Compensation Fund issued bonds instead of paying compensation in money as envisaged for nationalised residential property.

³⁹⁶ The compensation of only 25% of the apartment's market value to the former owner is another example of the compromise sought with the *Denationalisation Act*. Due to the limited financial means of the Republic of Croatia, no state budget funds have been allocated to the Compensation Fund.

apartment based on that contractual relationship pursuant to the *Law on Lease of Apartments*.³⁹⁷

In addition, Article 29 established the principle of pre-emptive purchase in favour of the former owner. Accordingly, in case of a future sale, the new owners of the apartment had to make the previous owners of the confiscated property an offer to purchase it.³⁹⁸

The *Denationalisation Act* finally reserved a different treatment for users³⁹⁹ of confiscated apartments. The former Yugoslavia had introduced confiscations as a punitive measure in criminal proceedings against the “enemies of the socialist order” after World War II. Pursuant to Article 32 of the *Denationalisation Act*, the previous owners of confiscated property and their descendants in the first degree were now entitled to restitution, while the users of this property became lessees. The exception to this rule, i.e. when the users are entitled to purchase such an apartment, applies in the following cases: 1) when the confiscated property owner does not request repossession, 2) when the compensation for confiscated property is defined by international agreements, 3) when the confiscation took place over only one part of the apartment, 4) when the owners of the confiscated property or their household members had already purchased another apartment under the *Law on Purchase of Apartments on which Occupancy Rights Exist*, 5) When the request for re-

possession of confiscated apartment is made by descendants of the owner who are not first degree descendants.

One basis on which users of a confiscated apartment could obtain a title of lawful use was the *Law on Confiscation of Property and on the Accomplishment of Confiscation of 9 June 1945*.⁴⁰⁰ In 1990, real estate transfers of such confiscated apartments were prohibited by the *Law on Prohibition of Use, Disposal, and Transfer, of Certain Property in Social Ownership to Other Physical and Legal Persons*.⁴⁰¹ On the other hand, this 1990 law did not prohibit real estate transfers, such as disposal and change of user titles) of confiscated apartments whose lawful use title was obtained through a court sentence at the time of the FPRY⁴⁰². Users in this latter category started purchasing the apartments in which they live and the competent organs accepted their request for purchase even after the *Law on Purchase of Apartments on which Occupancy Rights Exist* entered into force. Only the *amendments to the Law on Prohibition of Use, Disposal, and Transfer, of Certain Property in Social Ownership to the Other Physical and Legal Persons*⁴⁰³ in July 1993 stopped this practice. This amendment had an immediate effect, and it obliged the administrative organs to adjourn proceedings related to the purchase of confiscated apartments. Thus the right to purchase of the persons who had already formally presented their request was denied. This quite unusual practice has created an absurd situation, namely that one category of users succeeded in purchasing apartments in which they live and the other did not. The current situation seems to be unchanged; all the remaining users are still unable to purchase the apartments where they live.

397 The same applied in cases, where the occupancy right holder lost his/her ownership claim in the municipal court.

398 The ambiguous wording of Article 29, paragraph 1, which provided for the pre-emptive purchase right for “the future real disposal of the property right to the purchased apartment”, caused active debates on its interpretation regarding, among others, the kind of real estate transaction envisaged by the Act and the extension of the pre-emptive purchase right to the heirs of the former owner. Considering the ambiguity of this provision, the Constitutional Court of the Republic of Croatia, through its Decision No. U-I-673/96, asked the legislator to amend this provision by 21 April 2000.

Just before expiration of this deadline the Croatian Parliament asked for its extension. The Constitutional Court imposed a new deadline of 31 December 2000. After first extension of this deadline there have been four additional proposals for postponement of the fixed deadlines raised by the Croatian Government. Finally, on 5 July 2002 new amendments of this law entered into force, which abolished certain articles, among others also Article 29 entirely.

399 While occupancy rights had also been granted to previously confiscated apartments, such occupancy right holders were sometimes also referred to as Authorised User. Accordingly, it is more precise to refer generally to users rather than to occupancy right holders in respect to confiscated apartments.

400 *Law on Confiscation of Property and on the Accomplishment of Confiscation of 9 June 1945*, Official Gazette of FPRY, No.61/46.

401 *Law on Prohibition of Use, Disposal, and Transfer, of Certain Property in Social Ownership to Other Physical and Legal Persons*, Official Gazette of Republic of Croatia, No. 53/90.

402 Federal People's Republic of Yugoslavia, the name of the previous Socialist Federal Republic of Yugoslavia (SFRY) before the 1963 Constitution.

403 *Amendments to the Law on Prohibition of Use, Disposal, and Transfer, of Certain Property in Social Ownership to the Other Physical and Legal Persons*, Official Gazette of Republic of Croatia, no. 50/90.

Recent figures on forms of apartment tenure give an overview of the post-privatisation situation in Croatia, as provided in Table 3.5 below.

Table 4.5: *Forms of Apartment Tenure in 2005*

Type of Tenure	Number of dwellings	Household members
Ownership	1,224,012	3,688,074
Lease	41,822	119,615
Protected lease	48,952	144,359
Sub-tenancy	12,418	33,840
Family links with the owner/tenant	109,489	318,884
Use on other titles	18,429	50,587
TOTAL	1,455,116	4,355,359

Source: *Statistical Yearbook of Croatia, 2004, 43-2, Dwellings According to Use Title, pp. 708 and 709.*

4.5 Social Housing

The current Croatian legislation does not provide for specific laws on housing in favour of low-income and vulnerable groups. However, the *Law on Social Care* provides for some housing benefits. Furthermore, the recent Programme of Public Funded Housing Construction includes some social elements.

4.5.1 Law on Social Care

The *Law on Social Care*⁴⁰⁴ contains some provisions on state assistance for housing needs for low-income and vulnerable groups. Article 34, paragraph 1 provides in so far different kinds of social benefits like contributions to rent costs or contributions to utility costs such as electricity or water supply. These social benefits can be granted to single persons as well as to families. To receive state contributions, the potential beneficiaries must fulfil two cumulative conditions.⁴⁰⁵ Firstly, their income in the last three months may not reach a certain limit and, secondly, their housing units may not ex-

ceed a certain living space.⁴⁰⁶ Single persons and families who are excluded from these benefits are those who own or co-own a house, not used to satisfy their primary housing needs (such as a house used for tourism). In addition, Article 35, paragraph 6 limits the amount of state contributions for housing to 50% of all granted social benefits. As exception to this rule, higher contributions may be granted to avoid the separation of minors from their parents.

The allocation of the monthly social benefits for housing falls under the competence of the municipalities, whereby each municipality may decide autonomously on the amount to be granted. However, considering the huge differences of the amounts granted by the municipalities, the Ministry for Social Care ordered that the contributions for housing purposes may not be lower than 7% of the total social benefits granted by the municipalities. In 2002, 2.7% of the total Croatian population received social care services. This percentage varies from 1.5% in the more developed areas in Northern Croatia up to 12.2% in the provinces affected by the refugee crisis (Knin).⁴⁰⁷

4.5.2 Public Funded Housing Construction

In 2001, the Ministry for Public Works, Reconstruction and Construction launched a housing programme under the name of *Public Funded Housing Construction*⁴⁰⁸ (hereinafter: POS). After the end of the Programme of Socially Directed Housing in 1991, this was the first organised general state intervention in the field of housing construction.⁴⁰⁹

The POS was established to stimulate the housing market, which at this time could not satisfy the housing needs of the majority of the Croatian citizens. In fact, the housing con-

404 *Law on Social Care*, Official Gazette of Republic of Croatia, No.73/97, as amended by Laws No. 27/01 and No. 59/01.

405 *Ibid*, Article 35.

406 *Ibid*, Article 35 paragraph 3 establishes the following limits regarding living space: (1) single person household: 25 m²; (2) two person household: 35 m²; three person household: 45 m²; (3) four person household: 55 m²; for any additional person: 5 m².

407 Ministry of Social Care, *Statistical Data of Social Care Beneficiaries*, 31 December 2002.

408 *Public Funded Housing Construction (POS)*, Official Gazette of Republic of Croatia, No. 109/01, 11 December 2001.

409 With exception of the specific state programme for construction of houses in favour of specific categories of war veterans (invalids).

struction in Croatia had drastically decreased from 12,000 housing units per year before 1990 to 1000 housing units per year in 2000. While the recent war in Croatia certainly contributed to this decrease of construction, the difficult economic conditions for the Croatian citizens cannot be disregarded either. Especially in order to meet the housing demands of the younger population⁴¹⁰, the public opinion required the state to support housing construction through a comprehensive housing policy. Subsequently, the POS was launched to improve the conditions for the purchase of apartments and houses through the participation of the state in housing construction. In this respect it needs to be stressed that the POS was not designed as a social housing policy but rather as a project to stimulate the market. Invalids

The benefits of the state's participation in this project may be summarised as follows: (1) the state assumes the payment of a part of the loan interests, whose rates accordingly dropped from 8 to 11% usually granted by banks to 4% under the POS; (2) the repayment of loans is extended up to 30 years plus a one year waiting period, conditions which do not exist in the current banking loan policy in Croatia; (3) buyers under the POS are not obliged to own another immovable property to register a mortgage as guarantee for the loan.⁴¹¹

The POS provides these benefits on a priority basis to persons who intend to acquire an apartment for the first time and to persons with inadequate housing conditions. Persons to buy an apartment under the POS shall fulfil the criteria of payment credibility, which presumes a permanent source of income of the household members. The responsible national real estate agency APN and the bank, which is providing the loan are bound to review the payment credibility of each applicant. Additionally, the borrower shall provide his/her own financial means at a minimum of 15% of the expected value of the apartment.

⁴¹⁰ In western countries, the monthly instalment for buying a house is usually 1/3 or 1/4 of the monthly income of the household community while in Croatia that instalment reached 1/2 or more thereof.

⁴¹¹ The POS covers thereby the maximum cost of 8,500 Euro per square meter of apartment surface.

The implementation of the POS requires the co-operation of several participants: (1) the Ministry of Public Work, Reconstruction and Construction with the overall responsibility to supervise the realisation of the POS, (2) the APN acting as an investor in the name on the Republic of Croatia, and (3) the cities and municipalities that secure the construction land and establish the housing needs of the citizens.

Since the current legal framework of Croatia does not provide for a specific housing policy in favour of low-income and vulnerable groups, it should be stressed that the POS provides benefits to social vulnerable groups in an indirect way. Namely, this programme envisages besides natural persons also local administrative units such as municipalities and cities as potential buyers of apartments. The Croatian social protection is decentralised, and the local administrative units becoming owners have the possibility to construct houses that could be used also for social needs under those more favourable conditions guaranteed under the POS. It is particularly important to point out that the local administrative units are not obliged to separate all amounts for housing under the municipal fiscal year, which is the usual practice. In this particular case the municipalities are entitled to buy new apartments by providing the deposit and subsequently paying the instalments.

The Croatian Government expects the construction of 3,400 apartments per year upon the implementation of the POS. The investment in the POS of 27 million Euros a year shall be returned through the buyers' monthly instalment payments. Under the condition that the same amount will be invested each year, the overall invested amount will be returned after a total of 23 years from the first sale and subsequently reinvested in the POS. Furthermore, the Croatian Government expects the GDP to increase by approx. 1.5% per year through the POS.

The POS as a first state intervention in organised housing construction should be welcomed since it provides better conditions to acquire an apartment than those existing on the free house market. However, it is to notice that the POS is

reserved only to persons with permanent income source and does not include specific provisions for vulnerable groups.

4.6 Housing of Roma Minority

*Reliable statistical data on Roma and particularly Roma women in Croatia is lacking.*⁴¹² According to the census in 2001, there were 9,463 Roma in Croatia which presents an increase of 41% compared to the last census in 1991. However, since many members of the Roma community do not declare themselves as such for fear of discrimination, rough estimates account for 30,000 to 40,000 people of this minority in Croatia.⁴¹³ These estimates indicate that Roma actually form the country's second largest minority next to Serbs⁴¹⁴, with their highest concentration in the region of Medimurje. According to an official survey in 2003, an estimated 100 settlements have been erected in 15 out of the total 21 counties. While 40 of these settlements were established outside the "built up area", 60 settlements are a collection of several buildings within a "built up area". In the 10 counties, which indicated to have significant problems with illegal settlements, there are about 70 settlements with approximately 12,000 Roma living in an estimated 2,000 families.⁴¹⁵

*Roma in Croatia still face racially discriminatory treatment. A significant number of them do not have a full range of fundamental rights since they are lacking clear legal status such as citizenship or legal residence.*⁴¹⁶ Moreover, during the war in Bosnia and Herzegovina and in Kosovo, many Roma came to Croatia without documents.⁴¹⁷

As regards the housing situation, the Roma community faces similar problems as the one in Bosnia and Herzegovina. Since

⁴¹² European Roma Rights Center, *Shadow Report on the Republic of Croatia's combined second and third periodic Reports to the Committee on Elimination of Discrimination against Women*, Budapest, 2004, p. 1.

⁴¹³ The Alliance of the Roma Association in Croatia estimates the number of the Roma minority to be around 40,000 to 50,000, see Center for Peace, Legal Advice and Psychosocial Assistance, *Shadow Report on the Implementation of the Framework Convention for Protection of the Rights of National Minorities in the Republic of Croatia*, June/July 2004, p. 25.

⁴¹⁴ Alvaro Gil-Robles, Commissioner for Human Rights, *Report on his Visit to the Republic of Croatia from 14 to 16 June 2004*, No. 25.

⁴¹⁵ Republic of Croatia, *National Programme for Roma*, 2003, p. 67.

⁴¹⁶ See *supra* note 171, p. 3.

⁴¹⁷ Committee on the Elimination of Discrimination Against Women, *Reports of Croatia*, 19 January 2005, p. 2. Available on: [http://www.unis.unvienna.org/unis/press-](http://www.unis.unvienna.org/unis/press-rels/2005/wom1478.html)

Roma in Croatia often live in informal settlements without ownership titles, they are also excluded from repossession of their pre-war homes, as this repossession would require a formal property title. Furthermore, these illegal settlements are not recognised by the municipal authorities, which consider houses on socially owned land to be illegal. Without formal legal protection, the informal settlements of Roma are an easy target for criminal attacks.⁴¹⁸

In October 2003, the Government of the Republic of Croatia adopted the "National Programme for Roma" which intends to eliminate discrimination of that minority, the improvement of their living conditions and their full integration into the Croatian society. The Programme acknowledges that accurate data on Roma settlements and the housing conditions of the Roma community is lacking and therefore explicitly provides for a survey to be conducted of these settlements. It further allows for the recognition of informal settlements on state owned land through sale, cession without payments, use permission and other appropriate means. However, the envisaged solutions depend on the condition that "there are no hindrances".⁴¹⁹ The implementation of the Programme and its results are still subject to further review.⁴²⁰ A first assessment in 2004 concluded that the overall implementation of the Programme has been disappointing, since it was not given the necessary priority in the 2004 budget and in many sectors the envisaged projects have not started in line with the agreed schedule.⁴²¹ In fact, the Croatian Government

[rels/2005/wom1478.html](http://www.unis.unvienna.org/unis/press-rels/2005/wom1478.html)

⁴¹⁸ In the beginning of 2003, incidents against Roma and private properties in Zagreb were reported, see Center for Peace, Legal Advice and Psychosocial Assistance, *Shadow Report on the Implementation of the Framework Convention for Protection of the Rights of National Minorities in the Republic of Croatia*, June/July 2004, page 20.

⁴¹⁹ See *supra* note 174, p. 69.

⁴²⁰ A research of Minority Rights Group International in March 2004 showed that Roma associations have different views on the implementation of the programme, see *ibidem*, page 26.

⁴²¹ Advisory Committee on the Framework Convention for the Protection of National Minorities, *Second Opinion on Croatia*, adopted on 1 October 2004, page 15.

had until May 2005 allocated only 10% of the budget established for the Programme.⁴²²

In May 2005 the Croatian Government adopted a 10-year Action Plan for Roma Integration. This action plan is based on the initiative called “Decade of Roma Inclusion” which was adopted by several central and south east European countries in February 2005 and which is supported by the international community. The action plan, under the overall administration of the Croatian Office for National Minorities, intends to ensure that Roma, among others, have equal access to housing.⁴²³ It remains to be seen to what extent the action plan will improve the housing conditions of the Roma community. Upon its proper implementation, it might be a first step to ensure the right to adequate housing as set forth in Article 11 of the International Covenant on Economic, Social and Cultural Rights.⁴²⁴

Finally, Croatia joined the Budva Declaration⁴²⁵, attached to this report as Annex II, which aims at the improvement of the housing conditions of the population and more specifically of refugees and returnees. Again, it remains to be seen how this political commitment will be implemented in the legal and social framework of Croatia.

In the context of housing of the Roma minority, it should furthermore be considered, that the Law on the Rights of National Minorities guarantees to them the representation in local and regional self-government bodies, which may improve the proportional representation of minorities, in the local and regional assemblies.⁴²⁶

⁴²² See supra note 173, No. 29.

⁴²³ Southeast Europe Online, *Croatia to adopt 10-year Action Plan for Roma Integration*, 27 February 2005. Available on: http://www.southeasteurope.org/subpage.php?sub_site=2&id=13996&head=f

⁴²⁴ Article 11(1) of the International Covenant on Economic, Social and Cultural Rights reads: “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.” Croatia ratified the Covenant in 1991.

⁴²⁵ Declaration of the 5th Forum of Cities and Regions of South-East Europe – 11th Economic Forum; for further details see above Chapter Three, Section 5, Bosnia and Herzegovina, Housing of Roma Minority.

⁴²⁶ Center for Peace, Legal Advice and Psychosocial Assistance, *Shadow Report on the Implementation of the Framework Convention for Protection of the Rights of National Minorities in the Republic of Croatia*, June/July 2004, p. 56.

4.7 Marital and Inheritance Legislation

4.7.1 Marital Property Rights

The newly adopted *Marriage Law*⁴²⁷ of 2003 provides for the legal relations between spouses. Article 255 paragraph 1 provides the spouses with the opportunity to arrange their marital relations on their existing and future property by contract. Without such contract, the marital property is subject to the provisions of the Marriage Law.

Article 247 generally recognises two types of marital property: common property and separate property of each spouse. Common property includes all property obtained through the spouses’ work during their marriage or derived from that property. Previously, upon dissolution of a marriage, the courts had discretionary power to determine each spouse’s part of the common property.⁴²⁸ The Marriage Law of 1998 introduced Article 253, which considered each spouse co-owner in equal parts of the common property, unless they had agreed otherwise.⁴²⁹ This Article has been retained in the newly adopted law of 2003.

Separate property is defined as property possessed by each spouse at the moment of their marriage and property acquired during the marriage by other means than the spouses’ work, such as inheritance or gifts.⁴³⁰

As to the regular administration of the community property, the consent of the spouse to acts of the other spouse is presumed. However, this presumption does not apply to real property transactions, which require the explicit consent of

⁴²⁷ *Marriage Law*, Official Gazette of Republic of Croatia, No. 116/2003.

⁴²⁸ This provision in the *Marriage Law* of 1989 (Official Gazette of SRC, No. 45/89) was particularly unfavourable to women. According to Ms. Radmila Sucevic, a lawyer from the Zagreb based NGO “BaBe”, the courts usually allocated unemployed women usually only a maximum of 1/3 of the common property.

⁴²⁹ *Marriage Law*, Official Gazette of Republic of Croatia, No. 162/98. Pursuant to this legal presumption of co-ownership in equal parts, it is no longer necessary to review the (financial and non-financial) contributions of each spouse to the common property in order to determine their share in it.

⁴³⁰ Article 253 paragraph 1 of the *Marriage Law*, No. 116/2003.

both spouses, provided they are co-owners of their common property.

Article 258 establishes that the property relations in a consensual union are equal to those of legally married spouses, if such union has existed for 3 years, or if they have their own child born out of this union. This provision is an improvement compared to the previous Marriage Law, which required that consensual unions should have lasted “for a long time”. The determination of what is to be considered “long time” was thereby subjected to the evaluation of the courts. Now more precise provisions define the property rights of consensual unions.

A major concern of the applicable Marriage Law is the long duration of the judicial procedure for the separation and the subsequent division of the marital property, which may take up to ten years. In fact, the slow and expensive judicial procedure is especially disadvantageous for women.⁴³¹

Apart from the Marriage Law, a *Law on Communities of the Same Sex*⁴³² entered into force in 2003, which provides for the same legal protection for persons of the same sex living in an out of wedlock community as for “traditional” consensual unions.

4.7.2 Inheritance Rights

The Croatian Constitution guarantees the right to inheritance.⁴³³ The *Law on Inheritance*,⁴³⁴ adopted in 2003, specifies

⁴³¹ According to Ms. Radmila Sucevic, a lawyer from the Zagreb based NGO “BaBe” lawsuits for divorce and subsequent division of marital property are in the majority of cases initiated by women. In such cases, women often abandon or are forced to abandon the place where they used to live with their ex-husband, while the men usually continue to use the common property. Consequently, women often have to lease an alternative accommodation and to pay the rent for it. To initiate a lawsuit, women have additionally to anticipate all expenses, such as judicial taxes, fees of lawyers and those of court experts. These expenses will be reimbursed only after the final court decision, which will be rendered only after several years. Since most women in such a divorce procedure do not have access to the common property, these long proceedings have a particularly negative impact on them.

⁴³² *Law on Communities of the Same Sex*, Official Gazette of Republic of Croatia, No.116/2003.

⁴³³ Article 48 paragraph 4 Constitution of the Republic of Croatia: “*The right to inheritance is guaranteed.*”

⁴³⁴ *Inheritance Law*, Official Gazette of Republic of Croatia, No.48/03.

that one of basic principles is equal inheritance rights for all⁴³⁵

Basically there are two alternatives for an inheritance: the testamentary inheritance and the inheritance based on the law.⁴³⁶ The testamentary inheritance is based on the deceased person’s free will and the Law only establishes some procedural steps as well as formal requirements for the validity of the testament.

Where there is no testament, the Law designates the following persons as heirs: the deceased person’s descendants, the spouse, the parents, the deceased person’s brothers and sisters and their descendants, grandparents and their descendants. Pursuant to Article 8 paragraph 3 they are entitled to inheritance according to the degree of inheritance.

The first degree of inheritance includes the surviving children and spouse of the deceased person, whereby each individual heir inherits an equal share.

The second degree of inheritance includes the deceased person’s parents and the surviving spouse. If the deceased person did not have any descendants, the second degree descendants inherit the property. The parents inherit one half of the inheritance, while the second half is inherited by the spouse. If the deceased person’s spouse dies before him or herself and there was no descendant, the parents of the deceased person inherit the whole inheritance in equal shares.⁴³⁷ If one of the parents of the deceased person dies before him or her, the property, which would have been inherited if s/he were alive, belongs to the other parent.

If both parents died before the deceased, who is without a spouse, the inheritance falls to their descendants. When the deceased person has a surviving spouse but the parents have died, the inheritance falls entirely to this spouse.⁴³⁸

⁴³⁵ *Inheritance Law*, Official Gazette of Republic of Croatia, No.48/03.

⁴³⁶ *Ibid*, Articles 26 and 8 respectively.

⁴³⁷ *Ibid*, Article 11 paragraph 4.

⁴³⁸ *Ibid*, Article 11 paragraph 3.

One of the main new provisions contained in this Law is that now the common-law wife has the same rights as the surviving spouse in intestate inheritance prescribed by law.⁴³⁹

Article 25 includes also a provision on the termination of the spouse's right to inheritance upon divorce. A spouse's right to inheritance terminates if (1) the deceased initiated a court procedure for divorce and after his/her death the request is granted; (2) the marriage is declared null and void or non-existent before the death of the deceased persons; and (3) the common life of the spouses has permanently ceased by fault of the surviving spouse as determined by court, or their community has ceased by mutual consent.

