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Mission to Croatia

H e a d q u a r t e r s

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Background Report: Ruling by the European Court of Human Rights on the *Blecic v. Croatia* case

ECHR finds that judicial termination of occupancy/tenancy rights does not violate right to respect for home or right to peaceful enjoyment of possessions; Government re-iterates commitment to provide housing for returning refugees

Introduction

The most significant housing-related human rights concern and significant obstacle to refugee return in Croatia continues to be the lack of redress available to families who lived in socially owned apartments and whose occupancy/tenancy rights (OTR) were terminated during or following the war. The concerns of other categories of refugees – those in need of reconstruction assistance or assistance with repossession of their properties – are now being addressed by the Government. Nearly 24,000 households lost their apartments by court-ordered terminations of occupancy/tenancy rights during and following the war. In the formerly occupied areas there may be some 10,000 further cases of OTR terminated by law. Some termination proceedings continue in the courts today.

After intervention by the Mission and its international partners, the Government has enacted provisions for housing assistance to former OTR holders who wish to return and stay in Croatia. This has been done through two different programs, none of which are yet operational. Provisions for beneficiaries in the war-effected areas are contained in the July 2000 and July 2002 amendments to the Law on the Area of Special State Concern. In June 2003, the Government enacted provisions applying to beneficiaries outside the Area of Special State Concern (ASSC), which includes most of Croatia's large cities.

The European Court of Human Rights (ECHR) on 29 July held that the judicial termination of occupancy/tenancy rights in accordance with domestic law does not violate the right to home or the right to peaceful enjoyment of possessions guaranteed by the European Convention on Human Rights (Convention). The Court had not to address, in this case, the impact of occupancy/tenancy rights terminations on the return of refugees and displaced persons or the possible discriminatory effect of those terminations. Subsequent to the ECHR's decision, the Government has re-iterated its commitment to provide housing to all refugees and displaced persons who wish to return and stay, including former occupancy/tenancy rights holders. The provision of such housing is also one of the key points remaining to be implemented of the political agreement between the Government and the Independent Democratic Serb Party (SDSS).

The ECHR's Decision and Reasoning

Blecic v. Croatia involved the termination of the occupancy/tenancy rights of Krstina Blecic (born 1926) from Zadar. In July 1991, Blecic travelled to Italy to visit her daughter. As the ECHR observed, by the end of August 1991, "the armed conflict escalated in Dalmatia, resulting in severe travel difficulties in that area." From September, "Zadar was exposed to constant shelling and the supply of electricity and water was disrupted for over one hundred days". In October 1991, the Government terminated Blecic's pension and as a result she lost her right to medical insurance. In November 1991, third parties broke into the applicant's flat. Blecic returned in May 1992 to Zadar. The termination case, initiated in 1992 by the Zadar municipality that owned the flat, continued in the Croatian courts for more than 7 years. The Zadar County Court in October 1994 found that "… the escalation of the war and the applicant's health situation justified her absence". In November 1996, the Supreme Court reversed the decision of the Zadar County Court, finding that Blecic's absence was not justified. In November 1999, the Constitutional Court found that the Supreme Court had correctly applied the law and as a result the termination of occupancy/tenancy rights did not violate the Constitution.

The ECHR determined that Blecic's flat could reasonably be regarded as her home given nearly 40 years of residence and that the facts and circumstances of her departure indicated that she did not intend to abandon the flat, but intended to return. The termination of her occupancy/tenancy right by the domestic court thus constituted an interference with her right to respect for her home. The ECHR continued its analysis to assess whether the interference was justified, which depended upon three factors: whether the termination was "in accordance with law," whether it was in pursuit of a legitimate aim and whether it was "necessary in a democratic society" for attaining that legitimate aim.

The ECHR found that the termination was conducted according to the relevant domestic law, Article 99 of the Law on Housing Relations as interpreted by the Supreme Court. It further found that the law as applied to Blecic pursued a legitimate aim, "namely the satisfaction of the housing needs of citizens, and that it was thus intended to promote the economic well-being of the country and the protection of the rights of others." Thus the ECHR found that the only question was whether in applying the law, the domestic courts infringed Blecic's right to respect for her home in a "disproportionate manner".

The ECHR indicated that Croatia's margin of appreciation for implementing social and economic policies is a wide one. Thus, the ECHR would accept Croatia's judgment of what is necessary in a democratic society unless the means employed are manifestly disproportionate to the legitimate aim pursued. It noted that the Supreme Court found there was no justification for Blecic's absence consistent with prior case law and that the Constitutional Court deferred to that judgment in finding no constitutional violation.

The ECHR noted several interpretations by the Supreme Court of the Law on Housing Relations to the effect that "war events per se, without any particular reasons indicating the impossibility of using a flat, do not constitute a justified reason for the non-use of the flat." The ECHR also noted that the Supreme Court's interpretation that "the fact that a flat which is not being used by its tenant is illegally occupied by a third person does not, per se, make the non-use (of the flat by the tenant) unjustified. In other words, if the tenant fails to take the appropriate steps to regain possession of the flat within the statutory time-limits set forth in section 99(1) of the Housing Act… then the [illegal occupation of the flat by a third person] is not an obstacle to the termination of the specially protected tenancy". As a result,

the ECHR concluded that the termination could not be found an unreasonable interference with the right to respect for home.