The surviving spouse or descendants could retain the rights over the goods used in the household, which were acquired from their activity. On their request, this part could be excluded from the inheritance amount. This claim must be presented within five years from the date when the inheritance procedure started.

The Law contains some provisions in favour of descendants, which guarantee the so called compulsory inheritance by law regardless of the deceased person's will. Article 70, paragraph 3 establishes that direct descendants and legally married and common-law spouses have the right to one half of the amount that would have been inherited by law pursuant to their inheritance degree. Other descendants are entitled to one third.

4.8 Conclusions and Recommendations

As in Bosnia and Herzegovina, the war in Croatia resulted in mass displacements and the deprivation of property rights of the ethnic minority in different parts of the country. While the initial housing legislation of the war period was to meet the housing needs of internally displaced persons and refu-

⁴³⁹ *Ibid*, Article 8 paragraph 1. Article 21 guarantees equal inheritance rights to children born in an out of wedlock. Article 23 furthermore guarantees equal inheritance rights for adopted persons compared to natural children, if the inheritance rights are not limited or excluded at the moment of adoption. In practice approximately 95% of all adopted children enjoy the same inheritance rights as natural children.

gees, mostly of Croatian ethnicity, property laws after the military defeat of the former "Krajina" at the end of the war aimed rather openly at the permanent deprivation of occupancy rights and the slow and discouraging process of restitution of private property of the ethnic minority, mostly Serbs. The development of the Croatian housing legislation gives reason to the following conclusions and recommendations:

1) Prevention and Early Warning of Future Discriminatory Housing and Property Laws

The war legislation on socially owned apartments shows a rather alarming development. While the 1991 *Law on Temporary Use of Apartments* put abandoned property under state administration without formal revocation of the underlying property title, the subsequently adopted Amendment to the *Law on Housing Relations* in 1992 and to an even larger extent the 1995 adopted *Law on Lease of Flats in Liberated Territories* revoked the occupancy rights permanently without compensation and without an effective judicial review of these decisions. This development proves that the moral scruple of the Croatian legislator lowered continuously during the war period and later and consequently in the rather open legislative support of the policy of ethnic homogenisation of the national territory. The international community should be aware of this development and be very alert on any kind of "emergency" housing legislation in future conflicts.

2) Alternative Solutions for Those who Lost Their Occupancy Right

Since Croatia had already started the privatisation of socially owned apartments, the revocation of occupancy rights deprived the mostly Serbian titleholders from the option of purchasing their apartments. Thus, the revocation of these rights constituted a *de facto* expropriation without fair compensation. In contrast to Bosnia and Herzegovina, the revocation of occupancy rights has never been repealed and thus forestalls the return of ethnic minorities to Croatia. Since the Croatian government never fully supported the concept of alternative accommodation to those who lost their occupancy right, the revocation of the latter consti-

tutes, even 10 years after the end of the war, a serious breach of personal property rights. It is recommended that Croatia finds a more adequate solution than the “Housing Care Programme” for this still pending issue.

A solution requires special programmes for the restitution or compensation to these former occupancy right holders rather than general housing programmes like the Public Funded Housing Construction Programme (POS). The recent governmental proposals stressed the necessity to address this issue in a permanent way. However, the proposals to establish protected lease agreements and to apply the POS should be properly developed and amended. It is especially recommended to review some restrictive criteria contained in the government proposal such as 1) the imposed deadlines for applying; and 2) general and not specific eligible criteria for this group (ranking list) for participating under the POS.

3) Improved Implementation of the Property Restitution Process

As regards the constitutional right to private property, the repossession process of property to the rightful owners under the Amendments to the *Law on Areas of Special State Concern* (LASSC), the subsequent Return Programme and the governmental *Action Plan* turned out to be quite slow. In fact, the judicial and administrative organs in charge of the repossession process established under the *Action Plan* and LASSC Amendments are less effective than necessary. As a result of the lacking efficiency and accountability, the Croatian government was not able to maintain the definite repossession of private property by the deadline of the end of 2002 and even by the end of 2004 this process had still not been completed, although in 2004 most progress was made so far. For improved implementation of the property repossession process, the competent authorities should ensure that positive decisions on property return are executed in an efficient manner, embedded by precise and co-ordinated steps. This applies especially to the Office of State Attorney, which should promptly start extra-judicial procedures by issuing eviction orders against illegal or multiple current occupants. As regards the repossession of currently occupied houses, two features should be clearly distin-

guished: firstly the housing needs of persons occupying others’ property as an issue of social housing and secondly the property restitution as a civil law procedure to return the property to the legitimate owners. Currently, the wide protection of current occupants with housing needs forestalls comprehensive property repossession and thus the return of refugees to Croatia.

4) Administrative and Judicial Reform

The repossession of property is a complex process, which requires transparency, accountability and impartiality. To achieve these goals, the effectiveness of the administrative and judicial remedies should be improved. This goal would require an overall administrative and judicial reform as urged by the EU mission in Croatia.⁴⁴⁰ In November 2002, the Croatian government announced a comprehensive and very ambitious plan for judicial reform, which among others envisaged the appointment of more judges. However, the plan did not produce any significant improvements in practice. The necessary reform of the administrative and judicial system should focus on a more efficient procedure, especially in the execution of civil decisions, and the education and training of state officials and judges to introduce EU standards in the realm of the administration and judiciary. An efficient organisational structure and professional approach of competent officials is essential for increasing the rule of law and trust in the law in Croatia.

5) Harmonisation of fragmented property laws into one uniform law

The production of numerous housing laws during the war and post war period has introduced a fragmented legislative body, which includes different laws on various aspects of private property. Moreover, with the *Law on Areas of Special State Concern* it provides only limited geographical application. The various housing and property laws are a source of confusion, which reduce the enjoyment of property rights. To better protect secure tenure, the Croatian legislator should

⁴⁴⁰ See, Opinion on Croatia’s Application for Membership of the European Union, Communication from the Commission, Brussels, 20 April 2004, pp. 15 and 19. Available on: http://www.europa.eu.int/comm/external_relations/see/sap/rep/cr_croat/pdf

consider the adoption of a homogenous and uniform property law in a comprehensive act.

6) Adequate Housing for All

The current Croatian Constitution does not enshrine the right to adequate housing, even though Croatia is a party to the International Covenant on Economic, Social and Cultural Rights. Moreover, Croatia's housing legislation does not pay specific attention to the housing rights and needs of vulnerable groups, such as unemployed and low-income groups, widows, divorcees, single headed households etc. As in Bosnia and Herzegovina, the specific war context may forestall the review of the housing needs of these groups of the society which enjoyed quite a strong protection in the socialist era and which risk to be forgotten in the current introduction of a market economy. As the present low construction rate may further aggravate the housing situation of unemployed and low-income groups, the development of a national programme on social housing construction should be considered. The right to adequate housing should be laid down in Croatia's Constitution.

7) Continuity and Broadened Focus of Public Funded Housing Construction (POS)

The programme on Public Funded Housing Construction (POS) has produced some initial positive results. It is recommended to ensure the availability of budgetary funds to guarantee the continuity of this programme, which offers more favourable conditions than those on the free market. It is a useful solution for accessibility on the housing market especially for young families. At the same time, it should be considered whether the POS could not allow for further benefits for women, particularly widows and single parent women.

8) Special Attention to Adequate Housing for the Roma

As in Bosnia and Herzegovina, the housing situation of the Roma minority is quite alarming. Without formal property titles, their informal settlements are subject to the tolerance of the competent administrative organs. Due to the still prevailing rejection of this minority, they face discriminatory decisions and sig-

nificant disadvantageous treatment. Again as in Bosnia, the future privatisation of socially owned land may further aggravate the housing conditions of the Roma community. Accordingly, a better protection of informal settlements and the acquisition of property titles to the respective land parcels under favourable conditions should be considered, as well as options of special zoning and state acquisition of privatised land in public interest purposes to provide security of tenure to the inhabitants of these settlements, (leases, special use concessions, etc). Croatia acknowledged the needs of the Roma community within the recently adopted action plan. However, the previous reluctant implementation of the 2003 National Programme for Roma gives reason to further review the establishment of specific supportive measures in favour of the Roma community.

9) Simplify and Shorten Divorce Procedures

While the new Marriage Law has meant a substantial improvement in terms of division of marital property upon divorce, a remaining major concern is the long duration of the judicial procedure for the separation and the subsequent division of the marital property, which may take up to ten years. This is difficult for the spouse who had to abandon the common property, as s/he faces many years of additional expenses and uncertainty. It is therefore recommended that the divorce procedure is simplified and shortened.

10) Continue to Increase Women's Participation in Decision-Making Bodies

While Article 15 of the Law on Local Elections obliges political parties to ensure the principle of gender equality, it does not include any safeguards to ensure that this obligation is met. After the last elections of 2003, the percentage of women in Parliament dropped from 21.2% to 17%. Thus, more stringent implementation of the Law on Local Elections and the Gender Equality Act are recommended.

11) Collect Gender Disaggregated Data

Without gender disaggregated data, the assumption that both men and women benefit from specific laws, policies and programmes is often mistakenly contin-

ued and cannot be corrected. If figures on different forms of housing tenure, restitution of private property, social housing beneficiaries, local government councillors etc. were disaggregated by sex, these would provide a firm and clear basis for interventions for vulnerable groups. It is therefore recommended that gender disaggregated data is collected at both local and national level.

12) Strengthen Gender Equality Office

While the Office for Gender Equality is autonomous, it is inadequately equipped - both in terms of budgeting and personnel - to handle the ambitious agenda it has been given. It is thus crucial that sufficient financial and human resources are allocated to this Office.

CHAPTER FIVE

Serbia and Montenegro

5.1 Introduction

In April 1992, the two Yugoslav republics Serbia and Montenegro proclaimed themselves successors of the Socialist Federal Republic of Yugoslavia, through the creation of the Federal Republic of Yugoslavia (hereinafter: FRY).⁴⁴¹ The relationship between Serbia and Montenegro was, however, rather cumbersome and resulted finally in a constitutional crisis in 2000, when Montenegro announced a referendum on its independence from the Federal Republic. Due to the mediation of the European Union such a referendum was put off and in 2002 the Belgrade Agreement on the future relations between Serbia and Montenegro was signed under the auspices of the EU High Representative. In 2003, the two republics adopted the *Constitutional Charter of the State Union of Serbia and Montenegro*⁴⁴² (hereinafter: *Constitutional Charter*) as the basis for their future constitutional set up. The *Constitutional Charter* envisages that most decision-making functions lie with each member state, while some responsibilities are transferred to the common institutions of the State Union of Serbia and Montenegro.

The *Constitutional Charter* is based on the sovereignty of the single member states, which may withdraw from the State Union upon a referendum held three years after its entry into force.⁴⁴³ At the international level, Serbia and Montenegro are considered to be one legal entity and as such they are considered to be a single member of international and regional organisations. Apart from that, each single state may become

member of those international and regional organisations, which do not require international personality for their membership.⁴⁴⁴ In addition, each state may maintain international relations, conclude international agreements and establish missions in other states, unless this is contrary to the competencies of State Union and the interests of the other member state.⁴⁴⁵ The State Union Assembly consists of 126 deputies, indirectly elected from the two assemblies of the two member states (91 from Serbia and 35 from Montenegro). As of April 2005, out of the total of 126 parliamentarians, only 10 were women (7.9%).⁴⁴⁶

Article 3 of the *Constitutional Charter* requires the two member states to respect the human rights of all persons within its jurisdiction. A very important innovation includes its Article 10, which provides for the direct enforcement of international treaties on human and minority rights and civil freedoms within the territory of Serbia and Montenegro. However, the *Constitutional Charter* does not contain any explicit provision related to the protection of property rights or to the right to adequate housing.

During the war, Muslims, Croats, Hungarians and Albanians were subject to intimidation, harassment, discrimination and forced displacement, mainly by paramilitary groups in the Republic of Serbia.⁴⁴⁷ However, as the war in the former Yugoslavia did not take place directly on the territory of Serbia and Montenegro (except for Kosovo⁴⁴⁸), there is no legislation regarding the restitution or repossession of property for

441 Articles 51 and 69 of the Constitution of the Federal Republic of Yugoslavia explicitly guaranteed the right to property, which could only be restricted in the public interest and subject to fair compensation

442 *Constitutional Charter of the State Union of Serbia and Montenegro*, Official Gazette of Serbia and Montenegro, No. 01/03, 4 February 2003. This Constitutional Charter supersedes the Constitution of the Federal Republic of Yugoslavia.

443 Article 60 of the *Constitutional Charter* of the State Union of Serbia and Montenegro. In 2005 the Montenegrin State announced a referendum for the first part of 2006.

444 Article 14 of the *Constitutional Charter* of the State Union of Serbia and Montenegro.

445 Article 15 paragraph 2 of the *Constitutional Charter* of the State Union of Serbia and Montenegro.

446 Inter-Parliamentary Union, *Serbia and Montenegro: State Union Assembly*, on: <http://www.gov.yu/start.php?je=e&id=3> and Inter-Parliamentary Union, *Women in National Parliaments*, on: <http://www.ipu.org/wmn-e/classif.htm>. Serbia and Montenegro are ranked 99 on the world classification of women in national parliaments and, after Albania, have the largest gender imbalance with regard to women in politics in South Eastern Europe.

447 Human Rights Watch, *The Former Yugoslav Republics*, 1993, p. 4. Available on: http://www.hrw.org/reports/1993/WR93/Hsw-10.htm#P671_238252

448 Exception was the situation in Kosovo, where on the basis of UN Security Council Resolution 1244 (1999) and United Nations Interim Administration Mission in Kosovo (UNMIK) Resolution 1999/23 of 15 November 1999 the restitution of property of displaced persons was placed under the UN Housing and Property Directorate (HPD) and UN Housing and Property Claims Commission (HPCC).

refugees and displaced persons who fled from the FRY, as was the case in Bosnia and Herzegovina and Croatia. Therefore there is a substantial difference in analysis of legislation and policies, which in Serbia and Montenegro will be mostly focusing on housing and property standards. However, the recent war in the former Yugoslavia did create an urgent need to provide a quick housing solution for the growing number of refugees and displaced persons who had fled its other republics and autonomous provinces.

5.1.1 Serbia

The Republic of Serbia is composed of Central Serbia and the autonomous province of Vojvodina. The autonomous province of Kosovo has been put under international administration of the United Nations Interim Administration Mission in Kosovo (UNMIK) by UN Security Council Resolution 1244 (1999) and the decision on its future status is still pending. Housing and property rights issues in Kosovo are not examined in this report.

Governance Structure

The 2000 parliamentary elections brought the Democratic Opposition of Serbia (DOS), a group of 18 small parties and organisations, to power. National minorities were represented especially by parties that were part of this coalition. However, in the 2003 elections this coalition fell apart and due to the 5% threshold the smaller parties failed to get representation in parliament. 12.4% of Serbian parliamentarians are women.⁴⁴⁹

Serbia is subdivided in 29 districts, from which 17 are in Central Serbia, 7 in Vojvodina and 5 in Kosovo. There are 87 municipalities, including 17 in Belgrade.⁴⁵⁰

The *Law on Local Elections* of 2002 stipulates that the total number of the less represented sex in the list of candidates

⁴⁴⁹ European Forum for Democracy and Solidarity, *Serbia*, on: <http://www.europeanforum.net/country/serbia>

⁴⁵⁰ Standing Conference of Towns and Municipalities, *Serbia Local Government Reform Programme*, on: <http://www.skgo.org/code/navigate.php?id=351>

may not be smaller than 30%.⁴⁵¹ In 2005, there were only 25 women in local government.⁴⁵²

The recently adopted *Law on Local Self-Government*⁴⁵³ delegated more autonomy to the municipalities.

Constitutional Provisions

The Constitution of the Republic of Serbia⁴⁵⁴ of 1990 includes several provisions related to property. Article 34 guarantees the right to own property and the right to inheritance. Article 56 provides for the equal protection for all different types of property such as state, social and private property and Article 63 allows for the expropriation of property only upon fair compensation not below market value. Article 72 paragraph 4 authorises the Government to “*regulate property and obligation relations*” and to assume “*the protection of all forms of ownership.*” While Article 21 provides for the inviolability of the home, the Constitution, however, does not include a right to adequate housing. Article 13 prohibits any discriminatory treatment by providing that all citizens are equal in their rights and enjoy equal protection before the state irrespective of whatever ground.

Demographic and Socio-Economic Data

According to the 2002 census, Serbia had a population of 7,498,001 inhabitants, subdivided in 3,645,930 men and 3,852,071 women in 2000.⁴⁵⁵ According to this census, the Serbian society could be disaggregated as follows:

⁴⁵¹ Article 20 of the *Law on Local Elections of the Republic of Serbia*, Official Gazette of the Republic of Serbia, No. 33 of 13 June 2002. Available in English on: [http://www.venice.coe.int/docs/2005/CDL-EL\(2005\)027-e.pdf](http://www.venice.coe.int/docs/2005/CDL-EL(2005)027-e.pdf)

⁴⁵² Information provided on: <http://www.peacewomen.org/news/SerbiaMontenegro/news.html>

⁴⁵³ *Law on Local Self-Government*, Official Gazette of Republic of Serbia, n. 9/2002.

⁴⁵⁴ *Constitution of the Republic of Serbia*, Official Gazette of Republic of Serbia, No. 1/90.

⁴⁵⁵ Republican Institute for Statistics, 2002 Census, Population according to age and sex. Available on: <http://www.webrzs.statserb.sr.gov.yu>

HOUSING AND PROPERTY RIGHTS

Table 5.1.1: Serbian Population in Ethnic Groups in 2002 (in alphabetical order)

Ethnic Groups	In whole of Serbia	In Central Serbia	In Vojvodina
Albanians	61,6147	59,952	1,695
Bosniaks	136,087	135,670	417
Bulgarians	20,497	18,839	1,658
Croats	70,602	14,056	56,546
Czechs	2,211	563	1,648
Declared as Bunjevci	20,012	246	19,766
Ethnicallly declared as 'Yugoslavs'	80,721	30,840	49,881
Ethnically undeclared	107,732	52,716	55,016
Germans	3,901	747	3,154
Gorani	4,581	3,975	606
Hungarians	293,299	3,092	290,207
Macedonians	25,847	14,062	11,785
Montenegrins	69,049	33,536	35,513
Muslims	19,503	15,869	3,634
Roma	108,193	79,136	29,057
Romanians	34,576	4,157	30,419
Russians	2,588	1,648	940
Ruthenians	15,905	279	15,626
Serbs	6,212,838	4,891,031	1,321,807
Slovaks	59,021	2,384	56,637
Slovenians	5,104	3,099	2,005
Ukrainians	5,354	719	4,635
Vlachs	40,054	39,954	101
Others	11,711	64,000	5,311
Unknown	75,483	51,709	23,774
Total	7,498,001	5,522,279	2,031,992
Declared as regional affiliation	11,485	1,331	10,154

Source: adapted (from alphabetical order in local language to alphabetical order in English language) from: 2002 Census, Schedule n.1 Population According to Ethnicity

Table 5.1.2 Largest Ethnic Groups in Serbia in 2002 in percentages

Largest Ethnic Groups in whole of Serbia	In %	Largest Ethnic Groups in Central Serbia	In %	Largest Ethnic Groups in Vojvodina	In %
Serbs	82.86	Serbs	89.48	Serbs	65.05
Hungarians	3.91	Montenegrins	2.48	Hungarians	14.28
Bosniaks	1.82	Germans	1.45	Slovaks	2.79
Roma	1.44	Roma	1.10	Croats	2.78
Ethnically undeclared	1.44	Ethnically undeclared	0.97	Ethnically undeclared	2.71
Others	7.53	Others	4.52	Others	2.39
Total	100.00	Total	100.00	Total	100.00

Source: adapted (from alphabetical order in local language to alphabetical order in English language) from: 2002 Census, Republican Institute for Statistics, Schedule n.1 Population According to Ethnicity.

The schedule below presents the decrease of the rural population in past decades. The changes in the socio-economic structure of the population reflect the general trend in almost all former Yugoslav republics, where the socialist governments favoured an intensive industrialisation which caused rapid urbanisation.

Table 5.1.3: Economically active and agricultural Population

Year	1948	1953	1961	1971	1981	1991
Population (thousands)	6,528	6,979	7,642	8,447	9,313	9,779
Economically active population, % of total	50.9	48.4	47.3	45.7	44.8	44.2
Agricultural population, % of total	72.3	66.7	56.1	44.0	25.4	17.9

Source: Federal Bureau for Statistics, Serbia in Figures 2001, Internet Format

Massive housing construction took place during the 1970s and 1980s, predominantly in major cities, in accordance with the general housing policy of the former socialist system, which considered housing as a social good. Accordingly, the housing fund in Serbia is relatively recent with 72.3% of all

apartments in Central Serbia having been constructed after 1960.⁴⁵⁶

In 1991 25.5% of all residential units were socially owned in Central Serbia, while this was 17.5% in Vojvodina, due to the dominant private ownership in rural areas.⁴⁵⁷ As an indicator of the living standard in Serbia in 1991, the schedule below reflects the number, surface and inhabitation of apartments:

Table 5.1.4: Number, Surface and Habitation of Apartments

Area	Central Serbia	Vojvodina
Number of Apartments for permanent living	1,838,281	708,188
Average surface in m ²	58	67
M ² per person	19	25.6
Person per room	1.2	1.0

Source: 1991 Census of Population, Households and Apartments, Book No. 3, Schedule No. 1.

The higher average surface of apartments in Vojvodina is due to more developed private construction activities in rural areas⁴⁵⁸, whereas the surface of socially owned apartments in the major Serbian cities was limited by technical standards. The structure of socially owned apartments before privatisation per number of rooms in 1991 is reflected in the following table:

Table 5.1.5: Socially Owned Apartments per Number of Rooms

Number of Rooms	Central Serbia	Vojvodina
1	16,7%	12,5%
2	38,6%	36,0%
3	24,9%	26,8%
4 and more	19,7%	24,7%

Source: 1991 Census of Population, Households and Apartments, Book No. 3, Schedule No. 2.

456 Republican Institute for Statistics, 1991 Census of Population, Households and Apartments, Book No. 3, pp. 12-16. In Vojvodina this percentage is slightly lower than 62%.

457 *Ibid*, Schedule No. 2: Proportion of Socially Owned Apartments before Purchasing.

458 The province of Vojvodina is a predominantly agricultural region without big industrial cities.

The inhabitation density as another indicator of the living standard reflects the number of persons per room in an apartment. In Central Serbia, 1,376,281 persons or 24% of the population lived in optimal conditions, i.e. one user per room.⁴⁵⁹ However, another 13.5% of the population lived with more than three users per room.⁴⁶⁰

The 2002 census of the Ministry of Urbanism and Construction indicates that Serbia, including Vojvodina, accounted for 2,743,996 apartments and 2,576,487 households, resulting in 1.06 households per apartment.⁴⁶¹

Armed conflict, international sanctions, decline of trade due to the break up of Yugoslavia, inflation and lack of reforms during the thirteen years of Milosevic's mandate, led to economic decline and a sharp increase in unemployment and poverty in the 1990s. The NATO air strikes in 1999 destroyed a significant part of Serbia's infrastructure and industry. Moreover, high-level corruption and organised crime further trouble improvement of the socio-economic situation.⁴⁶² The crisis especially affected those sectors that were well developed during the socialist system, such as the agricultural sector and the traditional manufacturing sector. Inflation reached 14.2% by the end of 2002. While official estimates refer to more than 891,000 unemployed citizens, more in-depth analyses estimate the real unemployment rate in 2002 to be around 30 %.⁴⁶³

In 2000 over a third of the Serbian population was considered to be poor with an average income of less than 30 US\$ per month; among them 18.2% lived in absolute poverty with an average income of less than 20 US\$ per month.⁴⁶⁴ Based on these figures, approximately 2.8 million persons

459 Republican Institute of Statistics, 1991 Census of Population, Households and Apartments, Book No. 3, pp. 197-198. In Vojvodina, this indicator is with 848,066 persons or 42.4% of the population significantly better.

460 *Ibid*, Schedule No. 4: Citizens living in extreme density, pp. 197-198. In Vojvodina, only 4.1% of the population lives in such conditions.

461 Republican Institute of Statistics, 2002 Census, Population, Comparative Review of the Households. Available on <http://webrzs.statserb.sr.gov.yu/axdl/Zip/UPDS10.pdf>

462 See *supra* note 9.

463 Economist Intelligence Unit, *Country Report 2002, Serbia and Montenegro*, p. 14.

464 Centre for Liberal Democratic Studies, *Poverty in Serbia and Reform of Governmental Assistance for the Poor*, Belgrade 2002.

in Serbia are poor, while approximately 1.4 million people live in extreme poverty. Referring to households, 31.6% or around 755,000 households live below the poverty threshold and 15.6% or around 373,000 households live below the lower poverty threshold. While in the beginning of the 1990s poverty was mostly a rural phenomenon, the economic crisis especially affected the living standard of the urban population, mainly because the rural population could still cultivate some basic food. Taking into account that the above data does not include refugees and displaced persons, the general picture of poverty in Serbia is quite dramatic.

5.1.2 Montenegro

The signing of the Belgrade Agreement in 2002, which led to the establishment of Serbia and Montenegro on the basis of the 2003 *Constitutional Charter*, led to turmoil in Montenegrin politics. Despite the government's steady pro-independence stance, public opinion is more divided.

Governance Structure

Since the 2001 elections, of the 77 parliamentary representatives, only 8 have been women (10%). While Albanians gained parliamentary representation through uniting in a coalition, the parties of the Bosniaks and Roma communities failed to pass the 3% threshold.⁴⁶⁵

The Republic of Montenegro is administratively divided into 21 municipalities. The state form is still centralised, but the recent *Law on Local Self-Government*⁴⁶⁶ delegated more autonomy to the municipalities. The competencies of the municipalities include planning and developing communal activities, assistance to elderly and disabled, housing needs for social cases, local public transport, activities regarding the use and protection of urbanised areas, the creation of the conditions for maintenance and protection of buildings (apartments) and the protection of floor owners, the definition of the conditions for construction and use of buildings, and inspection

work of above mentioned activities.⁴⁶⁷ No information was available on the percentage of women in local government.

Constitutional Provisions

Article 45 of the Constitution of the Republic of Montenegro⁴⁶⁸ of 1992 guarantees the right to ownership. Article 46 recognises the right to inheritance. Pursuant to Article 45 paragraph 2, property may be expropriated upon fair compensation not below market value. While Article 29 guarantees the inviolability of the home, the Constitution, however, does not include the right to adequate housing. Article 15 provides that all citizens are equal and Article 17 allows each citizen equal protection of their freedoms and rights.

Demographic and Socio-economic Data

According to the 2003 census, 43% of the Montenegrin population were of Montenegrin ethnicity. The remaining part is divided among various ethnic groups.

Table 5.1.6 Montenegro Population in Ethnic Groups according to censuses of 1981, 1991 and 2003 – in alphabetical order

Ethnic Groups	1981 In Figures	1991 In Figures	2003 In Figures
Albanians	37,735	40,415	31,163
Bosnians	-	58	48,184
Croats	6,904	6,244	6,811
Egyptians	-	-	225
Ethnically undeclared	301	1,944	26,906
Germans	107	124	118
Hungarians	238	205	362
Italians	45	58	127
Macedonians	875	1,072	819
Montenegrins	400,488	380,467	267,669
Muslims	78,080	89,614	24,625
Roma	1,471	3,282	2,601
Russians	96	118	240
Serbs	19,407	57,453	198,414
Slovenian	564	369	415
Yugoslavs	31,243	26,159	1,860
Others	816	437	2,180
Unknown	4,338	6,076	6,168
Total	584,310	615,035	620,145
Regional affiliation	1,602	998	1,258

Source: adapted (from alphabetical order in local language to alphabetical order in English language) from: 2004, *Statistical Yearbook of Republic of Montenegro*, Republican Institute for Statistics⁴⁶⁹

465 European Forum for Democracy and Solidarity, *Montenegro*, on: <http://www.europeanforum.net/country/montenegro>

466 *Law on Local Self-Autonomy*, Official Gazette of Republic of Montenegro n. 42/03.

467 *Ibid*, Article 32.

468 *Constitution of the Republic of Montenegro*, Official Gazette of Republic of Montenegro, No. 48/92.

469 Available on: <http://www.monstat.cg.yu>

Table 5.1.7 Largest Ethnic Groups in 1981, 1991 and 2003 in Percentages

Largest Ethnic Groups	1981 In %	Largest Ethnic Groups	1991 In %	Largest Ethnic Groups	2003 In %
TOTAL	100.00	TOTAL	100.00	TOTAL	100.00
Montenegrins	68.54	Montenegrins	61.86	Montenegrins	43.16
Muslims	13.36	Muslims	14.57	Serbs	31.99
Albanians	6.46	Serbs	9.34	Bosnians	7.77
Yugoslavs	5.35	Albanians	6.57	Albanians	5.03
Others	6.29	Others	7.66	Others	12.05

Source: adapted from: 2004, *Statistical Yearbook of Republic of Montenegro*, Republican Institute for Statistics, *supra* note 29.

The Montenegro population disaggregated by sex and age is shown in the table below:

Table 5.1.8 Montenegro Population by Sex and Age in 2003

Total Population	Female	Male	Aged 0-14	Aged 15-29	Aged 30-44	Aged 45-65	Aged 65 +
620,145	314,920	305,225	127,461	98,350	127,408	142,236	79,702

Source: Institute of Statistics, Republic of Montenegro, *Census of Population, Households and Dwellings, 2003, Census Results by Municipalities and Settlements, Population by Sex and Age*, pp. 14 and 15, October 2004

The rapid industrialisation in the 1960s and 1970s led to massive migration from rural areas to urban centres. Accordingly, quick housing solutions for the growing labour force were needed. Subsequent urban and housing policies focused mainly on providing accommodation to factory workers. Housing construction dramatically increased after World War II, and then decreased again in the 1980s.

Table 5.1.9: Housing Construction in Montenegro

Year	% of Housing Fund Used for Construction
1945	5.3
1945 – 1970	34.3
1971 – 1980	26.0
1981 – 1985	17.2
1985 -	12.1

Source: Ministry of Urban Planning of Montenegro, *Analysis of the Urban Construction in the Conditions of Market Economy, Podgorica, May 1994*, p. 4.

The prices for accommodation in socially owned apartments in urban areas were relatively affordable. However, the lack of more structural urban planning and development contributed to a huge disproportion of the spatial distribution of the Montenegrin population. Thus, 24.7% of the total population was concentrated in the capital Podgorica, while the undeveloped municipalities in northern Montenegro only accounted for 1.1% (Andrijevica), 0.6% (Savnik), and 1.8% (Kolasin) respectively.⁴⁷⁰ In addition to Podgorica, the populations of Ulcinj, Budva, and Mojkovac also increased. Apartment construction in urban areas increased from 10,000 in 1951 to almost 100,000 in 1991.

In 2003, out of the total number of 620,145 inhabitants 383,808 lived in urban centres and 236,337 in rural areas.⁴⁷¹

Today, most dwellings are approximately 30 years old. The large majority are low-rise buildings. Despite the intensive housing construction, the average accommodation space of 17.7 square meters per person in Montenegro is below the FRY average of 19.5 square meters.⁴⁷² In addition, this average accommodation space is unequally distributed, since in certain municipalities on the Adriatic coast it accounts for 21 to 27 square meters per person.

The inhabitation density, representing the number of persons per room in an apartment, showed in 1991 only 131,338 persons (21%) in the optimal housing condition of one user per one or more rooms.⁴⁷³ Before privatisation, socially owned apartments constituted 26% of all housing, while 44.2% of these were concentrated in urban areas and only 1.9 percent in rural areas.⁴⁷⁴

470 Federal Institute of Statistics, *2000 Statistical Yearbook of Republic of Montenegro*, 1991 Census, p. 237.

471 Federal Institute of Statistics, Republic of Montenegro, *Census of Population, Households and Dwellings, 2003, Census Results by Municipalities and Settlements*, p. 14.

472 Ministry of Urban Planning of Montenegro, *Analysis of the Urban Construction in the Conditions of Market Economy*, Podgorica, May 1994, p. 4.

473 Federal Institute of Statistics, *1991 Census, Population and Households*, Book 3, Schedule 4.

474 *Ibid*, Book. 2, pp. 12-15.

The available data of 1991 shows that 95.4% of all socially owned apartments in urban areas were connected to public water supply and 94.6% of all apartments in Montenegro had electric power supply.⁴⁷⁵

The consequences of the recent conflict have widened the gap in the unequal distribution of the population; Montenegro had to provide shelter for refugees and IDPs, of whom one third (12,130) have found shelter in Podgorica. In addition a large number of economic rural migrants have moved to the capital trying to find better economic opportunities. As a result of these two trends the current population of Podgorica is expected to arrive up to 200,000 inhabitants very soon. According to the data collected from the local administrative units in Montenegro, without considering the presence of refugees and displaced persons, there are currently 18,000 households without a house or apartment.

In the capital Podgorica, there are four informal settlements on state land, which are not connected to sewerage networks.⁴⁷⁶ Most of these settlements are inhabited by refugees and other displaced persons. In addition, the recent UNDP/ISSP survey⁴⁷⁷ refers to “suburb settlements” such as Konik, Brlja, Komanovski, Vrela Ribnicka, inhabited by the Roma population. The spatial plan of 1986 planned for Podgorica to reach 130,000 citizens by 2000. The 2003 census showed that there are 168,812 persons living in the capital and that the number of illegally built structures amounts to 17,640.

5.2 Privatisation

Since the beginning of the 1980s, Serbia and Montenegro envisaged the privatisation of socially owned apartments. While

⁴⁷⁵ *Ibid*, Book 3, pp. 300-302. However, for the whole territory of Montenegro, the percentage of socially owned apartments connected to public water supply drops to quite a low number of 69.9%.

⁴⁷⁶ Zagori□ (69 hectares); Vrela Ribni□ka (30 hectares); Malo brdo (77 hectares); Dajbabska mount (35 hectares). These are areas that were intended for agriculture and protection of forests. See Republic of Montenegro, Municipality of Podgorica, presentation at *Ministerial Conference on Informal Settlements in Southeastern Europe*, Vienna, 28 September – 1 October 2004. Available on: <http://www.stabilitypact.org/humi/040928-presentations/podgorica.pdf>

⁴⁷⁷ UNDP/ISSP, *Household Survey of Roma Ashkaelia and Egyptians, Refugees and IDPs in Montenegro*, 2003, p. 17. Available on: http://www.isspm.org/HouseHold_Survey_Pack/rHSSen.pdf.

initial amendments to the socialist *Law on Housing Relations* allowed simultaneously for several types of tenure such as private property, lease and occupancy rights, comprehensive privatisation laws of the 1990s transformed the remaining occupancy rights to the legal instruments of the civil law system, i.e. private property and lease.

5.2.1 Serbia

Unsatisfactory results produced in the housing sector in the 1980s led Serbia to amend its *Law on Housing Relations* twice. The shortcomings of this Law forced the legislator towards comprehensive changes and transformation of social ownership over residential property. Finally, the *Law on Housing* of 1992 replaced the amended *Law on Housing Relations*. This Law introduced a full fledged privatisation through the replacement of the still partly existing occupancy rights by private ownership or lease agreements.

a) *Law on Housing Relations of 1973*

In 1973 the Socialist Republic of Serbia (hereinafter also: SRS) introduced the *Law on Housing Relations*.⁴⁷⁸ This Law included almost all provisions of the former federal housing law regarding the acquisition and cessation of occupancy rights and the rights and obligations of the occupancy right holders and their household members.

In 1980, after a long public debate, the SRS adopted the *Law on Changes and Amendments of the Law on Housing Relations*,⁴⁷⁹ which filled the perceived gaps of the previous legislation. The Amendment revised the conditions for the annulment of a contract of use through the allocation right holder, provided a more precise definition for household members of the occupancy right holder, established more precise provisions on the transfer of occupancy rights from the holders to their household members and limited the use of a socially

⁴⁷⁸ *Law on Housing Relations*, Official Gazette of SRS, No. 29/73, amended by Laws Nos. 30/80, 38/84, 9/85, 18/85 and 11/88.

⁴⁷⁹ *Law on Changes and Amendments of the Law on Housing Relations*, Official Gazette of SRS, No. 30/80.

owned apartments if the holder of that apartment was also a owner of a private house.

However, in the following years, Serbia - as the other Yugoslav republics - faced a negative trend in the housing sector, which could no longer produce the same results as in past decades. This negative development was among others caused by the economic crisis at this time and the mismanagement of the still monopolist Public House Enterprises (PHE) in the field of housing construction.⁴⁸⁰ Accordingly, political and state representatives initiated a broad discussion on how to overcome the current negative situation. The results of this discussion were finally summarised in a report of the SRS Commission for Economic Reform: 481

- (i) Introduction of more economic criteria in the housing sector, such as higher and economically more rational rents, more efficient maintenance of the housing fund and the abolishment of certain monopolies in the field of housing construction.
- (ii) A structural reform in the housing sector upon which citizens have more opportunities to satisfy their housing needs through a variety of alternatives, such as construction of houses, investment of own financial means or the purchase and renting of houses.
- (iii) Instead of allocation of socially owned apartments, the acquisition of private ownership over apartments should be the primary form to satisfy individual housing needs. The function of socially owned enterprises should be limited to provide their employees with loans for housing needs.
- (iv) The new form of financial support should be (until then virtually inexistent) mortgage loans which should allow for payment by instalments in accordance with the financial possibilities of individuals.
- (v) The intervention of the society should gradually be limited to provide housing for certain vulnerable groups, based on the principle of social solidarity. The society

should provide an adequate fiscal policy in order to allow individuals to satisfy their primary housing need.

- (vi) Technical obstacles to housing construction, such as monopolies of certain institutions in projecting, incorrect planning, unjustified high communal taxes or delayed allocation of construction land should be tackled through the introduction of market criteria.

The above outlined findings confirm the new political approach towards the housing sector and reflect the socialist party's embracement of the free market and its instruments.

b) Law on Housing Relations of 1990

The political discussion and the above outlined findings prompted the legislator to introduce a new legal basis for housing with the 1990 Law on Housing Relations⁴⁸². The adoption of this Law coincided with the major structural changes in the Yugoslav society from a socialist administration towards a market economy. Accordingly, this Law established various legal tenure forms, ranging from the relics of the previous housing legislation in form of occupancy rights to traditional private law institutes in form of leases or mortgages.

Article 2 of the Law introduced the core element of the housing reform, by emphasising the responsibility of the citizens to satisfy their housing needs through constructing or buying a house or alternatively by concluding a lease contract. Furthermore, this article entitled enterprises and commercial banks to grant loans to satisfy citizens' housing needs. Once entitled to grant loans based on economic criteria, enterprises were no longer bound to allocate a compulsory amount to the housing fund. Finally, Article 2 allowed socially owned enterprises to allocate socially owned apartments not only in the form of occupancy rights but also on the basis of lease agreements.

Since the previous low rents were insufficient for the maintenance of the housing fund, Article 3 of the Law introduced rents based on economic criteria. Thus, Article 40 specified

⁴⁸⁰ See above, Chapter Two, Section 3.5, Housing Legislation and Policies in the Period from 1974 to 1990.

⁴⁸¹ Presidency of the SRS Commission for Economic Reform, *Basis for the Housing Reform, Findings, Integral Part, Law on the Housing Relations*, 1990, p. 6.

⁴⁸² *Law on Housing Relations*, Official Gazette of SRS, No. 12/90.

the expenses to be covered by the rent such as the apartment's construction costs, maintenance costs or insurance costs.

Article 6, paragraph 1 foresaw a first step towards the privatisation of socially owned apartments by allowing the occupancy right holders or lessees and their household members to purchase socially owned apartments which they use.⁴⁸³ Through the above mentioned increase of rents, the legislator further stimulated the purchase of such apartments.

Article 7 furthermore allowed citizens and socially owned legal persons, i.e. socially owned enterprises or socially owned non-commercial subjects, to acquire co-ownership over an apartment through a joint investment in it. For the construction of new apartments, the Law introduced the co-ownership right in form of a contract which stipulates the amount of the ideal parts of the co-ownership.⁴⁸⁴ The minimum amount of these ideal parts was fixed at 5% of the apartment. Alternatively, the Law introduced the co-ownership over already existing socially owned apartments through the acquisition of ideal parts of it. In this case, the socially owned legal person and the employee could mutually agree on their respective ideal parts of the apartments. Thus, the employees and occupancy right holders could gradually increase their ideal parts over the apartment until they acquired full ownership, while the socially owned legal persons and allocation right holders could receive the purchase price. Finally, Article 7 envisaged various other specific cases for the acquisition of co-ownership.⁴⁸⁵

⁴⁸³ Article 6, paragraph 2 specified *inter alia* the criteria for determining the apartment's value, the minimum of the annual instalments, 40 years as the maximum period for these instalments and the buyer's obligation to accept a mortgage over the purchased apartment. Upon its purchase, the household members preserved their right to stay in the apartment pursuant to the applicable private law provisions.

⁴⁸⁴ The co-ownership does not allocate certain parts of the apartment to the individual owners but entitles them to a percentage of the ownership over the apartment, generally referred to as "ideal" part.

⁴⁸⁵ Article 7 provided the former owner, whose house or apartment had been expropriated and who claimed compensation, the right to purchase ideal parts of the apartment. Furthermore, owners who exchanged their private apartment with the allocation right holder for a larger apartment could acquire a co-ownership right over the larger apartment in the proportional amount of the square meters of their private apartment. Finally, occupancy right holders who substantially contributed to the reconstruction of an apartment building and thereby improved the conditions of their apartments were given the right to acquire this apartment in co-ownership.

As a transitional measure, Article 35 also protected all occupancy rights acquired before this Law came into force.⁴⁸⁶ This provision was deemed necessary in order to increase the citizen's legal certainty on occupancy rights and to avoid possible misinterpretations of their legal nature. Since the Law changed the basic concept of the Serbian housing legislation from the allocation of occupancy rights over socially owned apartments to the acquisition of full fledged ownership, it was also necessary to clarify the future of the still existing occupancy rights. While the Law preserved almost all existing basic provisions on occupancy rights, it also established the conditions for the transformation of these rights into private ownership.⁴⁸⁷ Article 54 furthermore maintained the allocation of socially owned apartments as an exception for special separated funds for the housing needs of retired persons and invalids.⁴⁸⁸ Additionally, Article 55 provided financial means for the construction of so-called solidarity apartments, which were reserved for employees without sufficient financial means such as war veterans, civil war victims or beneficiaries of social assistance.⁴⁸⁹

The Law addressed also the very sensitive issue of occupancy rights over privately owned apartments or parts thereof. Article 35 prohibited as a basic rule the acquisition of occupancy rights over such apartments. Already existing occupancy rights over privately owned apartments continued to exist, whereby the private owner could initiate an eviction against the occupancy right holder upon providing a corresponding alternative apartment.⁴⁹⁰

The Law then introduced the use of flats based on lease agreements. According to the Law, all socially owned apartments which were not used on the basis of occupancy rights

⁴⁸⁶ Article 35 paragraph 2 specifies that the occupancy right holder who obtained the occupancy right over the socially owned apartment before this Law came into force preserves his/her occupancy right and duties.

⁴⁸⁷ Articles 14 to 33 of the *Law on Housing Relations*.

⁴⁸⁸ The continuity of these funds was, however, only guaranteed until the end of 1990.

⁴⁸⁹ The continuity of these funds was guaranteed for a limited period until the end of 1995.

⁴⁹⁰ Pursuant to Article 37, this obligation falls to the municipality if the apartment owner is not able to do so.

should be used on the basis of lease agreements.⁴⁹¹ In fact, the Law established the lease as the primary legal tenure type for the contractual rights and obligations in connection with the use of apartments.⁴⁹²

To stop the ongoing decline of the housing funds, the Law included some precise provisions for the maintenance of common space of apartment buildings. Article 44 introduced the owners' and lessees' obligation to assure the regular maintenance of buildings, either by conducting the maintenance by themselves or by delegating it to the public enterprises in this sector.

The quite unusual Law contained a mixture of various tenure types, such as occupancy rights over socially owned apartments, the lease and the guarantee of full private ownership. It could be seen as a first step towards a substantial change in the housing sector in Serbia. In fact, it paved the way for the definite transformation of the socially owned housing fund into private ownership. Only two years later, a new Law accomplished this goal in a more comprehensive way.

c) Law on Housing

The 1990 *Law on Housing Relations* had a number of deficiencies. This is especially true with regard to the wide responsibilities of socially owned enterprises and other allocation right holders for the implementation of the new housing policy. In fact, the privatisation process was significantly slowed down by their activities, which were not conform or even in open contradiction with the new provisions. The large number of subjects responsible for the privatisation and the large number of their decisions not in conformity with the applicable law required a different approach. Furthermore, it became obvious that the mixture between traditional private law institutes and the relics of the socialist housing legislation became an obstacle for the definitive transformation of socially owned apartments into private ownership and/or lease

⁴⁹¹ The exception of this rule is foreseen only for certain groups of citizens such as Yugoslav Peoples Army members or federal civil servants, whose housing relations were determined by a separate law.

⁴⁹² Articles 9 to 12 introduce the basic features of the lease.

agreements. Accordingly, the legislator considered more substantial changes necessary in order to accomplish the main goals of the housing reform. These changes were introduced in 1992 with the *Law on Housing*.⁴⁹³

The new Law definitely abolished the occupancy rights regime by allowing the use of apartments only on the basis of private ownership or lease.⁴⁹⁴ It provides the legal basis for the definite transformation of socially owned apartments.⁴⁹⁵ As a basic rule, occupancy right holders or lessees who obtained their title before the Law came into force were entitled to file a purchase request with the disposal right holder of the socially owned apartment. Subsequently, the occupancy right holders (hereinafter: buyers) and the disposal right holder (hereinafter: seller) are obliged to conclude a purchase contract within 30 days upon the buyer's purchase request. Consent from the spouse of the buyer is required before the apartment can be sold.⁴⁹⁶ If the seller refuses to conclude the purchase contract, the buyer may initiate a civil procedure before the competent court. The court decision in favour of the buyer substitutes the purchase contract.⁴⁹⁷

Article 19 determines 40 years as the maximum period for purchase price payments by instalments and requires the buyer's consent to register a mortgage on the apartment before its final sale. The apartment purchase price is established on the basis of the buyer's average net salary, the location of the apartment, its general condition and the space of the apartment building. Moreover, the Law provides for a number of personal discounts which may be deducted from the purchase price.⁴⁹⁸

Article 26 entitles buyers, who are for some specific reasons not able to pay the instalments, to acquire a co-ownership

⁴⁹³ *Law on Housing*, Official Gazette of Republic of Serbia, Nos. 50/92, 76/92, 33/93, 46/94 and 44/95.

⁴⁹⁴ *Ibid*, Article 5.