The ECHR further determined that the termination and the resultant loss of the opportunity to purchase the flat did not constitute a violation of the right to peaceful enjoyment of possessions. Notably, the ECHR did not determine whether an occupancy/tenancy right constitutes a possession for purposes of the Convention, but assumed as such for purposes of its analysis.

The ECHR noted several observations made by the OSCE as *amicus curiae* that the *Blecic* case could be appropriately viewed only in the overall context of actions by the judiciary and legislature that had resulted in the mass termination of such tenancies during and after the Homeland War. It also noted the OSCE's observation that while all residents suffered some of the same war-related difficulties, ethnic minorities suffered additional hardships including harassment, threats, and in many cases forcible eviction from their homes.

The ECHR also cited the OSCE's view that termination of occupancy/tenancy rights had had a strong negative effect on minority return. In response, the ECHR noted the Government's position that the *Blecic* case "did not raise any question regarding the return of refugees or displaced persons or minority return." As part of its response to the OSCE *amicus curiae*, the Government submitted an overview of the measures taken to promote and assist the return of refugees and displaced persons, including measures specifically intended to provide housing for the return of persons whose occupancy/tenancy rights had been terminated.[1]

Scope and Impact of the ECHR's decision on pending cases

Blecic v. Croatia is an example of the nearly 24,000 cases of judicial termination of occupancy/tenancy rights that occurred in the major cities of Croatia during and after the armed conflict pursuant to the Law on Housing Relations, primarily on the basis of an "unjustified absence" of more than six months. Nearly 2,000 such terminations were conducted in Zadar alone, where the Serb population decreased from 10 per cent in 1991 to 3 per cent in 2001. While Blecic was present during virtually the entire domestic court proceeding, the vast majority of cases were conducted without the participation of the occupants who had fled or otherwise left the country, the vast majority of which were of Serb national origin.

The Mission's extensive case work experience suggests that many significant factors in the Court's weighting of interests in the Blecic Case may not have been typical for most cases. The facts and circumstances in other cases will be different both on the domestic law issue of "unjustified absence" and on the human rights question. Terminations seen as contrary to domestic law, for example terminations for participation in enemy activity in the absence of a criminal conviction contrary to the Constitutional Court's interpretation of the law, or

[1] Comments of the Government of the Republic of Croatia on the Third Party Submissions, 26 January 2004, paragraph 21. "Finally, in order to make it possible for persons to return who have lost their specially protected tenancy, the Government have [sic] developed the following measures. As regards the Areas of Special State Concern, their rights are regulated by the Act mentioned on Amendments on the Act of Areas of Special State Concern. However, having in mind the fact that the majority of these persons lived outside the mentioned areas, on 12 June 2003 the Government adopted a new programme for housing the rest of the former specially protected tenancy holders. That new programme provides two possibilities for those persons. Firstly, the Government will ensure protected lease for such persons under very favourable conditions (lease less than 0.5 EUR per 1m2). The second option is purchase of a flat under very favourable conditions, in accordance with the Act on Stimulated Housing Construction".

terminations where occupants were forcibly evicted and unsuccessfully sought repossession through civil remedies, could result in a different balancing of the interests.[2] Similarly, those cases in which the former occupancy/tenancy rights holders are still living in the flats and would face first-time eviction and displacement as a result of contemporaneous judicial termination might also result in a different balancing of interests since the interest in emergency housing found by the Court in Blecic no longer exists. Although most judicial termination proceedings were finalized years ago, some hundreds of cases continue in the Croatian courts to the present day.

Reactions to the ECHR decision

In reaction to the ECHR verdict, the Minister of Justice, Vesna Skare-Ozbolt, commented that "there can no longer be any pressure exerted on Croatia regarding occupancy/tenancy rights" and that "the housing problem of refugees needs to be resolved by alternative measures"[3]. The Ministry for Maritime Affairs, Tourism, Transport and Development (responsible for refugee return), without commenting on the ECHR decision, confirmed that the Government will provide housing solutions for all former occupants of socially owned housing according to Government programmes already adopted.

The SDSS (Serb Democratic Independent Party) vice-president and MP Milorad Pupovac indicated that the occupancy/tenancy rights issue remained a serious problem in Croatia and should remain on the Government's agenda. While conceding that the ECHR's decision was unfavorable for thousands who lost occupancy/tenancy rights during the Homeland War, he rejected any suggestion that the Government would alter its proposed housing care program[4]. In an additional press release[5] the SDSS stated that "the occupancy/tenancy rights are part of the former Yugoslav legacy and thus have to be equally treated in all the succeeding countries, which has been confirmed by Annex G of the Succession Agreement." The party emphasised that this case was "atypical since Blecic was neither a refugee nor displaced person".