⁴⁹⁵ *Ibid*, Articles 16 to 29.

⁴⁹⁶ *Ibid*, Article 16.

⁴⁹⁷ *Ibid*, Article 16 paragraph 4.

⁴⁹⁸ Articles 20 and 21 provide for (1) a discount of 0.5% for each working year to a maximum of 30% for the previous compulsory contributions of the buyers and their spouses to the housing fund; (2) a discount of 10% for expropriated owners who received

right over the apartment in the amount of the paid purchase price and to use the remaining part of the apartment as a lessee. Article 27 requires that the revenues from the sale of apartment have to be used for loans to citizens who intend to satisfy their housing needs by buying or constructing their own apartment or house.⁴⁹⁹

Article 31 then allows occupancy right holders, who did not buy their socially owned apartments before the end of 1995, to use the apartment as lessees. However, the new lessees also have the possibility to buy their apartments after this deadline. The lease of socially owned apartments, as already envisaged in the 1990 *Law on Housing Relations*, was confirmed as main alternative to private ownership. For this purpose, the Law incorporates the basic provisions of the private law tradition on the lessors' and lessees' rights and obligations.

Article 41, paragraph 1 basically confirms the provisions of the 1990 *Law on Housing Relations* on occupancy rights over privately owned apartments.⁵⁰⁰

The Law also confirms the economic approach towards the maintenance of common spaces of apartment buildings as set forth in the 1990 *Law on Housing Relations*. The amended Article 13 enlarges the alternatives on the maintenance of

these spaces by allowing the owners to assign a private enterprise with this responsibility.⁵⁰¹

Despite its broad provisions on the transformation of socially owned apartments into private ownership under quite favourable conditions, the Law, however, also includes some shortcomings. For example, it does not provide in an adequate manner for social housing.⁵⁰² Moreover, the Law entitles only a very limited group of citizens to use apartments which remain in the ownership of municipalities, cities, provinces or the Republic. The group of beneficiaries entitled to use these apartments is so limited that it even does not include all citizens eligible for social assistance or citizens considered to be part of vulnerable groups. Article 44 then requires socially owned enterprises and socially owned non-commercial employers, such as public institutes or state organs, to pay contributions to housing funds for so-called solidarity apartments.⁵⁰³ However, these solidarity apartments were only allocated to employees or former employees of the respective institutions.⁵⁰⁴ Accordingly, non-employed citizens of vulnerable groups and non-employed beneficiaries of social assistance were not entitled to the housing benefits provided by the Law.

Finally, a review of the Law has to consider the general economic context of that time. In fact, the Law was introduced and applied during a huge inflation which had two major impacts for the housing sector. On the one hand, it allowed citizens to buy their apartments at very low prices, while on the

an occupancy right as compensation for their apartment; (3) a discount of 15% in case of payment of 1/3 of the purchase price under a lump sum agreement or 20% in case of payment of the whole purchase price. Article 22 provides further personal discounts for certain groups of war veterans.

499 Article 28 specifies further that the revenues from the sales of apartments owned by municipalities, cities, provinces or the Republic shall be used: (1) for the housing needs of war veterans and war invalids, civil war invalids and the unemployed family members of participants in the war after 17 August 1990; (2) for persons who lost their occupancy right over a privately owned apartment, who are subsequently evicted and to whom municipalities are obliged to find an alternative accommodation; (3) as an emergency solution for persons who are obliged to abandon unhygienic apartments; (4) for persons who obtained the right to social assistance pursuant to the legislation of social care as well as to assure social security to citizens unable to work without family members; (5) for other persons pursuant to municipal legislation as e.g. young scientists and artists or experts for work in underdeveloped border areas.

500 Additionally, it provides the possibility for both the user and the owner of the apartment to ask the competent court to decide on the allocation of the apartment and the corresponding alternative accommodation. Article 42 requires the municipalities to finalise all procedures for allocation of alternative accommodation to users of privately owned apartments by the end of 1995.

501 Article 13 as amended by the *Law on Changes and Amendments to the Law on Housing*, Official Gazette of Republic of Serbia, No. 33/93.

502 Article 2 provides only in very generic terms that the state shall take measures for creating favourable conditions for housing construction. Moreover, it shall assure the conditions for solving the housing needs of socially vulnerable groups. However, the Law does not define the responsibilities of the various state organs to fulfil this commitment.

503 These compulsory contributions were envisaged for a transition period until the end of 1995. The period was subsequently extended until the end of 2000.

504 However, the Law does not establish the legal basis for the right to use these solidarity apartments. Since the previous form of the occupancy right was abolished, the use right will presumably be based on a lease agreement. In addition, this clause had a limited duration, since the compulsory contribution of 1.3% from the gross salaries obliged the enterprises, institutions and the state organs to separate this contribution by 31 December 1995.

other hand it reduced the revenues from the sales of apartments designated to be reinvested in the housing sector.

Although Kosovo is not included in this research, there should be mention of the implementation of the above mentioned housing laws in relation to other “emergency laws”, which followed after the abolition of the substantial autonomy status of the ‘Socialist Autonomous Province of Kosovo’. The adoption of such legislation had its impact on depriving the enjoyment of housing rights based on ethnic grounds, affecting thousands of ethnic Albanians.⁵⁰⁵

5.2.2 Montenegro

In Montenegro, the two basic laws on housing are the amended Law on Housing Relations and the subsequently adopted Law on Floor Ownership.

a) *Law on Housing Relations*

The Law on Housing Relations 506 of 1974, as amended in 1985, lays down the basic provisions for the acquisition, use and termination of use of socially owned apartments.

The amended Law on Housing Relations 507 in December 1990 introduced a fundamental reform in the Montenegrin housing legislation. Abandoning the old socialist model of housing as a responsibility of the state or the society, it introduced a more market-oriented approach by stating that

“workers and citizens shall satisfy their personal and families’ housing needs by investing their own means.”⁵⁰⁸

While the amended Law did not yet completely abolish social ownership over apartments, it allowed for the allocation of apartments based on lease agreements as well.⁵⁰⁹ These lease agreements were generally concluded for an indefinite period of time. At the same time, the disposal right holders were no longer obliged to contribute to the housing fund. Instead, Article 10 provided in rather broad terms that “enterprises and other organisations shall assure the financial means for housing needs of their workers in conformity with the enterprises’ needs and possibilities.” Accordingly, Article 14 allowed enterprises to use their financial funds for housing construction and to obtain loans from commercial banks.

More importantly, the Law introduced the privatisation of socially owned apartments.⁵¹⁰ It allowed both occupancy right holders and lessees (hereinafter: buyers) of socially owned apartments to purchase these apartments from the disposal right holders, which were obliged to conclude the purchase contract with them. It included detailed provisions on the determination of the purchase price, the personal discount rates to be deducted from the apartment’s market value, the payment of the purchase price and the registration of mortgages.⁵¹¹ Furthermore, Article 19 paragraph 1 provided for the registration of the new owner in the real property rights register.

The favourable conditions for the purchase of socially owned apartments and the high inflation rate at this time made the purchase of apartments very affordable. However, as in Serbia, problematic implementation of the Law had its negative effects on the Law’s efficiency.⁵¹² Furthermore, the Law included only very generic provisions for the maintenance of common space of apartment buildings.

⁵⁰⁵ See for example the *Law Concerning the Functioning of Republican Government Bodies under Special Circumstances*, Official Gazette of SRS n.30/90 of 26 June 1990 of 26 June 1990. See also *Regulation 1999/10 on the Repeal of Discriminatory Legislation affecting Housing and Property Rights*, adopted on 13 October 1999 by the United Nations Interim Administration Mission in Kosovo. This Regulation repealed the *Law on Changes and Supplements on the Limitation of Real Estate Transactions* (Official Gazette of Republic of Serbia, 22/91 of 18 April 1991); and the *Law on the Conditions, Ways and Procedures of Granting Farming Land to Citizens Who Wish to Work and Live in the Territory of the Autonomous Province of Kosovo and Metohija* (Official Gazette of Republic of Serbia, 43/91 of 20 July 1991). See for violation of civil and political rights in this area in the 1990s: Human Rights Watch, *The Former Yugoslav Republics*, 1993, pp. 4-6. Available on: http://www.hrw.org/reports/1993/WR93/Hsw-10.htm#P671_238252

⁵⁰⁶ *Law on Housing Relations of 1974*, Official Gazette of SRSG Nos. 4/74 and 32/78; *Law on Housing Relations of 1985*, Official Gazette of SRSG No. 21/85. “SRSG” refers to the Socialist Republic of Montenegro. In Serbian language, Montenegro reads “Crna Gora”.

⁵⁰⁷ *Law on Housing Relations of 1990*, Official Gazette of SRSG, No. 45/90.

⁵⁰⁸ *Ibid*, Article 9.

⁵⁰⁹ *Ibid*, Article 45.

⁵¹⁰ *Ibid*, Article 7.

⁵¹¹ *Ibid*, Articles 20 and 21.

⁵¹² See above, Section 4.2.1(c) on the *Serbian Law on Housing*.

b) *Law on Floor Ownership* 513

The above mentioned deficiencies led to the adoption of the Law on Floor Ownership in 1995.⁵¹⁴ It clarifies the responsibilities of the various stakeholders in the privatisation process. Article 11 provides for the transformation of occupancy rights over socially owned apartments to private ownership through the purchase of apartments.⁵¹⁵ Like the respective privatisation law in Croatia, the Law excludes the purchase of privately owned apartments by occupancy right holders. However, these occupancy right holders are entitled to use their apartments for a period of five years, after which they become lessees for an indefinite period of time.⁵¹⁶ For the remaining apartments that were not purchased, the Law replaces the existing occupancy rights with indefinite lease agreements. However, the provisions on lease do not contain any form of protected lease.⁵¹⁷

The Law then introduces detailed provisions on the administration and maintenance of the common space of apartment buildings. Until the adoption of the Law on Floor Ownership, the municipalities had continued to assign the maintenance of these spaces to the Public Houses Enterprises, whose monopolist position did not ensure the proper execution of this responsibility. Accordingly, the Law abolishes these monopolies through the introduction of public tenders for the allocation of the maintenance services. Furthermore, it declares the maintenance of the buildings' common space a matter of public interest, which has to be guaranteed by the municipalities.⁵¹⁸

The Law further specifies that the maintenance costs are not fixed but shall increase with the age of the building. It determines the compulsory contributions of the apartment owners to the maintenance costs at a minimum amount of 8% of the lowest income rate in Montenegro.⁵¹⁹ Lessees are required to pay expenses related to the regular use of the apartment, such as current use of the common space, heating, garbage collection etc.⁵²⁰ The municipalities have a certain degree of discretion in determining the contributions to the maintenance costs and the conditions of its payment, taking into consideration the general condition of the building and the social situation of the apartment owners.⁵²¹

The responsibility of administering and maintaining the building's common space is given to the apartment owners. If there are more than four apartment owners in the building, an administrator for the building has to be nominated.⁵²² The Law also includes precise provisions on decision-making bodies and procedural steps for the maintenance, such as the responsibilities of the assembly of owners, the election of an administrator and his/her responsibilities. So far, 979 assemblies of owners have been constituted in three municipalities.⁵²³ Among the reasons for this limited number are the lack of interest of the apartment owners to constitute such organs and the failure of municipalities to nominate building administrators. This is in turn linked to a lack of human resources and thus lack of monitoring capacity. Apart from that, outstanding contributions to the maintenance costs re-

513 *Law on Floor Ownership*, Official Gazette of Republic of Montenegro, No. 21/95.

514 *The Law on Floor Ownership* superseded the *Law on Housing Relations*, except for the latter's Articles 85 to 94, which dealt with housing co-operatives (see below under (c)).

515 Confirming the provisions of the amended *Law on Housing Relations* on the purchase of socially owned apartments, the *Law on Floor Ownership* limited this purchase right, however, to occupancy right holders and lessees, who had acquired their title before it entered into force in July 1995.

516 Article 76 of the *Law on Floor Ownership*.

517 *Ibid*, Articles 43 to 52. Taking into account the transformation of over 90% of all socially owned apartments into private ownership, the Montenegrin legislator probably did not consider such protective measures to be necessary.

518 *Ibid*, Article 34.

519 *Ibid*, Article 37.

520 *Ibid*, Article 47.

521 Municipalities usually fix the contributions at 8 to 10% of the lowest income rate (See e.g. Article 2 of the Official Gazette of the Municipality of Andrijevica No. 3/98, Official Gazette of the Municipality of Budva, No. 9/95) For beneficiaries of social assistance, the contribution is generally limited to the minimum amount of 8%. For the appropriations of the contributions, almost all Municipalities have accepted the following scheme: 50% for current maintenance services, 30% for urgent repairs, 5% for operative reserve, 5% for insurance payments, 10% for costs of consultants/experts.

522 Article 26 of the *Law on Floor Ownership*.

523 Ministry of Urbanism, *Information of Implementation of the Law on Floor Ownership*, January 2002, p. 31. The 3,078 Montenegrin housing buildings include 50,115 housing units of which 46,350 (92.5%) have been purchased.

main one of the biggest issues in the housing sector in Montenegro, and also in Serbia and Bosnia and Herzegovina.⁵²⁴

The current unsatisfactory conditions of the residential buildings as well as the weakness of provisions on the maintenance and administration of buildings contained in the Law on Floor Ownership have forced the Montenegrin legislator to propose the adoption of stronger norms in this matter. Thus the Assembly of Montenegro on 16 November 2004 adopted the new Law on Floor Ownership, which entered into force in December 2004.⁵²⁵ The norms on maintenance contained in Chapter III of this Law, if properly implemented and monitored, could most likely end the decline of the housing fund in residential buildings.

While there was no organised policy on temporary use of vacant housing, in practice vacant houses were allocated temporarily to refugees and displaced persons. According to official data 13.3% of them were hosted by relatives or friends, and 32.3% in privately rented apartments.⁵²⁶

c) *Law on Housing Co-operatives* 527

The 1984 Law on Housing Co-operatives introduced housing co-operatives as another form of tenure in Montenegro. The provisions of this Law were completed by Articles 85 to 94 of the 1990 Law on Housing Relations, which remained applicable after the latter had been superseded by the Law on Floor Ownership.⁵²⁸ Housing co-operatives were es-

⁵²⁴ *Ibid.*, p. 32. The payment of due contributions varies from 1.1% to 51.1%, whereas in 11 municipalities the payment of contributions to the maintenance costs have not been collected at all. While Serbia and Bosnia and Herzegovina face similar problems, in Slovenia and Croatia the monitoring of maintenance is stronger, combined with the fact that the owners are allowed to change the building administrators.

⁵²⁵ *Law on Floor Ownership*, adopted on 16 November 2004, Official Gazette of Montenegro n. 71/04 of 22 November 2004. Available on: http://www.skupstina.cg.yu/skupstinaweb/tekstovi_list.php?s_id_zakona=125

⁵²⁶ Ministry of Work and Social Care, *National Strategy for the Permanent Solution of Refugees and Displaced Persons in Montenegro*, February 2005.

⁵²⁷ *Law on Housing Co-operatives*, Official Gazette of the SRCG, No. 17/84.

⁵²⁸ While the provisions of the *Law on Housing Relations* referred basically to the rights and obligations of the members of the co-operatives, the *Law on Co-operatives* included general provisions on establishment and organisation of co-operatives. Thus provisions on establishment and management of housing co-operatives as a sub-category of co-operatives must be in line with the general provisions on co-operatives. Official Gazette of SFRY, No. 66/90 and Official Gazette of FRY, No. 41/96.

tablished to meet the increasing housing needs in Montenegro.⁵²⁹ These housing co-operatives were non-profit enterprises, comprising several individual members who pooled together their personal work capacities in order to construct apartment buildings. The state supported the initiative of the co-operatives through the allocation of construction land and through a number of tax exemptions. On the buildings constructed by housing co-operatives, each member acquired private ownership. Any person who did not possess another privately owned house or apartment could become a member of one housing co-operative.⁵³⁰ In fact, the main goal of housing co-operatives was not the accumulation of profits but the individual participation of citizens in the construction of apartments with the support of the state. However, since the official socialist policy favoured social ownership and the social enterprises had a monopolist position, the concept of housing co-operatives could not really be successfully implemented.

After the adoption of more precise provisions on housing co-operatives in the 1990 Law on Housing Relations, within a rather short period of time 113 housing co-operatives were established in Montenegro. The co-operatives had 25,000 members and constructed more than 4,000 residential and commercial units. Furthermore, they contributed to a considerable extent to the repair and reconstruction of existing apartment buildings.⁵³¹

However, many housing co-operatives were created with the intention to take advantage of the favourable taxation of building materials, which were often afterwards sold on the black market. Accordingly, the 1993 Law on Changes and Amendments to the Law on Added Value Taxes⁵³² abolished the favourable taxation of construction materials for members of housing co-operative and put the housing co-operatives on the same level with construction enterprises.

⁵²⁹ Article 85 of the *Law on Housing Relations*.

⁵³⁰ Article 87 of the *Law on Housing Co-operatives*.

⁵³¹ Ministry of Urban Planning, *Information on the Situation in Housing Co-operative Sector*, Podgorica, June 1998, p. 9.

⁵³² *Law on Changes and Amendments to the Law on Added Value Taxes*, Official Gazette of Republic of Montenegro, No. 11/93.

The abolishment of the tax benefits subsequently resulted in a drastic decrease of the co-operatives to a single one presently remaining.

The concept of housing co-operatives could still contribute to the provision of a better supply of affordable housing. A revival of these co-operatives would require the adoption of an affirmative state policy in favour of these entities. Furthermore, the establishment of a housing bank which can grant affordable loans to housing co-operatives should be considered. Finally, the legal and fiscal framework should be amended to better satisfy the demands of those co-operatives and to tighten loopholes.

5.3 Denationalisation

Denationalisation is one of the most complex and sensitive issues in all transitional countries. Indeed, it raises the dilemma how to satisfy the interests of the previously expropriated owners without depriving the present occupants of nationalised apartments of their legally acquired right to use them. Serbia as well as Montenegro envisage in their *Denationalisation Acts* the principle of “restitution before compensation” with only minor protection for current users of previously nationalised property.

5.3.1 Serbia

So far, in Serbia several draft laws on denationalisation have been prepared, ranging from the demand for immediate restitution of all nationalised property to more realistic balanced approaches on this question. Analysing the last draft of the *Denationalisation Act*⁵³³, it seems likely that the Serbian legislator will opt for restitution in kind as a principle, with certain exceptions which could give a substantial protection for the current users.

The approach to be taken will significantly depend on the experiences in other post socialist Eastern European coun-

tries and on the influence of the associations of dispossessed owners in Serbia.⁵³⁴

The *Draft Denationalisation Act* provides for the conditions and procedures for the restitution of nationalised agricultural, commercial and residential property.

Article 19 of the Draft Act introduces as the basic principle the restitution of the nationalised property in kind. If restitution of the property is not possible, the Draft Act provides for compensation of the market value of the property in question, for residential property in cash, or alternatively is envisaged the payment in bonds.⁵³⁵

However, the basic principle of “restitution before compensation” knows a number of exceptions. For example, Article 21 excludes nationalised property, used by institutions in the field of state institutions, culture, health or education and whose restitution would diminish the exercise of their regular obligations.

Persons without Serbian/Montenegrin citizenship are guaranteed the same treatment as persons with such citizenship, under condition of reciprocity.⁵³⁶ Alternatively when foreign legal or natural persons do not have the right to acquire ownership, but they are entitled to denationalisation according to this Draft Law, they are entitled to compensation in cash.

Interestingly, the proposal drafted by the “Association of Dispossessed Owners”⁵³⁷ differs from the Draft Act, which contains very detailed provisions regarding the status of the users (lessees) in the apartments subject to restitution. Again as a general principle, Article 37 establishes the criteria for restitution in kind of residential buildings in favour of the

⁵³⁴ See proposals of the Associations of Dispossessed Owners on: <http://www.Liga.org.yu>.

⁵³⁵ Article 32 specifies that when the Republic of Serbia or SRY (today State Union of Serbia and Montenegro) are obliged to compensate a natural person in cases where the amount of compensation is higher than 10,000 Euros, the State could pay the entitled persons in bonds. However such payment cannot take more than 7 years and must be done in a strong foreign currency and assured with a positive interest rate.

⁵³⁶ Article 11 of the Draft-proposal.

⁵³⁷ See the Draft-proposal of the Associations of Dispossessed Owners on: www.Liga.org.yu.

⁵³³ Draft-proposal presented by the Centre for Development of Legal Studies together with the Ministry of Finance and Ministry of Economy. Serbian version available on: <http://www.cups.org.yu/projekti/html/denacionalizacija/html>.

former owners and their descendants. This principle is however limited by rather strong norms in favour of the current user of the denationalised apartment in certain specific cases. Thus, it is envisaged that the restitution in kind will not take place when ownership was obtained by its current owner through purchase of that apartment at a public auction, through adverse possession (*usucapio*), or “when the ownership over that apartment was obtained by purchasing the apartment according to the Law on Housing.”⁵³⁸ In that case the owner of the nationalised apartment is entitled to compensation in cash from the current user.

This Draft-Proposal also specifies the position of the lessees (former occupancy right holders who were unable or unwilling to purchase the apartments) of the apartments in the buildings subject to restitution. It is envisaged that the change of the ownership over the building where they are lessees does not influence the termination of their contract of lease.⁵³⁹ In addition it is established that the lessees “have a right to request” to purchase the apartment they are using at the market value; in this latter case the payment must be in cash, cannot take longer than 10 years and the instalments should be established on a monthly basis. Alternatively, the current user could offer the denationalisation’s stakeholder other forms of compensation such as the cession of the ownership title over other apartments or other real estate units.⁵⁴⁰

The restitution procedure starts upon the initiative of the former owner, who pursuant to Article 76 is required to file a restitution claim within one year after this Act enters into force. The restitution request is filed before the court competent to decide upon the owner’s request.

5.3.2 Montenegro

After a long political and parliamentary debate, the Montenegrin *Denationalisation Act* was adopted in July 2002.⁵⁴¹ It allows for the restitution of immovable property nationalised after World War II to the previous owners.⁵⁴² Alternatively, it provides for compensation in the following cases: if the nationalised immovable property is occupied by state organs in order to fulfil their responsibilities, if it is used for health, educational, cultural or scientific purposes or if it is destroyed or significantly damaged.⁵⁴³

The natural persons who had ownership or other property rights over the immovable property at the moment of nationalisation are identified as the beneficiaries of the restitution.⁵⁴⁴ The right of restitution is explicitly confirmed for the heirs of the previous owners, regardless of the prior settlement of the inheritance proceedings.

The Act provides for a number of restitution alternatives with the following order of priority: (1) restitution of the property through the allocation of the ownership or co-ownership right, (2) restitution through the exchange of the nationalised property with a property of the same value, (3) partial restitution in kind combined with compensation of the market value for the remaining part, (4) compensation of the market value of the nationalised property, or (5) pecuniary compensation in the form of restitution bonds. Accordingly, the Act prioritises restitution over compensation and then again pecuniary compensation over compensation in bonds.⁵⁴⁵

Immediate restitution is required of nationalised property, which is vacant or which is used by third persons at the time of a restitution decision in favour of the beneficiary. If the property subject to the restitution claim is inhabited, a transi-

⁵³⁸ Draft-proposal of *Denationalisation Act*, Article 38, paragraph 4.

⁵³⁹ *Ibid*, Article 39.

⁵⁴⁰ *Ibid*, Article 41.

⁵⁴¹ *Denationalisation Act*, Official Gazette of Republic of Montenegro, No. 34/02.

⁵⁴² *Ibid*, Article 2.

⁵⁴³ *Ibid*, Article 7.

⁵⁴⁴ *Ibid*, Article 10.

⁵⁴⁵ The latter is quite a positive option since, especially in transitional countries with a weak economy and a high inflation rate bonds may easily be transformed in a “piece of paper” far from the real market value of the nationalised property.

tional period of five years after such a decision applies, until the property has to be restituted to the beneficiary. Persons who were using an apartment subject to a restitution claim at the date the *Denationalisation Act* came into force, have become lessees, whether they previously had entered into a lease agreement or not.⁵⁴⁶ The duration of this lease was limited to the transitional period of five years.⁵⁴⁷ Furthermore, current users are entitled to compensation for the loss of the use right over the apartment after the transitional period. However, the Act does not specify what kind of compensation the users shall receive. Additionally, the Government of Montenegro declared to provide “corresponding apartments” - pursuant to the *Law on Floor Ownership* - to those lessees who have to leave the apartments after the transitional period and who do not own a house or apartment in the territory of the Republic of Montenegro. However, the Act does not specify what is considered to be a “corresponding” apartment. The broad and generic terms of the provisions in favour of current users do not guarantee that their housing conditions will not deteriorate after the expiration of the transitional period and should therefore be amended to provide more substantial guarantees for current users. This is recommended, bearing in mind the very limited available housing stock for providing the corresponding apartment for current users.

The above provisions confirm that both the Montenegrin and the Serbian *Denationalisation Act* favour the interests of the former owners over those of the current users of nationalised immovable property. This situation is the opposite in Croatia. Generally speaking, it seems that compensation instead of restitution in kind represents a more equal and more balanced solution for all citizens.

The *Denationalisation Act* established a particular Compensation Fund for compensation claims.⁵⁴⁸ The Montenegrin

⁵⁴⁶ Article 19 of the *Denationalisation Act*.

⁵⁴⁷ *Ibid*, Article 20 paragraph 2. However, this right to use the apartment for a transitional period of five years was subject to the condition, that the current users do not own an apartment or house in the territory of the Republic of Montenegro.

⁵⁴⁸ Article 33 specifies the following sources for financing this fund: (1) 10% of the revenues from the sales of state property; (2) 10% of the revenues from the sales of shares of the state funds; (3) 10% of the revenues from the privatisation of enterprises; (4) 15% of the revenues from concession taxes; (5) revenues from the property of the Republic of Montenegro and of the local self-government units if that property is not

Government committed in so far to provide the compensation within a period of ten years.

As regards the restitution process, the claimants were required to file their restitution requests within 14 months after the Act entered into force. Article 36 established the Restitution Commission as the responsible body to decide upon such requests. In order to avoid legal uncertainty in real estate transactions, the Denationalisation Act prohibits such transactions for property subject to a restitution claim.

5.4 Expropriation Act

The *Serbian Expropriation Act*⁵⁴⁹ of 1995 and the *Montenegrin Expropriation Act*⁵⁵⁰ of 2000 provide for the conditions and procedures for expropriations. Their provisions on the limitation of ownership rights shall probably be reviewed in light of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR).⁵⁵¹

5.4.1 Serbia

Article 1 of the *Serbian Expropriation Act* provides that property may only be expropriated in the public interest, upon fair compensation which is not below market value.⁵⁵² The public interest must be established in form of a law or governmental decision.⁵⁵³

The above provisions generally comply with the basic requirements for the limitation of the right to the peaceful enjoyment of their regular functions; (6) every revenue of foreign nature, loans and other sources from international organisations for the purpose of compensation; (7) from the amount compensated by the state organs for the nationalisation of the property to the former owner who is obliged to restate that amount to the Montenegrin State; (8) from administrative fees of the restitution process; and (9) other sources.

⁵⁴⁹ *Expropriation Act*, Official Gazette of Republic of Serbia, No. 53/95.

⁵⁵⁰ *Expropriation Act*, Official Gazette of Republic of Montenegro No. 55/2000.

⁵⁵¹ The State Union of Serbia and Montenegro signed the ECHR on 3 April 2003 and ratified it on 3 March 2004, on which date it entered into force in this country.

⁵⁵² Article 1 of the *Expropriation Act*: “Real property may be expropriated or the ownership of such property may be restricted only against fair compensation which is not below the real property market value, if the public interest so requires and if it is established in accordance with the law.”

⁵⁵³ *Ibid*, Article 2. Article 20 of the *Expropriation Act* lists reasons considered to be in the public interest: “The Government of the Republic of Serbia may establish the existence of public interest justifying the expropriation if the expropriation of the real property

joyment of possession as laid down in Article 1 paragraph 1 of Protocol No.1 to the ECHR.⁵⁵⁴ The European Court of Human Rights has explicitly confirmed that the national legislator enjoys a broad scope of discretion in determining the public interest.⁵⁵⁵ However, the provision on the establishment of the public interest in the Serbian Expropriation Act does not require the state organs to consider the interests of owners and to balance these interests towards the public interest. This rather broad provision should be amended to introduce the requirement of balancing the opposed interests. Thus, the state organs would be obliged to provide a satisfactory explanation why the public interest prevails, especially in those cases, where the public interest and the interest of the owner are equal.

In theory, this Act could be used for the expropriation of property in order to accommodate vulnerable groups, such as the Roma.

Pursuant to Article 34, the expropriating party may obtain the possession of the property as soon as the decision of the municipality on the expropriation and the compensation has become final or as soon as it reached an agreement with the owner on the compensation. Article 35, paragraph 1 then allows the expropriating party to acquire the possession of the property before a final decision or an agreement on compensation has been reached, if “an urgent need to construct certain buildings or to conduct certain works” is established. The very broad language “urgent need to construct certain buildings” specifying the necessary requirement for such an advanced allocation may lead to misinterpretations and abuses on part of the state organs deciding on the allocation

is necessary for construction projects in the field of education, health care, social security, culture, sport, traffic, energy and communal infrastructure, for constructions needed by the state organs, organs of territorial autonomy and local self government, constructions needed for the defence of the state, protection of human environment and protection from natural disasters, for exploitation of minerals and for housing construction of apartments to satisfy the housing needs of socially vulnerable groups.”

⁵⁵⁴ Article 1, paragraph 1, 2nd sentence, Protocol No. 1 to the ECHR: “No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.”

⁵⁵⁵ *James and Others v. U.K.*, 22 February 1986, Series A No. 98, para. 46: “The Court, finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one will respect the legislature’s judgment as to what is “in the public interest” unless that judgement be manifestly without reasonable foundation.”

before compensation. In its current version, Article 35(1) does not protect the owners sufficiently against possible misinterpretations and abuses by the competent organs. Accordingly, this provision may be considered to violate the right to peaceful enjoyment of possession as envisaged in Article 1 paragraph 1 of Protocol No. 1 to the ECHR.⁵⁵⁶ Therefore, it seems necessary to introduce a more precise definition of the term “urgent need”.

Furthermore, Article 32 requires the expropriating party upon its expropriation request to apply for its registration in the land register and other public records. Such registration restricts the owner to dispose of the property until the expropriation decision is issued. Since the expropriation proceedings may last for several years until this final expropriation decision is made,⁵⁵⁷ owners are significantly limited to exercise their rights invested in the ownership. Moreover, it seems to be debatable, if the long duration of expropriation proceedings still meets the requirement of a “fair hearing within a reasonable time” as laid down in Article 6 paragraph 1 ECHR. Finally it should be considered that, even if the expropriation is not granted at this stage, once the expropriation request is registered, a possible future expropriation is made public and thus diminishes the market value of the property.

Finally, Article 11 creates another disadvantaged position for owners by providing compensation in monetary form as the regular form of compensation. Given the unstable Serbian financial market, the monetary compensation could result mostly in a financial loss for the owner.

In summary, the above outlined provisions of the *Expropriation Act* may not conform to the right to peaceful enjoyment

⁵⁵⁶ Interpreting this provision, the European Court on Human Rights requires the state organs to balance the demands of the public interest and the requirements of protection of the individual’s fundamental rights, *Sporrong and Lonnorth v. Sweden*, 1982, Series A, No. 52. para. 69.

⁵⁵⁷ The expropriation decision of the municipality is subject to both administrative and subsequently judicial review. Given the inefficient Serbian administrative and judicial system, the expropriation procedure from the initial expropriation request until the final decision may in fact last several years. According to lawyers of the Belgrade Humanitarian Law Fund, in extreme cases expropriation proceedings may last for more than 10 years.

of possession and could accordingly be subject to review of the European Court of Human Rights.

5.4.2 Montenegro

Like the Serbian Expropriation Act, the Montenegrin *Expropriation Act* provides for the limitation of ownership rights in the public interest upon compensation at market value.⁵⁵⁸ Article 1 paragraph 2 provides that the public interest shall be established in a law or in a governmental act. However, the Act does not provide a definition of the public interest, neither in explicit terms nor in more generic ones. The lack of such a definition opens the way for non transparent and arbitrary decisions on the public interest on part of the government. Accordingly, the Act should be amended to provide for a definition which serves as a guideline for the decision on the public interest and which thus avoids the abuse of power referred to the government.⁵⁵⁹

As the Serbian *Expropriation Act*, the Montenegrin one allows the expropriating party to acquire possession over the expropriated property before the decision of the municipality on the compensation has become final in exceptional cases where an “urgent need to construct certain buildings or to conduct certain works” is established.⁵⁶⁰ Again, the broad language of this provision opens the possibility to misinterpretations and abuses and should therefore be amended to define the term “urgent need” more precisely.

The main concern of the Montenegrin *Expropriation Act* is, however, its provision on the transformation of the ownership right to the expropriating party. Articles 3 and 58 provide that the ownership over the property is changed upon the final decision on the expropriation. However, the Act does not explicitly require a final decision on the expropriation and additionally on the compensation for the transfor-

mation of the ownership right to become effective. Thus, the expropriating party may acquire ownership over the property without a final decision on the compensation has been issued. Accordingly, the owner of the property loses the ownership right over the property without knowing when and to what extent s/he will be compensated. This rather unfavourable position for expropriated owners gave reason to submit Articles 3 and 58 of the *Expropriation Act* to the Constitutional Court of the Republic of Montenegro for review. The Constitutional Court found that the above mentioned provisions are not in accordance with Article 45 paragraph 2 of the Montenegrin Constitution, which guarantees that each form of deprivation of property requires a compensation to be defined. The Court established that the deprivation or limitation of property is inseparably linked to the determination and payment of the compensation and it required that the determination and payment of compensation has to precede or coincide with the transfer of the ownership right.⁵⁶¹ At the time of writing, no information was available on whether this constitutional court decision resulted in amendment of the Expropriation Act.

5.5 Recent Challenges in the Housing Sector

Serbia and Montenegro face various challenges in the housing sector. Among others, the high number of refugees and displaced persons, the crises of the construction sector and a dysfunctional housing market cast a shadow on the development of adequate, sufficient and affordable accommodation.

⁵⁵⁸ Article 1 paragraph 1 of the Expropriation Act states: “*Expropriation is the deprivation or limitation of ownership rights over real property if so required by the public interest followed by the compensation according to the market value of the real property.*”

⁵⁵⁹ A better example of a restrictive definition of the public interest can be found in the Serbian *Expropriation Act*, see above, Section 4.4.1, Serbian Expropriation Act.

⁵⁶⁰ Article 28 of the *Expropriation Act*.

⁵⁶¹ Constitutional Court of the Republic of Montenegro, Official Gazette of Republic of Montenegro, No. 14/01 and No. 12/02. Articles 3 and 58 of the Montenegrin Expropriation Act are furthermore not in conformity with Article 1 of Protocol No. 1 to the ECHR, which acknowledges compensation as a basic requirement for the limitation of property rights. See European Court of Human Rights, *Papamichalopoulos and others vs. Greece* 24 June 1993, Series A, No. 260-B, and *Katkaridis and others vs. Greece*, 13 September 1995, Series A, No. 626.

5.5.1 Refugees and Internally Displaced Persons

The high presence of refugees and internally displaced persons (hereinafter: IDPs) has put a significant social and economic burden on Serbia and Montenegro. In fact, the arrival of hundred of thousands of homeless people still presents a major challenge for the housing situation in both states.

a) Serbia

According to a survey in 2002, there were approximately 700,000 registered refugees, war affected persons and internally displaced persons in the country.⁵⁶² One half of all registered refugees arrived in the FRY in waves following the various crises in the Balkans between 1991 and 1995.⁵⁶³ This influx decreased after 1998 when only 2% of all registered refugees arrived in FRY.⁵⁶⁴

As regards the accommodation of the people coming to Serbia, in 2001, 43% of the refugees live in rented apartments, 29% with family members and friends and only 17% in own apartments and houses. 5.6% of the refugees still live in collective centres, including a significant part of the vulnerable population with health and social demands.⁵⁶⁵ The accommodation situation of IDPs is only slightly different: 40.7% of them live in rented apartments, 39.8% with family members and friends, 7.6% in their own apartments and houses and 6.9% in collective centres. The recent trend reveals a decrease of refugees living with family members and friends or in collective centres whereas the percentage of refugees

⁵⁶² According to the Government of Serbia, *National Strategy for Resolving the Problems of Refugees and Displaced Persons*, May 2002, there are 377,431 registered refugees in Serbia. The term "refugee" refers to persons who obtained the refugee status pursuant to Serbian legislation. The term "war affected persons" refers to persons who had a residence in one of the former SFRY republics and fled to Serbia as a consequence of the war but who were not eligible for refugee status, i.e. who had obtained the Yugoslav citizenship or whose request for refugee status was rejected (mostly civil servants of the former SFRY or members of the former Yugoslavian army who had a residence on the territory of other republics. There are also approximately 230,000 IDPs from Kosovo.

⁵⁶³ The main influx was in 1995, when 190,000 people fled Croatia and 80,000 came from Bosnia. Those massive arrivals were the direct consequence of military actions in Croatia and the change of control in Bosnia and Herzegovina after the signature of the DPA.

⁵⁶⁴ UNHCR, *Refugee Registration in Serbia*, 2001, p. 9.

⁵⁶⁵ *Ibid*, p. 13.

in rented apartments is increasing. The number of refugees who found an own apartment or house has quadrupled between 1996 and 2001.⁵⁶⁶ The main reason for this development is due to the fact that these refugees succeeded in selling their property in the country of origin and consequently could afford their own accommodation in Serbia.

Refugees are basically concentrated in three areas. Approximately half of them live in Vojvodina, 30% in the Belgrade area and the remaining part in central Serbia. The territory of the northern province of Vojvodina is the preferred region because this agricultural area matches the needs of the mostly rural refugees. Furthermore, the local authorities of Vojvodina were more sensitive and open to accepting the new population, due to the depopulation of this province in the past two decades. The refugees' settlement in the larger urban areas is closely linked to their economic expectations.

A majority of 60% of all refugees opted for local integration in Serbia, most of them young, able to work and living in Vojvodina and the Belgrade area.⁵⁶⁷ With regard to registered *displaced persons* the official registration from Kosovo covered 187,129 persons out of which 176,219 or 94.2% were registered in Central Serbia, and 10,910 or 5.8% in Vojvodina⁵⁶⁸

The integration of those populations became a major responsibility of the Serbian Government. Bearing in mind that the majority of refugees and IDPs live in rented apartments or with family members and friends, an organised approach to provide them with a durable solution for their housing needs was required. For this purpose, the Serbian Government adopted the "*National Strategy for Resolving the Problems of Refugees and Displaced Persons*". This governmental programme intended on the one hand to create better conditions to ac-

⁵⁶⁶ *Ibid*, p. 13. In their countries of origin, 64% of the mostly rural refugees owned private property including agricultural land, while 21% of them were occupancy right holders. This means a significantly higher percentage of abandoned private property compared to B-H, where refugees had mostly occupancy rights. *Ibid*, p. 31.

⁵⁶⁷ UNHCR/Commissioner for Refugees of the Republic of Serbia 2001, p. 13.

⁵⁶⁸ The refugees' decision was mainly based on the lack of personal security at their places of origin and the length of the restitution procedure for their property. In 2001, only 19,993 persons, mostly elderly rural population, wished to return, see UNHCR, *Refugee Registration in Serbia*, 2001, p. 36.

quire apartments and houses. On the other hand it provided for social housing activities.

The first component of the strategy was to enable returnees and IDPs to purchase newly constructed houses under more favourable conditions compared to those on the free market. In this respect, it was not a social but rather a market-oriented programme, which tried to stimulate the crisis-ridden construction sector through the participation of the state in housing construction. Moreover, it provided financial assistance to the beneficiaries to acquire ownership over newly constructed apartments.⁵⁶⁹ However, the lack of such financial means on the part of the Serbian Government may endanger the successful implementation of the programme. Accordingly, the financial support of the international community might be required.

The second component of the governmental strategy provided for the construction of social apartments. Those apartments would remain in state ownership and be allocated to persons of certain vulnerable groups, including returnees and IDPs. Beside the “solidarity apartments” as provided by the *Law on Housing*, this would be the first concerted state intervention in the housing sector in favour of vulnerable groups. The programme has to satisfy opposite needs. On the one hand, it has to reduce the costs for the construction of social apartments which may result in the construction of apartments in urban suburbs, usually not well equipped with social and health facilities. On the other hand, the demands of vulnerable groups may require to facilitate their access to even those facilities and to better integrate instead of isolate them.

The current situation of refugees and IDPs requires urgently an adequate response in form of a well established housing policy. The successful implementation of the already developed governmental strategy requires in so far the adoption of corresponding legislation and the establishment of new institutions. The formation of the *Secretariat for Social and Refugee*

⁵⁶⁹ The basic concept of this programme is comparable to the POS Programme in Croatia, see above, Chapter Four, Section 4.5.2 on Public Funded Housing Construction.

Housing within the Ministry of Urbanism and Construction, responsible for the elaboration of responses to the housing needs of refugees, is a first positive step towards this goal.

Various international organisations are involved in programmes and projects aimed at the provision of housing for refugees and IDPs in Serbia.⁵⁷⁰ The Government of Italy is funding the *Settlement and Integration of Refugees Programme*, implemented by UN-HABITAT together with the Ministry for Capital Investments. At local level, this Programme is implemented by UN-HABITAT together with the Municipalities of Cacak, Kraljevo, Pancevo, Stara Pazova, Valjevo and the Cities of Kragujevac and Nis. This Programme consists of three components within an integrated framework: (1) Housing; (2) Municipal strengthening; and (3) Integration of Refugees. Among the expected results are the delivery of 670 sustainable housing solutions in seven municipalities to low-income refugees and other vulnerable households; and the establishment of institutional tools and capacities at local and central level to develop and manage social housing programmes.⁵⁷¹

b) Montenegro

Facing the mass arrival of refugees and internally displaced persons from other former Yugoslav republics, the Montenegrin Government adopted the *Decree on Care for Displaced Persons*.⁵⁷² In order to master the crisis, Article 5 of the Decree established a “Commission for Refugees and Displaced Persons” for the administration and allocation of accommodation for displaced persons. In addition, Article 10 also established administrative organs at municipal level, which,

⁵⁷⁰ For example the Migration, Asylum, Refugees Regional Initiative (MARRI) of the *Stability Pact for South Eastern Europe* also includes Serbia and Montenegro and builds on the Stability Pacts’ Regional Return Initiative to keep the housing issue on the national, regional and international agenda and mobilize the long term development and reconstruction assistance that is needed to consolidate solutions for the returnees and for the displaced persons and refugees still in need of a solution. See *Stability Pact for Southern Europe, Migration, Asylum, Refugees Regional Initiative, The Housing Sector – Access to Affordable Housing*, April 2004.

⁵⁷¹ UN-HABITAT, *the Settlement and Integration of Refugees Programme*, 2005. See also: <http://www.unhabitat.org/lyu>

⁵⁷² *Decree of Care for Displaced Persons*, Official Gazette of Republic of Montenegro No. 37/92. Among the displaced population, the situation of the Roma minority is particularly difficult and shall therefore be reviewed in more detail below: Section 4.7 on the Housing of the Roma Minority.

among others are to provide shelter, in co-operation with humanitarian and other organisations and citizens.

According to the first comprehensive data provided by the Montenegrin Government as of March 2002, a total of 2,820 displaced persons were hosted in official collective centres, 4,056 displaced persons resided in family houses or in wood barracks, while 1,791 stayed in 50 unofficial collective centres.⁵⁷³ In 2005, Montenegro accommodated 26,521 refugees and displaced persons.⁵⁷⁴ Out of this total, 31.9% originated from Croatia and Bosnia and Herzegovina, while the remaining 68.1% remaining displaced persons came from Kosovo. Both categories represent 4.7% of the total Montenegrin population.⁵⁷⁵

After many years of residence in Montenegro, the Ministry of Works and Social Care has recently adopted a “*National Strategy for Permanent Solution in Favour of Refugees and Internally Displaced Persons in Montenegro*”. In accordance with the UNHCR position in this regard, this Strategy foresees as possible options for a definitive solution (a) repatriation to the places of origin, (b) local integration, and as a last option (c) resettlement to a third state (although countries such as the USA, Canada, Australia, have closed down their special programmes in favour of war affected persons from this region). According to recent surveys, around 20% of refugees and other displaced persons prefer to return to their place of origin, and as a primary reason for such decision they declared the unresolved permanent housing solution in Montenegro. The great majority of refugees and other displaced persons prefer local integration in Montenegro.⁵⁷⁶ The Strategy findings confirm that the priority for such integration is to solve the basic housing needs. Concerning the housing options so far 32.3% of this population live in their own house or apart-

ment, 32% in rented apartment, 13.3% at friends or relatives, 14% in family accommodation centres, 5% in collective centres and 3% in other accommodation.⁵⁷⁷

The Montenegrin Government also elaborated three main housing solutions for a basic durable solution for those refugees and other displaced persons who opted for local integration: (a) affordable construction of new housing units (b) use or purchase of abandoned rural households, and (c) social housing, i.e. accommodation in state owned flats for the most vulnerable persons, or their accommodation in medical or social institutions. In the realisation of these solutions the first joint efforts of the local administration and international cooperation can be identified.⁵⁷⁸

In its 2004 Strategy paper “The Housing Sector – Access to Affordable Housing”, the Housing Action Plan of the Stability Pact for South Eastern Europe pointed out that in order to ensure social and political stability the housing needs in South Eastern Europe needs to be addressed urgently, in particular for low-income groups, refugees, displaced persons and other vulnerable social groups. It is estimated that providing housing for refugees and other displaced persons, who opted for local integration, will amount to around 45 million Euros.⁵⁷⁹

Taking into account the very limited economic resources of Montenegro, the responsibility to provide adequate housing for displaced persons would represent an almost impossible obligation to accomplish autonomously. Accordingly, the joint efforts of the Montenegrin Government together with international agencies seem to be a good example of how to solve this situation in a permanent way.

573 Government of Montenegro, Commission for Displaced Persons of Montenegro, *Report on Refugees and Displaced Persons*, March 2002, pp. 13 and 29.

574 Government of Montenegro, Ministry of Work and Social Care, “*National Strategy for Permanent Solution in Favour of Refugees and Internally Displaced Persons in Montenegro*”, February 2005, p.7.

575 Official Statistic of the Government of Montenegro, Commission for Displaced Persons of Montenegro, March 2003.

576 Government of Montenegro, Commission for Displaced Persons of Montenegro, *Report on Refugees and Displaced Persons*, March 2002, p. 5.

577 See *supra* note 135, p. 47.

578 The German NGO “Help” funded the construction of buildings for Roma in Vrela Ribnicka near Podgorica. The Dutch International Guarantees for Housing Foundation (DGH) in co-operation with the Foundation SGHI has provided funds for the construction of buildings for vulnerable groups in Podgorica and Berane. Usually the cooperation between the local partners and the NGO in charge of works functions so that the local municipality provides the land for construction and the infrastructure connection, while the international donors provide the funding (directly or indirectly) and monitor all works and the timely implementation of the project.