In a press statement on 30 July the HoM stressed that regardless of the verdict by the ECHR, which addressed the legality of terminating occupancy/tenancy rights, the task of providing housing to all returning refugees in Croatia will still have to be fulfilled. He pointed out that former occupancy/tenancy rights holders in socially-owned housing are the most important remaining refugee category without housing options in Croatia. In order to close the file on refugee return, it is essential that those former occupancy/tenancy rights holders who wish to return are offered access to adequate housing. The HoM stated that the present government had committed itself to carrying out two programmes launched by the former government in order to provide housing to former occupancy/tenancy rights holders wanting to return. These programmes were adopted in 2000 and in 2003, but they have yet to show visible results. Ensuring the right of housing to all refugees who wish to return [and stay] in Croatia remains a main focus of the OSCE Mission to Croatia and its international partners.

The ECHR's decision was the subject of extensive media reports and editorial comment. While most media focused on the decision and reported the HoM's statement on remaining

[2] Similarly, commenting on the ECHR decision an official of the Ministry of Justice Office for Relations with the ECHR explained: "…had the domestic court tried to cover up violence against her or even that she was forcibly thrown out of her apartment, the verdict by the European Court would have been very different." See *Vjesnik*, 31 July 2004, page 5.

[3] See *Novi List*, 31 July 2004, page 9 and *Vjesnik*, 31 July 2004, page 5.

[4] See *Vjesnik*, 31 July 2004, page 5.

[5] See *Jutarnji List* 11 August 2004, page 6.

tasks to close the refugee file, the Government-owned daily *Vjesnik* carried the headline "Strasbourg defeats OSCE[6]" and "The position of Croatian courts confirmed[7]." Vjesnik subsequently published a letter from the HoM clarifying the Mission's position and correcting mistakes in the newspaper's initial reporting. The weeklies *Nacional* and *Globus* carried major feature stories emphasizing the continuing need to find housing solutions for former occupancy/tenancy rights holders who wish to return.

Current housing care arrangements for former occupancy/tenancy rights holders

Former occupancy/tenancy rights holders remain the largest category of refugees and displaced persons without housing options in Croatia. The Government has developed several models for *housing care* that correspond to the geographic areas where the different types of terminations occurred. The geographic areas in which *ex lege* termination occurred are largely synonymous with the war-affected areas, the so-called Areas of Special State Concern (ASSC), while judicial terminations such as Blecic occurred outside the ASSC.[8]

Former occupancy/tenancy rights holders from inside the ASSC were made eligible for housing through amendments adopted in 2000 and 2002 to the Law on ASSC. However, due to the low housing priority status accorded to this category, few if any former OTR holders have received housing under this programme. Former occupancy/tenancy rights holders from outside the ASSC, including Croatia's major cities, were made eligible for housing in June 2003 pursuant to a *Conclusion* adopted by the former Government. The application procedure opened in practice in spring 2004 and will close as of the end of 2004. As of the end of July 742 applications had been submitted. According to information available to the Mission as of the end of July, no decisions have been issued on these requests. It is a common feature of both programmes that only those who indicate they will live in Croatia and do not own any residential property in the former Yugoslavia are eligible to apply.

The Mission, together with the European Commission and the UNHCR are encouraging the Government to implement the housing care programmes for former occupancy/tenancy rights holders as a matter of urgency, and will support the implementation of the programmes. The need to extend the housing option to former occupancy/tenancy rights holders who wish to return is mentioned in the EC *avis* on Croatia's EU membership application and in the draft European Partnership Agreement with Croatia. It will also be one of the central points in a proposal to be made by the 9 Heads of Delegation and Missions of the EC, OSCE and UNHCR to the Heads of their host governments in Bosnia and Herzegovina, Croatia and Serbia and Montenegro to create the conditions for closing the refugee file within a finite time period.

In a meeting on 4 August, the HoM, the Head of the EC Delegation, the UNHCR Representative and the US Ambassador agreed with the Minister for Maritime Affairs, Tourism, Transport and Development, Bozidar Kalmeta that the housing care programmes for former occupancy/tenancy rights holders who wish to return to Croatia will proceed as planned, although the ECHR verdict in the *Blecic vs. Croatia case* has not been analyzed by

[6] See *Vjesnik*, 31 July 2004, page 5.
[7] See *Vjesnik*, 7 August 2004, page 4.
[8] After "Operation Storm," the Parliament adopted legislation in September 1995 pursuant to which occupancy/tenancy rights in flats in the newly liberated areas of Croatia would be terminated automatically by operation of law if the tenants were absent from their flats for more than 90 days. It is estimated that several thousand families, primarily of the Serb minority, had their occupancy/tenancy rights terminated in this manner immediately following the military operation and the ensuing mass departure of Serbs.

the Government yet. They further agreed that the need to provide housing care for all returning refugees and internally displaced persons is not affected by a decision on the legality of occupancy/tenancy rights terminations. A publicity campaign for the Housing Care Programmes will be undertaken with the assistance of UNHCR from early September. In a previous meeting, the Minister agreed to consider an extension of the application deadline, which expires at the end of the year, since the implementation of the programmes has been significantly delayed.