579 See *supra* note 135, *Action Plan*, pp. 53-54.

5.5.2 Crisis of the Construction Sector

The present housing situation in Serbia is characterised by an insufficient supply of affordable accommodation.⁵⁸⁰ In fact, the Serbian housing construction sector almost collapsed in the past decade, when the construction rate became less than one apartment per 1000 inhabitants.⁵⁸¹ The significant decrease of housing construction was due to unfavourable conditions for constructors, who had no access to financial means or only at high interest rates. This situation consequently generated inaccessible high prices for the majority of the citizens.

In Montenegro too, the present situation is characterised by a lack of investments in housing construction. Favourable conditions for the purchase of apartments and the high inflation rate made the purchase of their apartments very affordable for most occupancy right holders. Accordingly, over 90% of all socially owned apartments were purchased and thus transformed into private ownership. The high percentage of newly acquired private ownership was, however, no stimulation for further investments in housing construction. Furthermore, the high inflation devalued incomes and revenues and thus became another impediment for future investments in housing construction in an organised way. Finally, the inefficiency of the previous monopolistic Public Housing Enterprises negatively affected the investment in housing construction. Due to the above reasons, the housing construction in Montenegro declined significantly.

Furthermore, the construction of new apartments and housing is aggravated by a lack of detailed urban plans and the slow procedure of the competent bodies to determine construction land for new apartments. Moreover, the lack of adequate infrastructure increases the cost of newly constructed apartments, resulting in a limited number of new housing constructions. Thus, in the first semester of 2002, only 904 new

⁵⁸⁰ According to a recent estimation, the current housing deficit in Serbia accounts for around 100,000 -150,000 residential units.

⁵⁸¹ In Belgrade alone, the housing construction rate dropped from 12,000 residential units in 1991 to 400 residential units in 1997, see: Petovar, *Realisation of Economic and Social Rights*, Ed. Beogradski Centar za Ljudska Prava, p. 153.

apartments were constructed in Montenegro, among them, with 438, almost half in Podgorica.⁵⁸²

5.5.3 Dysfunctional Housing Market

Currently, both Serbia and Montenegro have to deal with a dysfunctional housing market, which is characterised by a lack of a financial policy in the housing sector, a lack of accurate data on housing standards and an undeveloped rental sector.

a) Lack of Financial Policy

The affordability of housing has been further aggravated by a lack of a financial policy which would support housing construction. Since the banking system has adopted the capitalist market mechanisms, housing loans based on even these conditions are often too expensive for a majority of the population.⁵⁸³ This negative development is further supported by a high unemployment rate,⁵⁸⁴ which makes housing construction not affordable for a considerable part of the Serbian and Montenegrin population. In addition to the generally bad economic situation, the underdeveloped banking sector presents itself a major impediment for future housing construction. However certain recent efforts to make the financial availability more accessible to the citizens can be noted.⁵⁸⁵

In Montenegro, the domestic commercial banks may provide for only limited financial resources which results in short term loans with high interests. These conditions make newly

⁵⁸² *Ibid.*

⁵⁸³ Currently, an average monthly instalment for a housing loan for a medium sized apartment in Belgrade is around 250 Euro, while an average household income with two employees was around 200 Euro by the end of 2002.

⁵⁸⁴ In 2002, the unemployment rate in Montenegro amounted to approx. 14% to 20%. Furthermore, unpaid or low salaries require many people to hold a second job in order to meet their minimum needs. In addition, up to 8% of the active population has a second job. A further alarming trend concerns unequal salaries paid to men and women. While the monthly net income for a female employee is 178.70 Euro, the income for a male employee amounts to 236.60 Euro. Institute for Strategic Studies and Prognoses (ISSP), *Housing Survey No. 5*, Podgorica, September 2002, pp. 23, 24 and 35.

⁵⁸⁵ See the recently adopted *Law on National Corporation for Guaranteeing Housing Loans*, Official Gazette of Republic of Serbia n. 55/04. This Corporation was established to guarantee the credits of bank loans.

constructed apartment inaccessible to Montenegrin citizens who do not yet own an apartment, such as young couples and persons who want an independent accommodation.⁵⁸⁶

b) Lack of Data on Housing Standard

The Serbian housing market is furthermore characterised by a lack of accurate data on the present housing standards, including the lack of well established criteria to assess these standards. Pursuant to the 2002 census of the Ministry of Urbanism and Construction, Serbia, including Vojvodina, accounted for 2,980,882 apartments and 2,614,320 households; resulting statistically in 1.14 households per apartment.

A more detailed look at the census data, however, casts a cloud on this positive figure. Firstly, the criteria “households per apartment” does not provide for a positive development in the major Serbian cities, which still face a huge housing deficit. Secondly, the census confirmed also that 120,000 residential units are used by two households and 11,000 residential units even by three households. Additionally, 54,000 households do not live in residential units at all but in units for other purposes, as e.g. commercial property, and 20,000 households do not live in residential units but in single rooms.⁵⁸⁷

The main obstacle to get the real picture of the housing standards is probably the imprecise definition of what is considered to be an apartment. Article 4 of the Serbian *Law on Housing* defines an apartment as “a unit of common space devoted to habitation which constitutes one building unit and which has a separate entrance”. According to this rather broad definition, each building with a roof could be considered an “apartment”. This implies furthermore that the people who live in those “apartments” could be considered to have a suitable response to their housing needs, at least for statistical purposes.

586 According to the Republican Institute for Statistic of Montenegro, *Communication No. 63*, 18 March 2003, Prices of Housing Construction, New Apartments, First Semester 2002, the costs per square meter of newly constructed apartments in 2002 amounted to 695 Euro in the capital Podgorica and to 654 Euro for the rest of Montenegro.

587 Ministry of Urbanism and Construction, *Social and Affordable Housing, Strategic Paper*, p. 3.

In addition, the official categorisation of apartments according to their number of rooms makes it more difficult to get a clear picture of the real housing standards. Since the official technical standards classify an apartment with more than 60.4 m² as a three room apartment, almost each third apartment in Serbia qualifies as such, regardless of its real number of rooms.⁵⁸⁸

c) Undeveloped Rental Sector

After the privatisation of socially owned apartments, almost 99% of all residential units in Serbia are privately owned.⁵⁸⁹ Other residential units may be used on the basis of lease agreements. However, official data shows the percentage of rented apartments at 1% of the total housing fund.⁵⁹⁰ Obviously, a significant number of rented apartments are not officially registered. Thus, it is difficult to have reliable data on the real number of rented apartments, which in the major cities are estimated to account for 5 to 10% of the total housing fund. This lack of information makes it difficult to assess the rental market, which especially in the major cities with their big housing deficits may have established rather high rents.

In Montenegro, a recent research showed that 11.8% of the whole population is living in rented apartments. The average monthly lease amounts about 100 Euro per rental unit. The lack of rent control mechanisms forces a Montenegrin family accordingly to spend half of its monthly salary on the

588 According to the 1991 census data in Serbia (without Vojvodina), there were
 - 41,994 apartments with a surface of 30 m²
 - 22,473 apartments of 30-40 m²
 - 53,909 apartments of 41-50 m² and
 - 85,821 apartments of 51-60 m².

As “apartments” were also considered 3,977 residential units of 10 m² and 53 residential units with a surface of 11-20 m². See Aleksandra Jovanovic and Slobodanka Nedovic, *State of Economic and Social Rights in FRY*, Ed. Beogradski Centar za Ljudska Prava 1998, p. 125.

589 Belgrade Centre for Human Rights, *Status of Human Rights in Serbia and Montenegro*, 2003, p. 242. This rate, one of the highest in Europe, is basically due to the hyperinflation at this time, which completely diminished the real value of the established purchase price and which accordingly enabled the huge majority of Serbian citizen to purchase their apartments.

590 Goran Milicevic, *Financing System Conformed to Our Current Conditions*, February 2002, p. 1.

rent.⁵⁹¹ This research confirms that it would be helpful to introduce better mechanisms to regulate the Montenegrin rental market.

d) *Illegal Construction*

The monopoly of socially owned enterprises in the construction sector during the 1960s and 1970s and the long procedure - between one to three years - to obtain a building permit made illegal construction a rather widespread practice during the socialist era. This phenomenon mainly affected the suburbs of the major Serbian cities, which attracted economic immigrants with employment opportunities. Since the former socialist regime also supported a rapid urbanisation during the course of the country's industrialisation, the monopolistic socially owned enterprises were not able to provide sufficient housing to the new arrivals. The illegal construction was further supported by urban plans which did not allocate sufficient affordable plots for individual construction. Finally, the arrival of returnees and IDPs produced a huge and immediate need for housing which rather often was satisfied through illegal construction. Although there is no precise data on illegal construction for Serbia, this number in Belgrade alone is estimated to be approximately 45,000 residential units.⁵⁹² Other studies on this issue estimate that almost 700,000 residential units were constructed without permission.

5.6 Social Housing

5.6.1 Serbia

The Serbian governmental social assistance provides very limited possibilities to counter the consequences of the increasing poverty. Regarding the social assistance for housing needs, the Serbian organic social law called *Law on Social Se-*

*curity and on Assuring the Social Security of Citizens*⁵⁹³ does not include state financial contributions for rent or other housing expenses for beneficiaries of social assistance. However, the Law provides for indirect assistance by granting a lump-sum contribution for persons who are unexpectedly and momentarily in social need. This contribution could be used for housing needs. However, such a limited and momentary contribution cannot be considered a satisfactory solution for long-term housing needs. On the other hand, the Government may not be in the financial position to guarantee such a commitment in the form of a law.⁵⁹⁴ In the meantime, beneficiaries of social assistance were at least allowed to pay their municipal expenses for housing like costs for water supply and garbage collection in instalments.⁵⁹⁵

Although Serbia currently does not monitor the homelessness rate, according to the opinion of the Ministry of Social Care it does not reach the level of other Eastern European transitional countries. This opinion is based on the fact that the high inflation in Serbia allowed the huge majority of Serbian citizens to purchase their apartments within a short period of time during the privatisation of socially owned apartments.

Adoption of a Housing Policy

The challenges for the housing sector made the Ministry of Urbanism and Construction formulate a comprehensive strategy paper on "*Housing Policy of the Republic of Serbia Until 2000*". This document identified three different approaches for the development of a housing policy: The first approach is market-oriented and limits the role of the state to assure a regular functioning of the market mechanisms in the housing sector through minor or indirect state interventions. The

⁵⁹³ *Law on Social Security and on Assuring the Social Security of Citizens*, Official Gazette of Republic of Serbia, Nos. 35/91, 79/91, 33/93, 53/93, 67/93, 46/94, 48/94, 52/96 and 29/01.

⁵⁹⁴ Despite the fact that one third of the 2002 budget of the Ministry of Social Care was devoted to social needs, one part of its financial obligations, such as pensions and other contributions for social care, was covered by international donors like the British or Swiss Government. According to Mrs. Dara Seratic, Director of the Sector for Social Protection of the Ministry of Social Care, the Ministry cannot afford any form of specific contribution for housing due to the limited availability of financial funds.

⁵⁹⁵ Information provided by Mrs. Dara Seratic, Director of the Sector for Social Protection of the Ministry of Social Care.

⁵⁹¹ Institute for Strategic Studies and Prognoses (ISSP), *Housing Survey No. 5*, Podgorica, September 2002, p. 41.

⁵⁹² See Kostic, *Bespravna Gradnja u gradovima Srbije*, (Illegal Construction in Serbian towns), Udruzenje Urbanista Srbije, Belgrade, 1998, pp. 16-20.

second approach entitles the state to create and influence the general trends in housing policy in order to protect the housing needs of vulnerable groups. The third approach finally allows for direct public state interventions to create a large public sector in the field of housing as a corrective measure against the excesses of the market.

The initial activities of the Ministry focus on the examination and analyses of the present housing situation. In order to deal with the present challenges in the housing sector, a future housing policy will have to contain a sustainable strategy, which allows for affordable housing for the growing population unable to satisfy their housing needs at the current market price. In this respect, the establishment of a Department for Social and Affordable Housing as a special organ for the formulation and implementation of the policy is considered. Further state interventions in the field of social housing are also foreseen but seem to be of less priority because of limited financial funds. By learning from the past, the state should stimulate the initiative of individuals through the creation of suitable legislative, fiscal and financial conditions. Moreover, the state should also assure the participation and integration of vulnerable groups.

It is estimated that the current housing deficit in Serbia amounts to 130,000 apartments. Priority would be to construct 10,000 apartments per year. The main problem which slows down the construction of new residential units is the high prices of urban plots due to the high prices of infrastructural connections. This does not stimulate potential investors, while the current fiscal policy is also not favourable for potential constructors. The primary objective of the Ministry is to create a more favourable policy for new construction by introducing new tax benefits for the potential constructors.

Social housing in the current conditions is non-existent; only certain possibilities for social housing are envisaged through benefits for potential constructors, such as the allocation of state land for construction and obliging the constructors to

build a certain number of apartments for social housing as a compensation for allocated land etc.⁵⁹⁶

Towards a Law on Social Housing

The draft text of a draft *Law on Social Housing*⁵⁹⁷ of 30 May 2005 envisages the establishment of a *Republican Agency for Housing*. The main task of this Agency is to assure the condition of sustainable development of social housing. The financial means for activities of this Agency are provided from the State budget, donations, domestic and international loans etc. These financial means should be used for granting loans to non profit housing organisations in charge of providing social housing.⁵⁹⁸ The non profit housing organisations for social housing must assure the availability of apartments for social housing, and grant loans for social housing to natural and legal persons etc.⁵⁹⁹ Other activities of this agency would comprise the evaluation and selection of social housing programmes for funding, monitoring of appropriate use of the granted loans, and providing expertise and technical assistance in the elaboration and realisation of the programme of social housing.⁶⁰⁰

Municipalities, through their budgetary planning, are foreseen as bodies primarily in charge of assuring the conditions for the development of social housing and adopting the local housing strategy and a suitable land policy for social housing. They will also be in charge also of registering the apartments for social housing.⁶⁰¹ In addition, Municipal Housing Agency is foreseen as a body whose task is primarily to collecting the data necessary to undertake and develop the housing policy of the municipalities, administer the projects on construction of social housing apartments, administration and maintenance of apartment for social housing, contract-

596 Interview with the Mr Lazic, representative of the Ministry of Urbanism and Spatial Planning, 11 April 2003, Belgrade.

597 This draft has not (yet) been officially published as a draft Law. Mr. Mojovic, National Director of UN-HABITAT in Serbia, kindly shared the draft with the author.

598 Non profit housing organisations could be: municipal housing agencies, housing cooperatives and NGOs. Draft text for a Law on Social Housing, Article 22.

599 Draft text for a Law on Social Housing, Article 11.

600 *Ibid*, Article 14.

601 *Ibid*, Article 4.

ing the rent and collecting the rents in cooperation with the Centres for Social Care, and contracting the rent.

At state level a *National Strategy on Social Housing* should elaborate the long term goals of the development of the social housing project. The modalities and financial sources for realisation of the Strategy's goals as well as the development of the social housing policy are also envisaged.⁶⁰²

5.6.2 Montenegro

The *Law on Housing Relations of Montenegro*⁶⁰³ of 1990 provided some protective measures in favour of vulnerable groups. Article 47 specified that apartments over which the municipalities had the right of disposal and which were obtained through nationalisation, confiscation, inheritance and gift and by way of purchase could be used for solving the housing needs of World War II veterans, civil invalids, socially vulnerable groups and persons evicted from unhygienic or ruinous apartments. In addition, this Law explicitly bound the municipalities to provide socially vulnerable groups with apartments and to partially subsidise the rent for such apartment users.

The *Law on Floor Ownership*⁶⁰⁴ specifies only two cases which relate to the collection of financial means for housing needs of certain groups: Article 8 mentions a special fund for retired persons and disabled persons, while Article 9 states that financial means for the housing needs of socially vulnerable groups are provided by the central state organs and the local administrative units.

The *Law on Social and Child Care*⁶⁰⁵ does not include specific housing provisions in favour of vulnerable groups. However, the Law provides for general social assistance in form of material family support. Such financial support could also be

used to satisfy housing needs.⁶⁰⁶ However, this form of financial support is subject to the discretion of the competent organs of social care which evaluate the specific social needs of beneficiaries. In August 2002, 9,843 families with 27,988 members were beneficiaries of material family support.

Since the current institutional framework is centralised, the system of social assistance is organised at the ministerial level. Thus, it is the Ministry for Social Care, acting through the municipal centres of social care, which provides material support. The state budget devoted to social assistance amounts to 8%. In these circumstances municipalities were allowed to use the municipal housing fund to provide accommodation for certain socially vulnerable groups.

However, the recently adopted *Law on Local Self-Autonomy*⁶⁰⁷ granted these municipal centres more autonomy in the decision-making process. According to these provisions, certain activities such as social protection in home medical assistance, assistance to elderly and disabled persons, housing needs for social cases and other kinds of social protection are now the exclusive competencies of the municipalities.⁶⁰⁸ In addition, by virtue of this Law the local administrative units (municipalities) have autonomy to establish particular public services in certain sectors which among others comprise social and child protection. The municipalities may establish those services whenever they are necessary for assuring a better efficiency of certain services.

Apart from these limited benefits, there is no comprehensive housing policy or organised state intervention in support of vulnerable groups with housing needs. The Montenegrin Ministry for Social Care contributes this unfavourable situation to the weak economy and the lack of budgetary funds available for social assistance.⁶⁰⁹

⁶⁰² *Ibid*, Article 5.

⁶⁰³ *Law on Housing Relations*, Official Gazette of SRCG, No. 45/90.

⁶⁰⁴ *Law on Floor Ownership*, Official Gazette of Republic of Montenegro, Nos. 21/95, 23/95, 12/97, 21/98.

⁶⁰⁵ *Law on Social and Child Care*, Official Gazette of Republic of Montenegro, Nos. 45/93, 16/95 and 44/2001.

⁶⁰⁶ Article 9 of the *Law on Social and Child Care* excludes, however, families who own apartments, residential houses or agricultural land of a certain size from the material family support. This exclusion could penalise families who possess a small plot of land in rural areas but who migrated to urban centres and live there in unfavourable conditions.

⁶⁰⁷ *Law on Local Self-Autonomy*, Official Gazette of Republic of Montenegro, n. 42/03.

⁶⁰⁸ *Ibid*, Article 32, paragraph 6.

⁶⁰⁹ Explanation given during an interview with the Montenegrin Vice-Minister for Social Care, 8 April 2003.

5.7 Housing of Roma Minority

According to the census in 2002, there were 108,193 Roma in Serbia (79,136 in Central Serbia and 29,057 in Vojvodina), which represents 1.44% of the total Serbian population.⁶¹⁰ As a consequence of the Kosovo crisis, approximately 100,000 Roma, i.e. about two thirds of the Roma population in that province, were forced to leave their homes. 19,000 of them were officially registered as IDPs in Serbia in 2002.⁶¹¹ However, based on the traditional Roma disinterest in and suspicion of formal registration, the actual number of Roma IDPs in Serbia is likely to be significantly higher.

In Montenegro, the 1991 census counted 3,282 Roma. Again, the available data does not provide a reliable basis to establish the actual number of the Roma population. Their traditional nomadic way of life characterised by a high mobility and frequent changes of their place of residence gives reason to consider the official data with a certain reserve. Thus, the real number of Roma permanently settled in Montenegro is certainly higher than the number officially reported in the 1991 census. The presence of Roma in Montenegro drastically increased after the outbreak of the war in former Yugoslavia. In particular the hostilities in Kosovo in 1999 provoked a mass arrival of Roma in Montenegro. Official data indicates that immediately after the Kosovo crisis, Montenegro accounted for a total of 28,338 refugees and 30,289 internally displaced persons.⁶¹² Compared to the permanent Montenegrin population of 624,115, this number shows that refugees and displaced persons constituted 9.4% of the total population at that time. Of this 9.4%, the Roma minority constituted the third largest group with 7,479 persons or 25.7% of all refugees and displaced persons.⁶¹³ In reality, this figure was

610 European Roma Rights Center, *The Protection of Roma Rights in Serbia and Montenegro*, Budapest, 2003, p. 7. Again, the official figures are believed to dramatically under-represent the true number of Roma in Serbia and Montenegro which non-governmental organisations estimate to be as high as 400,000 to 450,000, including Kosovo.

611 *Ibid.*, p. 6.

612 Government of Montenegro, Commissariat for Displaced Persons of Montenegro, *1999 Census*.

613 Government of Montenegro, Commissariat for Displaced Persons of Montenegro, *Report on Refugees and Displaced Persons in Montenegro*, March 2002. The term Roma community refers also to various sub-divisions of Roma population, as e.g. Askali and Egyptians.

probably even higher, due to the Roma mobility and their attitude to often identify themselves as members of other ethnic groups like Montenegrins, Serbs or Muslims.

Housing Situation

Due to their weak position in the society, the Roma population seems to be more affected by their settlement in Serbia and Montenegro than any other group. The reason of their vulnerability and social exclusion derives from a lack of information on rights and services available to them. The living conditions of Roma and more particular Roma IDPs are extremely poor. Thus, most Roma refugees from Kosovo settled in the vicinity of Roma already residing in Serbia and Montenegro, mainly in already overcrowded informal settlements in the suburbs of major cities without basic utilities such as running water, sewage facilities or electricity.⁶¹⁴

Due to lack of reliable official statistics and limited comprehensive studies in this matter, the exact amount of these informal settlements and the living conditions of their inhabitants are difficult to assess. However, a recent field research showed the number of these informal settlements in Serbia and Montenegro to be alarming. The Romani settlement Veliki Rit in Novi Sad with a population of 2,500 persons in approximately 530 structures illustrates, for instance, the poor housing conditions of the Roma population. Out of these 530 structures only 100 are built with legal permits. At least half of the structures in the settlement are small shacks made of tin, cardboard, scrap or mud. The settlement has no sewage system, and solid waste removal takes place rarely.⁶¹⁵ In addition, several Romani settlements are located in hazardous areas such as river banks or garbage dumps. The field research confirmed the Roma minority to be an extremely

614 The official 1999 Census of Refugees and Displaced Persons showed that the most numerous Roma settlements in Montenegro were in Podgorica (3,888), Bar (777), Niksic (665), and Berane (572).

The recent UNDP *Household Survey of Roma Ashkaelia and Egyptians, Refugees and IDPs in Montenegro*, 2003, p. 22 shows the critical household situation of this population: almost half of Montenegrin Roma (45.4%) do not have water installation in the accommodation they live, while more than two thirds of their households (68%) do not have a bathroom in their residence.

615 European Roma Rights Center, *The Protection of Roma Rights in Serbia and Montenegro*, Budapest, 2003, p. 34 with further examples.

vulnerable social group, its majority living in bad housing conditions with poor hygiene and health conditions, facing unemployment and insufficient enrolment of children in the school system.⁶¹⁶

A recent research on the housing situation of Roma IDPs and refugees in Montenegro showed that 80% of them declared to own a house and 6.8% to have lived in an apartment, while only 12.4% had dwelled in a shanty.⁶¹⁷ Furthermore, among the interviewed Roma families permanently residing in Montenegro, 48% declared to own their own houses, 40% were hosted in barracks or other unfavourable accommodations, 8% of families are subtenants in bad conditions and the remaining 4 % had found another solution.⁶¹⁸ Many of the permanent Roma residents mentioned that their housing conditions had further deteriorated upon the arrival of Roma refugees and internally displaced persons.⁶¹⁹ Both Roma refugees and Montenegrin Roma residents consider housing as one of most serious problems to be solved, with 8% more local Roma raising this as one of their major concerns.⁶²⁰

Lacking Public Support and Protection

As in other former Yugoslav republics, the massive influx of other ethnic groups with different cultures, religions and languages has increased the latently existing anxieties, prejudices and even animosities from the majority of the population against the Roma minority. The incidents of racist based violent attacks against Roma are constantly increasing.⁶²¹ This

⁶¹⁶ *Ibid*, p. 30: "Frequently housing conditions are so substandard as to cause a public health risk, highlighting the intersection between the right to adequate housing and the right to the highest attainable standard of health."

⁶¹⁷ Bozidar Jaksic, Survey published in "Ljudi bez krova" (Roofless People), ed. Republika, Belgrade, 2002. This Survey was carried out in Podgorica and Niksic, the places with the highest concentration of Roma in Montenegro. References to "house" and "apartment", however, should be taken with a certain reserve because the Roma's vision of these terms is far from traditional standards in this matter. Thus, the actual housing conditions of the Roma population could be much worse.

⁶¹⁸ Compared to these figures, 77% of the Montenegrin non-Roma citizens declared to live in their own family houses and 19% in apartments. *Ibid*, pp. 259 and 260.

⁶¹⁹ Interestingly enough, Roma refugees from Kosovo declared that their previous housing conditions in Kosovo were substantially better than the housing conditions of the Montenegrin Roma population, *ibid*, p. 260.

⁶²⁰ *Ibid*, p. 267, Schedule 3.

⁶²¹ European Roma Rights Center, *The Protection of Roma Rights in Serbia and Montenegro*, Budapest 2003, p. 24 with a number of recent incidents.

violence of non state actors is further supported by public organs which refuse to support and protect the Romani community and their settlements. Referring to the informal character of Romani settlements, municipalities often refuse to provide basic infrastructure facilities.⁶²² Since some municipalities are reluctant to accept Romani settlements and to provide basic assistance, they depend largely on NGOs and international relief.

The public organs not only refuse basic assistance to the Roma, but also decline their protection against the increasing number of violent attacks against them and their settlements. The worst example in Montenegro occurred when the municipal authorities and police forces of Danilovgrad did not protect the Roma when several hundreds of inhabitants proceeded to destroy their settlement. As regards this incident, the UN Committee against Torture and Other Cruel Inhuman and Degrading Treatment or Punishment found the Federal Republic of Yugoslavia responsible for not having taken any action in order to prevent the destruction of the Roma settlement.⁶²³

Forced Evictions

Roma in Serbia increasingly face forced evictions or the threat of forced evictions. The lack of security of legal tenure for informal settlements makes these settlements thereby especially vulnerable for such evictions. According to Romani sources, the Belgrade region accounts for 154 Romani settlements, of which only one was established with legal permits. The ongoing privatisation of socially or state owned

⁶²² *Ibid*, p. 34. The case is reported of the municipality of Leskovac in southern Serbia which refused, in spite of available international donor funding, to install a water supply system, since the streets of the Romani settlement had been built without permission. The lack of clean water has resulted in skin diseases of the Romani settlers.

⁶²³ UN Committee against Torture and Other Cruel Inhuman and Degrading Treatment or Punishment, *Hajziri Dzemajl and others vs. Federal Republic of Yugoslavia*, CAT/C/29/D/161/2000. The UN Committee found the FRY in breach of several provisions of the UN Convention against Torture and Other Cruel Inhuman and Degrading Treatment or Punishment. The UN Committee decided upon a complaint of 65 Roma Community members from Danilovgrad (Montenegro) against the total destruction of an entire Romani settlement in a suburb of this town. As reaction to an alleged rape of a local Montenegrin girl, several hundreds of local inhabitants with the knowledge of the municipal authorities and police forces had proceeded to destroy the Romani settlement. The police had not taken any preventive action. While the Roma were able to flee, their settlements were burned and totally destroyed. Several days later, the destroyed settlement was cleared by heavy bulldozers of the Public Utility Company.

land where most Romani settlements have been erected aggravates the housing situation of the Roma. While the former socialist government often tolerated the informal settlements on socially owned land, private owners who intend to use the acquired land for economic purposes are less willing to accept Romani settlements on their now private property. Accordingly, they try to remove the Roma from their land. Taking into consideration that the value of land of Romani settlements in the outskirts of Belgrade will further increase, forced evictions may become a major problem for the housing situation of Roma.⁶²⁴ Without alternative accommodation by the municipal organs, the forced eviction violate the right to adequate housing as set forth in Article 11 paragraph 1 of the International Covenant on Economic, Social and Cultural Rights.⁶²⁵

Local Integration and Recent Developments

As regards the situation in Serbia and Montenegro, the still insecure situation in Kosovo and the well-founded fear for personal security in case of return were the main reasons why the majority of the Roma refugee population opted for local integration. If this integration of the Roma community is to be taken seriously, the governmental authorities should embark on the implementation of affirmative action policies and on the adoption of legislation aimed to improve the social, economic, cultural and educational circumstances of the Roma population. In this respect, the adoption of an antidiscrimination law and the amendment of the Citizenship Act

⁶²⁴ European Roma Rights Center, *The Protection of Roma Rights in Serbia and Montenegro*, Budapest 2003, p. 30. This applies especially to the numerous informal settlements established by Roma displaced from Kosovo.

⁶²⁵ Serbia and Montenegro succeeded the former SFRY in its ratification of the Covenant on Economic, Social and Cultural Rights in 1991. As already shown for Bosnia and Herzegovina, General Comment No. 4 issued by the UN Committee on Economic, Social and Cultural Rights, also recognises informal settlements as tenure protected by the Covenant. Its Paragraph 8(a) reads as follows: "Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner occupation, emergency housing and informal settlements including the occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure, which guarantees legal protection against forced eviction, harassment and other threats. States Parties should consequently take immediate measures which aim to confer legal security of tenure upon those persons and households currently lacking of such protection, in genuine consultation with affected persons and groups." The right to adequate housing includes access to land (see paragraph 8 paragraph 3 of General Comment No. 4 on "The Right to Adequate Housing", adopted on 13 December 1991.

Available on: http://www.bayefsky.com/general/cescr_gencomm_4.php

to facilitate the naturalisation of Roma refugees would be a priority.

The *National Strategy for the Permanent Solution in Favour of Refugees and Internally Displaced Persons in Montenegro* envisages the possibility of acquiring the Montenegrin citizenship of refugees, when their refugee status will expire. Montenegro is currently drafting the new *Law on Citizenship*. This draft specifies that the acquisition of the ownership by refugees will be in accordance with Article 34 of the 1951 Geneva Convention on the Status of Refugees. As a matter of principle the Montenegrin Government committed itself, according to its possibilities, to allow in the best ways the naturalisation and the assimilation of the refugees. In addition the National strategy foresees certain basic rights for the persons who will not enjoy any longer the refugee protection from Montenegro and who will not be eligible for Montenegrin citizenship.⁶²⁶

The improvement of the living conditions of the Roma community and their integration into the local societies will require co-ordinated activities of Roma and humanitarian organisations, NGOs and the local authorities.

A first step towards a better integration of the Roma minority was taken in 2002, with the adoption of the former federal *Law on the Protection of the Rights and Liberties of National Minorities*, which secured the Romani community in Serbia and Montenegro the status of a national minority.⁶²⁷ In 2003, the Federal Ministry of National and Ethnic Communities launched the *Strategy for Integration and Empowerment of Roma in Serbia and Montenegro*. This strategy should address the specific needs and problems of the Roma community through a clear political but also financial commitment in favour of this vulnerable group.

⁶²⁶ Government of Montenegro, Ministry of Work and Social Care, *National Strategy for Permanent Solution in Favour of Refugees and Internally Displaced Persons in Montenegro*, February 2005, p. 50.

⁶²⁷ *Law on the Protection of the Rights and Liberties of National Minorities*, Official Gazette of FR Yugoslavia n.11/02. European Roma Rights Center, *The Protection of Roma Rights in Serbia and Montenegro*, Budapest 2003, p. 10.

In addition, in September 2004 Serbia and Montenegro became signatories to the Vienna Declaration.⁶²⁸ In the Vienna Declaration, attached to this report as Annex I, Serbia and Montenegro recognise to regularise and improve informal settlements by their integration in the social, economic, spatial and legal framework, particularly on local level. They have further agreed to create an adequate legal and institutional environment which allows for the functioning of housing, real estate and land markets on the principles of good governance such as non-discrimination, equality and transparency. They explicitly agreed to develop effective policies and programmes to facilitate sustainable regularisation of informal settlements on the principles of security of tenure, providing public services and improving urban management.

This political commitment was further supported in October 2004 by the Budva Declaration⁶²⁹, attached to this report as Annex II, which binds Serbia and Montenegro to provide the local population *inter alia* with access to water, energy and housing. The impact of these political declarations and initiatives on the housing situation of the Roma minority remains to be seen.

5.8 Marital Property and Inheritance Legislation

5.8.1 Marital Property Rights

a) Serbia

At the time of writing, the *1980 Marriage Law* was in force in Serbia. However, it should be kept in mind that on 1st of July 2005 a new *Family Law*⁶³⁰ will enter into force, which is why certain provisions on marital property rights contained in this Law will be addressed here.

628 The Vienna Declaration was adopted on 28 September 2004 upon the Ministerial Conference on Informal Settlements in South Eastern Europe. For further details see: <http://www.stabilitypact.org/humi/041001-conference.asp>

629 Declaration of the 5th Forum of Cities and Regions of South-East Europe – 11th Economic Forum; for further details see above Chapter 3.5, Bosnia and Herzegovina, Housing of Roma Minority.

630 *Family Law*, Official Gazette of Republic of Serbia, n. 18/2005.

Chapter VII of the Serbian *Marriage Law*⁶³¹ provides for the property relations between spouses. It generally recognises two types of marital property: common property and separate property of each spouse. Article 320 defines separate property as property possessed by each spouse prior to the marriage and property acquired during the marriage by other means than the spouses' work, such as inheritance or gifts. It allows the spouses to dispose autonomously of their separate property. These rules are preserved by the new *Family Law*⁶³²

Article 321 then defines common property as property deriving from the work of the spouses during their marriage, including non-financial contributions.⁶³³ Article 322 requires the registration of common immovable property as such in the cadastre and land register in the name of both spouses. If the common immovable property is registered only in the name of one spouse, it is presumed to have been registered in the name of both spouses, unless the registration is based on a written contract of the spouses providing for the contrary.

Article 324 confers to both spouses jointly the regular administration of the common property. Alternatively, the spouses can empower each other to administer and dispose of all or parts of their common property without the other's consent. Article 326, however, limits the spouses' autonomy to reach such agreements by specifying that they may not renounce their rights guaranteed by this Law, such as, their part in the common property. Nevertheless Article 327 allows the spouses to separate their common property at any time by mutual agreement.

If, upon divorce, the spouses cannot agree on the separation of their common property, this issue will be decided by the competent civil court. While the financial contributions

631 *Marriage Law*, Official Gazette of Republic of Serbia, Nos. 22/80, 11/88, 22/93 and 35/94.

632 *Family Law*, Official Gazette of Republic of Serbia, n. 18/2005, Articles 168 and 169.

633 The definition of common property does not refer to formal marriage but rather to the *de facto* situation. Accordingly, if the spouses have been separated for a long time, without having been formally divorced, the spouses acquire separate property.

are a decisive criterion for the court's determination of each spouse's part in the common property, Article 328 emphasises that contribution to the common property also includes "mutual assistance among the spouses, care for children, house keeping, taking care of, managing, maintaining, and increasing the income and property". This provision effectively guarantees the recognition of the homemaker's contributions to the common property. Accordingly, the civil courts usually halve the common property between the spouses.⁶³⁴ Apartments purchased during the marriage are mostly divided in equal ideal parts between the spouses.⁶³⁵ However, the new *Family Law* is more explicit on this issue: Article 180, paragraph 2 specifies that in case of court proceedings, upon division of the spouses' common property it "is presumable that the spouses' shares in their common property are equal".

While the law now explicitly provides for equal rights between the spouses, in practice divorce lawsuits take very long. In such cases, women often abandon or are forced to abandon the place where they used to live with their ex-husband, while the men usually continue to use the common property. Consequently, women often have to lease an alternative accommodation and to pay the rent for it. To initiate a lawsuit, women have additionally to anticipate all expenses, such as judicial taxes, fees of lawyers and those of court experts. These expenses will be reimbursed only after the final court decision which will be rendered only after several years.⁶³⁶

Article 335 provides that spouses are not liable for obligations that the other spouse has assumed before or after the marriage. Pursuant to Article 336, they are, however, accountable for obligations assumed by either spouse during the marriage with both their separate property and their part in the common property. The new *Family Law* remained in line with those provisions.⁶³⁷

⁶³⁴ According to Mrs. Mirjana Wagner, attorney at law (Belgrade) and representative of the women's group "Justicija".

⁶³⁵ See also: Legal interpretation of the Supreme Court of Serbia, Civil Department, 21 June 1993, Explication, para. 3. The Law explicitly confirms that separate property is property of the spouse after the separation of their common property.

⁶³⁶ Interview with Mrs. Mirjana Wagner, legal representative of women's organisation "Justicija", 10 April 2003, Belgrade.

⁶³⁷ *Family Law*, Official Gazette of Republic of Serbia, n. 18/2005, Articles 186 and 187.

Regarding the property relations of out of wedlock communities, Article 338 confirms that the property acquired through the work of the partners during the community becomes their common property. In contrast to other marriage laws of former Yugoslav republics, it does, however, not specify a time period for the duration of the community as a prerequisite for creating the property effects between the partners.⁶³⁸ Article 191, paragraph 2 of the new *Family Law* specifies that the property rights of partners in out of wedlock community are equal to the property rights of the spouses.

The new Law is also explicit on certain rights of minors. Thus, Article 194 specifies that the child and the parent who exercises the child care have a right to stay in the apartment, whose owner is the other spouse, if the child and the parent who exercises the child care do not have ownership over another habitable apartment. This right is limited until the child's adult age.

The Serbian *Marriage Law* also recognises the institute of the "family community" (porodicka zajednica), which is defined as a larger family composed by spouses, their children and other relatives who work together on agricultural property or who commonly contribute in another manner to the acquisition of common property. The property acquired during the existence of that community is considered to be the common property of all members of the family community. As regards immovable property rights of the family community members, Article 342 paragraph 1 provides for the registration of immovable property in the land register as their common property in the name of all members who contributed through their own work to its acquisition or enlargement. However, if only one or only certain members of the family community are entered in the land register, Article 342 paragraph 2 considers this or those members as owners of the common property, unless the other members of the family community request to be also registered as owners of the common property. If one member of the family community is registered in the land register as the owner of the com-

⁶³⁸ Article 226 of the Croatian *Marriage Law* requires a community lasting "for a long time" as a prerequisite for the application of the marital property provisions. In so far, the judicial practice generally recognises a period of 5 years as a "long time".

mon property and this person is acting towards third persons by selling or encumbering the common property, the other members of the family community may initiate a civil procedure against the person registered as owner. Finally, Article 344 allows the family community members also to define their property relations by mutual agreement in form of a written contract.

The new *Family Law* envisages that the rights of family community members to their common property are regulated by the same norms applicable to the spouse's common property rights. However, this rule will not apply to the family community members when pursuant to Article 176, paragraph 2 of the *Family Law* one spouse registers his/her property rights, and it is presumed that both spouses are registered. Furthermore, in case of the court division of the spouses' common property, it is presumed that the parts of both spouses in their common property are equal.⁶³⁹

b) Montenegro

Beside the Marriage Law and the Inheritance Law, the *Law on Housing Relations* also contained protective measures in favour of the other spouse. Through the character of the occupancy right as a family right, it enlarged the occupancy right granted to one spouse to the other spouse under the condition that s/he lived in the same household.⁶⁴⁰ Upon a divorce, the spouses could mutually agree who will remain the occupancy right holder over the apartment. Otherwise, this decision had been taken by the competent courts, which pursuant to Article 56 had to base their decisions among others on the general housing needs of both spouses and those of their children.

The *Marriage Law*⁶⁴¹ of 1989 provides explicitly that the free and responsible parental care is in the interest of the

⁶³⁹ Articles 180, paragraph 2 and 176, paragraph 2 of *Family Law*, Official Gazette of Republic of Serbia, n. 18/2005.

⁶⁴⁰ Although the *Law on Housing Relations* has been superseded by the *Law on Floor Ownership*, the previous provisions on the occupancy right as a right of the family had its impact on the right to purchase socially owned apartment which again was based on the occupancy right over these apartments.

⁶⁴¹ *Marriage Law*, Official Gazette of SRCG, No. 7/89.

Montenegrin society. To assure adequate conditions for this parental care, the adoption of a suitable housing policy is required.⁶⁴² Article 10 then introduces the basic principles of the relations between spouses which shall be based on equality, mutuality, solidarity and on the protection of the minors' interests.

Like the Serbian *Marriage Law*, the Montenegrin Law generally recognises two types of marital property: common property and separate property of each spouse.⁶⁴³ The definition of both property types follows the same criteria as already explained above for the Serbian *Marriage Law*.⁶⁴⁴ Also the rules on the administration of common property follow the Serbian provisions.

As in Serbia, the Montenegrin *Marriage Law* requires the registration of common immovable property in the cadastre and land register in the name of both spouses.⁶⁴⁵ If common property is registered only in the name of one spouse, the Law presumes the registration in the name of both spouses. The registration of both spouses in the land register constitutes a legal protection for Montenegrin women, who especially in rural areas still find themselves in a traditionally marginalised position. However, the lacking co-registration in common practice may devalue the protection provided by the Law.

If the spouses cannot agree on the division of their common property upon their divorce, Article 287 provides - in contrast to the Serbian law - for its division in *equal parts*. However, if one spouse claims to have contributed significantly more to the acquisition of the common property, the courts decide on its division. This decision shall be based not only on the salary of the spouses but also on non-financial contributions to the household and family, including child care. Thus, the contributions of women, which are often not expressed in economic terms, may be protected, depending on how in re-

⁶⁴² *Ibid*, Article 6.

⁶⁴³ *Ibid*, Article 279.

⁶⁴⁴ *Ibid*, Articles 280 ff.

⁶⁴⁵ *Ibid*, Article 282.

ality the court decisions turn out. For out of wedlock communities, the provisions on the division of common property shall apply if such community has lasted for long time.⁶⁴⁶

As in the Serbian *Marriage Law*, the Montenegrin *Marriage Law* also provides for the institute of the “family community” for large families where, mostly in rural areas, spouses, their children and other relatives jointly acquire common property if they all contributed to its acquisition. The relevant provisions are similar to those of the Serbian *Marriage Law*.⁶⁴⁷

5.8.2 Inheritance Law

Article 34 paragraph 2 of the Serbian Constitution guarantees the right to inheritance. The Serbian *Inheritance Law*⁶⁴⁸ was adopted in 1995. For foreign citizens, Article 7 guarantees the right to inheritance under the condition of reciprocity.⁶⁴⁹

The Law recognises two forms of inheritance: inheritance based on a testament and inheritance based on law. For the testamentary inheritance, the Law provides for some formal requirements on the testament’s validity. The inheritance based on law is defined by inheritance degrees. The surviving spouse and his/her children are the heirs of the first inheritance degree. Pursuant to Article 9, they inherit in equal parts per person.

The Law provides special protection to minor children. Thus, Article 9, paragraph 3 allows to diminish the spouse’s inheritance in favour of minors, if the marriage household included the deceased’s minor children from a previous marriage or from an out of wedlock community and if the property of the spouse is superior to half of the value of the inheritance which the other spouse should have inherited by inheritance

on the equal parts. In this case, the deceased’s children may inherit up to two times more than the spouse, depending *inter alia* on their age and economic condition and the spouse’s ability to earn his/her living.

If the deceased did not have any descendants, his/her spouse falls in the second degree of inheritance, where s/he inherits one half and the deceased’s parents the other half in equal parts. If the spouse cannot or is not willing to inherit, the inheritance falls altogether to the parents.⁶⁵⁰ If both parents of the deceased cannot or is not willing to inherit, and they do not have any descendants, the spouse inherits all.⁶⁵¹

Article 23 includes a protection in favour of the spouse by providing him/her with a life term right to use the deceased’s real property or a part thereof (*usufructus*) if such request is justified by the difficult living conditions of the spouse. If the total value of the inheritance is so small that its division would cause an indigent condition for the spouse, s/he may be entitled to the whole inheritance. On the other hand, the parents may also ask for the reduction of the spouse’s part to a maximum amount of one fourth of the whole inheritance. This request may be granted if the spouse would inherit more than one half of the deceased’s separate property and if, additionally, the marriage did not last for a long time. The courts deciding upon the above requests shall consider all specific circumstances of the individual case.⁶⁵²

The spouse’s right to inheritance by law ceases if (a) the deceased initiated a court procedure for divorce and the request is granted after his/her death, (b) the marriage was declared null and void before the death of the deceased for reasons known to the other spouse at the moment of their marriage, and (c) the common life of the spouses had permanently ceased by fault of the surviving spouse or their community ceased upon mutual consent.⁶⁵³ The surviving spouse, however, preserves the right to testamentary inheritance. Further-

⁶⁴⁶ With regard to the similar provision in the previous Croatian *Marriage Law*, the Croatian courts considered an out of wedlock community of five years to have lasted for a long time.

⁶⁴⁷ Montenegrin *Marriage Law*, Articles 297 ff. See above for the Serbian *Marriage Law*, Section 5.8.1(a) on Marital Property Rights.

⁶⁴⁸ *Inheritance Law*, Official Gazette of Republic of Serbia, n.46/95.

⁶⁴⁹ Reciprocity refers to the right of inheritance for Serbian citizens in the state of the foreign citizen. In this respect, the respective rights to inheritance may also be recognised through international agreements.

⁶⁵⁰ *Inheritance Law*, Article 12.

⁶⁵¹ *Ibid*, Article 15.

⁶⁵² *Ibid*, Article 26.

⁶⁵³ *Ibid*, Article 22.

more, s/he preserves the right over the goods used in the household which were acquired by his/her own activity.

Article 39 entitles the children, the spouse and the parents of the deceased to a compulsory inheritance. The deceased's grandparents and siblings may be entitled to a compulsory inheritance if they are unable to work or if they do not have the basic means for their life. Article 40 determines the compulsory inheritance for the children and the spouse with one half of their part in the inheritance based on law. The compulsory part of the other relatives amounts one third thereof. Pursuant to Articles 4 and 5, the total exclusion of legal heirs is only possible if they are considered as unworthy for inheritance. Such unworthiness may be confirmed if a person under military duty, including the state of reserve, left the country to avoid its defence and did not return to it before the death of the deceased.⁶⁵⁴

The Law finally provides the legal heirs who used to live together with the deceased the right to separate a part of the deceased's property from the inheritance in the amount of their contributions to the common household. This part does not fall into the inheritance and, accordingly, will not be considered for the determination of the compulsory inheritance.

As regards the inheritance legislation in Montenegro, Article 46 of the Montenegrin Constitution guarantees the right to inheritance. Article 4 of the Montenegrin *Inheritance Law*⁶⁵⁵ provides thereby also for the basic principle of equal treatment in inheritance. In other respects, the provisions of the Montenegrin *Inheritance Law* are virtually identical in its content and in its numbering with those of the Serbian Inheritance Law.⁶⁵⁶

⁶⁵⁴ However, due to the widespread misuse of compulsory military service, this norm does not appear to stand on a solid basis. The Constitutional Court of Serbia declared this provision unconstitutional, confirming that declaring unworthy for inheritance must be linked with the deceased person and not to not fulfilment of state duties. The Court decision was published in Official Gazette of Serbia n. 101/03.

⁶⁵⁵ Official Gazette of SRCG, Nos. 4/76, 10/76, 22/78 and 34/86.

⁶⁵⁶ However, the Montenegrin *Inheritance Law* does not provide for the exclusion from the compulsory inheritance for not having performed the military duty service.

5.9 Conclusions and Recommendations

Serbia and Montenegro never experienced a mass flight of ethnic minorities as Bosnia and Herzegovina and Croatia. Accordingly, they did not adopt “emergency legislation” for the administration and reallocation of abandoned property. Instead, their housing legislation focused on the privatisation of socially owned apartments and the denationalisation of once nationalised property. These efforts were challenged by the mass arrival of refugees and displaced persons in Serbia and Montenegro. Furthermore, the establishment of private property took place in the general context of the transition from the socialist economic system to a market economy and the challenges arising out of this process. The development of the housing legislation gives reason to the following conclusions and recommendations:

1) Affordable Housing for Low-income Groups, Refugees and IDPs

a) Balance between social and private ownership

In the recent past, Serbia and Montenegro experienced in the housing sector two opposite systems from a situation where the state and socially owned entities were the overall administrators of socially owned apartments to a situation where the citizens assumed themselves the ownership of their apartments without further involvement of the administrative organs. A future housing policy should avoid these two extreme alternatives and instead try to adopt governmental regulative activities to ensure affordable housing and social housing. Especially in Serbia, where in 2000 around 755,000 households (31.6%) lived below the poverty threshold and around 373,000 (15.6%) households live below the lower poverty threshold, there is an urgent need for affordable housing.

b) Long term, comprehensive approach

A comprehensive concept for affordable and social housing should be properly developed as an effective response to the housing needs of the low-income population as well as of refugees and displaced persons who opted for local integration in Serbia and Monte-

negro. The development of such a concept in conditions of a depressed economy will require a long term approach in form of a “new deal” which will focus on the interests of the involved stakeholders and which may result in the satisfaction of the housing needs of individuals, the support of the economic interests of constructors, the reduction of unemployment on part of the working force and finally the growth of the GDP on state level. Prerequisite for the successful implementation of such programmes on affordable and social housing is the adoption of a proper legal framework, which should include fiscal, financial, social and technical aspects. Their long term benefits for the society should be stressed.

c) Coordination between ministries and municipalities

The programme for affordable housing and the programme for social housing should be considered as a priority for future state policies. They will require an inter-active approach among various administrative organs. Thus, an efficient level of coordination at horizontal level between the ministries should be guaranteed through inter-ministerial bodies. On vertical level, the necessary co-operation between the policymakers, i.e. the ministries, and the competent organs at municipal levels must be assured. This commitment is also envisaged by the 2004 Strategy paper “*The Housing Sector – Access to Affordable Housing*” the Housing Action Plan of the Stability Pact for South Eastern Europe which pointed out that to ensure social and political stability housing needs in South Eastern Europe need to be addressed urgently.

d) Financial Resources and Flexible Approach

The development of a social housing programme will require budgetary funds in its initial stage. Given the weak economic situation of Serbia and Montenegro, the international community should consider to actively support such efforts. On the other hand, the governments of Serbia and Montenegro should consider assuming a more flexible approach to support the development of the social housing sector. Thus, the allocation of construction land to private constructors under favourable criteria with

the condition to reserve a quota for social housing could be envisaged.

e) Housing Co-operatives

The concept of housing co-operatives could still contribute to the provision of a better supply of affordable housing. A revival of these co-operatives would require the adoption of an affirmative state policy in favour of these entities. Furthermore, the establishment of a housing bank which can grant affordable loans to housing co-operatives should be considered. Finally, the legal and fiscal framework should be amended to better satisfy the demands of those co-operatives and to tighten loopholes.

f) Development of functioning rental market

The development of a functioning rental market should be another priority of a future housing policy. Since the current rental market in major urban areas is characterised by very high rents, it does not allow for sufficient affordable accommodation not only for low income but also medium income groups. Amendments to the lease laws should therefore consider restricting the raise of rents to the current statistical index on living costs. The housing policy on the rental sector should establish more regulative measures in order to adjust the currently strong position of apartment owners. Furthermore, any such measures need to avoid conditions which lead to the establishment of a black market in this sector.

g) Building efficiency and capacity

Efficient and trained officers will provide faster decisions on the allocation of construction land and on building permits. Future housing and spatial planning policies should allow for the fast adoption of appropriate urban plans, the expedient identification of construction parcels and the efficient construction of infrastructure. All these measures will result in a decrease of the currently high construction costs for new apartments. Furthermore, the already existing legal provisions on the payment of maintenance costs should be properly implemented and enforced. The increased revenues

from these payments will reduce the further decline of the housing stock.

2) Structural Reform of Banking System

The future housing policy should also focus on the establishment of a functioning banking system, which allows for mortgage loans as a primary financial source for capital investments of individuals in housing construction. To achieve this goal, the current banking system and its policy on mortgage loans require a structural reform. Apart from the adoption of a better legal framework which allows for the fast constitution and effective enforcement of mortgages, the governments of Serbia and Montenegro should establish a fiscal policy which favours the establishment of particular banking institutions granting mortgage loans. Such a saving fund with low interest rates and long repayment periods could be supported by the international community. The development of a functioning banking sector should further be supported by an appropriate tax policy which provides, for instance, favourable conditions for young families to buy their first apartment or house. In this respect, the establishment of different categories of property taxes for houses in urban and rural areas according to their position and purposes should also be considered.

3) Adopt Law on Lease

Serbia should enact the comprehensive *Law on Lease*; it is not sustainable that this sector is completely unregulated (with exception of the norms of lease in the public sector). The state should enact a minimum of regulation in this sector in order to avoid the existent full voluntarism in establishing the lease condition by the owners, in this respect the Croatian law on lease could be considered as a good example.

4) Special Attention to Adequate Housing for the Roma

As in Bosnia and Herzegovina and Croatia, the housing conditions of the Roma minority are of special concern. The high number of Roma refugees and displaced persons, especially from Kosovo, has created an emergency situation, to which neither Serbia nor Montenegro have yet found an adequate response. Apart from still prevailing discriminatory attitudes and deci-

sions not only of the local population but also by the administrative organs, the informal character of many Romani settlements appears to be the major issue to be addressed. Thus, municipalities refuse constantly to provide basic public utility services to informal settlements. Even worse, the transformation of state owned land to private property increases the number of forced evictions against the Roma population. This applies especially to the Belgrade region, where former socially owned land in the suburbs is increasing in economic value. The future integration of the Roma community and the improvement of their housing conditions require the allocation of property titles to informally settled land. This would provide the Roma community with a minimum of secure tenure. Serbia and Montenegro have recognised this requirement in the Vienna declaration which provides for the improvement of the Roma housing situation through the integration of informal settlements in the social, economic and legal framework. This political declaration should be properly implemented through appropriate legislative and administrative measures. In this respect, Serbia and Montenegro should consider to provide adequate alternative accommodation for Roma whose informal settlements are jeopardised through the privatisation of former socially owned land. Other options are special zoning and state acquisition of privatised land and prohibition of sales of state owned land in the public interest. Upon privatisation of land used by the Roma community, alternative accommodation should be provided to this minority.

5) Review of Denationalisation Acts

The provisions of the draft Serbian and Montenegrin *Denationalisation Act* on the position of current users of apartments which are subject to restitution should be reviewed and amended by more precise provisions in favour of the current users. The Serbian draft Act provides only one article on the position of current users which allows them to further use the denationalised apartment on the basis of a lease agreement with the owner. It is recommended to include more detailed provisions in favour of current users in order to guarantee the secure tenure of their apartments. The Montenegrin *Denationalisation Act* allows for a transitional period of 5 years after the denationalisation during

which current occupants may use the apartment as a lessee. After this period, the Government of Montenegro shall provide “corresponding apartments” to the current users. It is recommended to specify in more detail what shall be considered a “corresponding apartment.” The broad terms of the provisions in favour of current users do not guarantee that their housing conditions will not deteriorate after the expiration of the transitional period and should therefore be amended to provide more substantial guarantees for them.

6) Amend Expropriation Acts

Further amendments to the Expropriation Acts of both Serbia and Montenegro should be considered. The provision on the establishment of the public interest in the Serbian *Expropriation Act* does not require the state organs to consider the interests of owners and to balance these interests towards the public interest. This rather broad provision should be amended to introduce the requirement of balancing the opposed interests. Thus, the state organs would be obliged to provide a satisfactory explanation why the public interest prevails. The Montenegrin *Expropriation Act* does not provide a definition of the public interest at all, neither in explicit terms nor in more generic ones. The lack of such a definition opens the way for non transparent and arbitrary decisions on the public interest on part of the government. Accordingly, the Act should be amended to provide for a definition which serves as a guideline for the decision on the public interest and which thus avoids the abuse of power referred to the government.

7) Simplify and Shorten Divorce Procedures

While the law now explicitly provides for equal rights between the spouses, in practice divorce lawsuits take very long. This is difficult for the spouse who had to abandon the common property, as s/he faces many years of additional expenses and uncertainty. It is therefore recommended that the divorce procedure is simplified and shortened.

8) Collect Gender Disaggregated Data

Without gender disaggregated data, the assumption that both men and women benefit from specific laws, policies and programmes is often mistakenly contin-

ued and cannot be corrected. If figures on different forms of housing tenure, social housing beneficiaries, local government councillors etc. were disaggregated by sex, these would provide a firm and clear basis for interventions for vulnerable groups. It is therefore recommended that gender disaggregated data is collected at both local and national level.

9) Increase Women’s Participation in Decision-Making Bodies

At present, only 7.9% of deputies in the State Union Assembly are women. In Serbian Parliament, that percentage is 12.4%, while in Montenegro this is 10%. These rather alarming figures make Serbia and Montenegro the country, after Albania, with the largest gender imbalance with regard to women in politics in South Eastern Europe. The Serbian *Law on Local Elections* of 2002 stipulates that the total number of the less represented sex in the list of candidates may not be smaller than 30%. Safeguards to ensure the implementation of this law should be constituted. In Montenegro, such affirmative action policy should be adopted. Further efforts should be made to combat gender stereotypes and increase the number of women in all decision-making positions, both at central and local levels.

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Annexes

Annex I: Vienna Declaration

Vienna Declaration

As signed in Vienna on 28th September 2004 by

H.E. Mr. Demeti (Vice Minister of Territory Regulation and Tourism, Albania),

H.E. Mr. Buxhaku (Minister of Transport and Communication, Republic of Macedonia),

H.E. Mr. Vucinic (Minister for Urban Planning and Protection of the Environment, Montenegro) and

H.E. Mr. Ilic (Minister for Capital Investment, Serbia),

In the presence of

Dr. Erhard Busek (Special Co-ordinator of the Stability Pact),

Lars Reutersward (UN-Habitat, Director of Global Division), on National and Regional Policy and Programmes regarding

Informal Settlements in South Eastern Europe

The undersigned National and Regional Representatives from South Eastern Europe recognize that:

- I. The objective of this declaration is to commonly agree on actions that (a) will regularise (legalise) and improve informal settlements in a sustainable way and (b) will prevent future illegal settlements.
- II. *Informal settlements* are human settlements, which for a variety of reasons do not meet requirements for legal recognition (and have been constructed without respecting formal procedures of legal ownership, transfer of ownership, as well as construction and urban planning regulations), exist in their respective countries and hamper economic development. While there is significant regional diversity in terms of their manifestation, these settlements are mainly characterised by informal or insecure land tenure, inadequate access to basic services, both social and physical infrastructure and housing finance.
- III. *Every person in the city or community has the right to be an equal member of the community.* Legalisation/regularisation of informal dwellers will make them individuals with equal rights. As such, inhabitants of the city should enjoy the same opportunities to realise his/her access rights to an adequate standard of living and access to services as everyone else in the city, as well as the same obligations to respect the law and pay taxes and user charges.
- IV. *Sustainable urban management* requires that informal settlements be integrated in the social and economic, spatial/physical and legal framework, particularly at local level. Successful regularisation efforts contribute to long-term economic growth as well as to social equity, cohesion and stability.

- V. *Principles of Good Governance* have to be applied by Central and Local Governments when implementing the commitments made under international agreements and conventions to make maximum efforts, particularly to provide access to adequate shelter and to ensure that the shelter situation of the residents of informal settlements is improved. Respective commitments are contained in the “*Charter of Fundamental Rights of the European Union* (2000/C, 264/01), Articles 17.1 and 34.3”, the “*European Social Charter* (Revised, 1996, European Treaty Series No. 163), Articles 30 and 31” and the “*UN Habitat Agenda* (1996), Chapter III, Paragraph 39”. Detailed references are stated in Annex A.
- VI. The urban, social and economical integration of informal settlements within the overall city structure will be a key factor in preparing for accession to the EU.

The National and Regional Representatives from South Eastern Europe have agreed on the following:

- I. To create an adequate legal and institutional environment allowing for the functioning of housing, real estate and land markets through (a) the formulation and implementation of respective regularisation policies within the context of overall housing policies, (b) the adoption of specific and well-targeted programmes, (c) a clear assignment of responsibilities to national and local authorities in line with the subsidiarity principle (decentralisation) and (d) the promotion of sustainable urban management.
- II. To aim at the complete regional resolution of informal settlements by the year 2015, with national targets to be set by January 2005.
- III. To undertake in-situ regularisation and upgrading to the maximum extent (but only in cases that do not threaten proper urban development, i.e. contravening rights of way, environmental protection, cultural heritage protection).
- IV. To prevent future informal development by:
- Reviewing and modifying, as appropriate, legal and regulatory framework and enforcing it
 - Changing planning processes, where appropriate, to provide adequate housing and/or serviced plots for all income groups, allowing wider public participation in the planning process
 - Mounting an awareness campaign to build up trust and explain that illegal construction is not only against the law, but will seriously hamper economic development
- V. To follow principles of good governance, such as non-discrimination, equality, transparency and accountability regarding the provision of tenure security, public services and infrastructure.
- VI. To develop effective policies and programmes facilitating sustainable regularisation of informal settlements, in accordance with paragraph III and IV above, along the following principles:
- Creating security of tenure, providing public services and improving urban management
 - Decentralising land information, registration and management responsibilities
 - Integrating aspects of legal framework, property and urban functionality
- VII. To support capacity building and training activities regarding urban management at national and local level, first and foremost of local governments, which will be at the forefront of urban management.
- VIII. To periodically exchange information on good practice and monitor progress towards the above objectives through (bi-annual) regional review meetings, and regional reports to global habitat meetings such as the World Urban Forum.

Annex A: International Agreements and Conventions

Charter of Fundamental Rights of the European Union (2000/C, 264/01),

Chapter II (Freedoms), Article 17.1 and Chapter III (Solidarity), Article 34.3:

- Article 17.1: Right to property

“Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.”

- Article 34.3: Social security and social assistance

“In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.”

European Social Charter (Revised, 1996, European Treaty Series No. 163),

Part II, Articles 30 and 31

- Article 30: The right to protection against poverty and social exclusion

“With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

- a. To take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;
- b. To review these measures with a view to their adaptation if necessary.”

- Article 30: The right to housing

“With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

1. To promote access to housing of an adequate standard;
2. To prevent and reduce homelessness with a view to its gradual elimination;
3. To make the price of housing accessible to those without adequate resources.

UN Habitat Agenda (1996),

Chapter III - Commitments, A. Adequate Shelter for all, Paragraph 39

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- Paragraph 39:

“We reaffirm our commitment to the full and progressive realization of the right to adequate housing, as provided for in international instruments. In this context, we recognize an obligation by Governments to enable people to obtain shelter and to protect and improve dwellings and neighbourhoods. We commit ourselves to the goal of improving living and working conditions on an equitable and sustainable basis, so that everyone will have adequate shelter that is healthy, safe, secure, accessible and affordable and that includes basic services, facilities and amenities, and will enjoy freedom from discrimination in housing and legal security of tenure. We shall implement and promote this objective in a manner fully consistent with human rights standards.”

Annex II: Budva Declaration

Declaration of the 5th Forum of Cities and Regions of South-East Europe - 11th Economic Forum

Budva, Serbia and Montenegro, 11-12 October 2004

The participants at the 5th Forum of Cities and Regions of South-East Europe (11th Economic Forum) meeting in Budva on 11 and 12 October 2004 at the invitation of the City of Budva and at the initiative of the Congress of Local and Regional Authorities of the Council of Europe as part of the Stability Pact for South-East Europe, and in co-operation with the Foundation for the Economy and Sustainable Development of the Regions of Europe (FEDRE);

1. Extend their thanks to the Municipality of Budva for its warm welcome and the Union of Municipalities of Montenegro for its support for the Forum;

2. At political level:

2.1. Denounce the violence in South-East Europe, particularly in Spring 2004, and reaffirm that full respect for minority rights is an indispensable factor for civic peace and stability, and an essential condition for economic development;

2.2. Concerning Kosovo:

- hope that the framework document for the reform of local government and public administration in which the Council of Europe participated will facilitate acceptable political development for all the communities in the spirit of the European Convention on Human Rights and the European Charter of Local Self-Government;- encourage the Pristina and Belgrade authorities to continue their dialogue aimed at improving living conditions and freedom of movement for all the communities;-encourage all the communities:

. to contribute to the development of democracy and human rights; . to participate fully in the upcoming elections to the Kosovo Assembly;- request the political parties to fully respect and adhere to the electoral legislation and regulations;

2.3. Reaffirm the essential role that local and regional authorities must play in promoting political stability and economic development in South-East Europe with a view to European integration;

2.4. Underline the importance to develop the transfrontier cooperation between local and regional authorities in South-East Europe and in this context invite the governments of the region to sign and ratify the Outline Convention of the Council of Europe on Transfrontier Cooperation;

2.5. Back the European Union's efforts to enhance the role played by local and regional authorities in the process of consolidating democracy in the West Balkan region, and invite the European Commission to associate the Council of Europe, particularly the Congress, in the implementation of the CARDS programme and the New Neighbourhood Policy;

2.6. Support the work of the Committee of the Regions of the European Union in this field and welcome the initiative for a Conference on local and regional authorities in South-East Europe to be organised jointly by the Congress and the Committee of the Regions in the Venice Region in Spring 2005, as a follow-up to the 5th Forum held in Budva;

2.7. Welcome the recent officialisation of the Network of Associations of Local Authorities of South-East Europe (NALAS Network), and notably the signature of its legal statutes during the 11th Plenary Session of the Congress in May 2004, and the forthcoming election of the Network's President;

2.8. Recall that the NALAS Network is a concrete result of the previous Forums of Cities and Regions of South-East Eu-

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rope held since 2000 and a major tool for cooperation between the local authorities of South-East Europe;

- 2.9. Welcome the proposal that the NALAS Network and the Association of Local Democracy Agencies (ALDA) be invited to the South-Eastern Regional Ministerial Conference on “Effective Democratic Governance at Local and Regional Level” (Zagreb, 25-26 October 2004, organised under the auspices of the Stability Pact for South-Eastern Europe and the Council of Europe);
- 2.10. Hope that this Zagreb Ministerial Conference will lead to concrete results, especially legislative improvements, closer dialogue between central and local government, stronger leadership and strategic management in local and regional authorities, greater citizen participation and better local public services;
3. Regarding the socio-economic situation at local and regional level in South-East Europe:
 - 3.1. Are convinced that improving economic conditions at local and regional level is a key factor for the development of democratic institutions in South-East Europe;
 - 3.2. Give their full support to the idea developed in the United Nations (UN) of securing “basic utilities” for the local population, namely access to water, energy, housing, health, education, etc. , and encourage the initiatives taken by FEDRE and UNITAR in this framework;
 - 3.3. Underline the role that sustainable tourism can play in the improvement of socio-economic conditions. They stress the importance to prolong the touristic season, particularly by targeting retired people from Northern Europe, ensure good training of touristic managers, and to improve many tourist facilities and infrastructures;
 - 3.4. Improve the use of European Union funds and all other financial resources by taking account at all level of the principles of sustainable development with a view of allowing candidate countries to join European Union in the best possible conditions;
 - 3.5. Ensure that central and regional/cantonal authorities should grant powers and sufficient financial resources to local authorities, in the spirit of the European Charter of Local Self-Government so that they are able to carry out consistent policies and priorities;
 - 3.6. Request the governments of South-East Europe to give local authorities power to administer public property in their respective municipalities, including properties which may be subject to privatisation and support the actions and contacts of FEDRE Foundation with private companies in this respect;
 - 3.7. Ask for the development of public and private partnerships at local and regional level, particularly through public enterprise, namely for the quick realisation of highly needed infrastructure;
4. Regarding anti-corruption measures:
 - 4.1. Recognise that unstable economic conditions, increase unemployment, uncontrolled privatisation and linking of private and public interests favour corruption and also that corruption is preventing investment, and therefore socio-economic development;
 - 4.2. Consider that:
 - It is necessary to ensure that local and regional authorities are fully supporting and participating partners in the process of drafting the National Strategies on Anti-Corruption, and notably their Action Plans containing specific anti-corruption measures;
 - Training of staff and elected representatives is a major tool for prevention of corruption and invite the Congress and the European Network of Training Organisation for Local and Regional Representatives (ENTO Network) to develop

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specific training activities based on the “European Code of Conduct for Local and Regional Elected Representatives” adopted by the Congress in 1999;

- Each local and regional authority should take specific measures to prevent of corruption, control and report corruption, and increase public awareness of the fight against corruption, while emphasising that corruption should be combated not just at national, but also at local and regional level, due to the specificities and nature of cities and regions;
 - The establishment and enhancement of the Public Information Offices working to increase public awareness and perception of anti-corruption measures should not be run only by the central authorities but should also involve local and regional authorities closely;
 - A programme of civic education to raise awareness in young people of the fight against corruption;
- 4.3. In this respect, propose that specific liaison committees involving representatives of all levels of authority (local, regional, national) be established with strong involvement of all National Associations of local and regional authorities in South-East Europe;
- 4.4. Support full use of Council of Europe instruments to prevent corruption (conventions, implementation by the member States of European norms, training and technical assistance);
5. Regarding the situation of refugees and internally displaced persons:
- 5.1. Call on all the governments concerned and the international community, in view of the problems faced by municipalities, to give them easier access to funding for the provision of adequate housing for refugees and internal displaced persons;
- 5.2. Welcome the transfer of the Migration, Asylum and Refugees Regional Initiative MARRI created in the framework of the Stability Pact for South Eastern Europe to regional ownership;
- 5.3. Call on Governments and local authorities to ensure unimpeded and non-discriminatory Access to Rights to refugees, returnees and displaced populations and particularly to employment, education and municipal services in line with international standards and acquis;
- 5.4. Call on governments to fulfill their commitment to resolve the issue of informal settlements as expressed in the Vienna Declaration on National and Regional Programmes regarding Informal Settlements in SEE, signed by Ministers from the Region on 28 September 2004;
- 5.5. Call on all the governments of SEE, with the support of the international community and the commercial and international finance institutions, to provide easier access to housing finance and cooperate in the development of national and regional guarantee funds;
- 5.6 Encourage municipalities in SEE to develop housing associations and cooperatives and explore public-private partnership options in order to develop a sound and balanced housing market accessible for all sections of society, including affordable and social rental housing based on existing best practice from post war reconstruction in Europe;
- 5.7. Request international organizations to associate the Congress and especially UN-HABITAT for sustainable Housing solutions and socio-economic integration of Refugees and United Nations High Commissioner for Refugees (UNHCR), with its activities on return and integration of refugees and internally displaced persons at local and regional level and; in this connexion, take account of the Congress report on “Migration

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