



ACCESS TO RIGHTS

**Legal challenges to the return of refugees
from Serbia-Montenegro to Croatia**

**Based on International Legal Alliances
Cross-Border Legal Programme 2001-2004**

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1. INTRODUCTION

On 20 April 2004, the European Commission issued its Opinion on Croatia's request for membership of the European Union. Following the opinion by the EC, the European Council granted Croatia, on 18 June 2004, formal EU-candidate country status. Negotiations are starting early 2005. The Strategy Paper of the Commission, submitted 6 October 2004, sets out the framework for negotiations. Croatia needs to make additional efforts, among others, in the field of minority rights, refugee returns and judicial reform.

International Legal Alliances (ILA)¹ provides in this paper an overview of the legal obstacles refugees are confronted with. These obstacles are well described in a number of reports produced by international governmental and non-governmental organisations. The purpose of this paper is to explain the importance of a Cross Border Legal Mechanism to bring about practical legal and administrative solutions in Croatia. The refugees from Croatia, who are now in Serbia, cannot obtain these solutions by themselves. There is a great need for providing assistance in obtaining Certificates of Citizenship, Birth Certificates, Land and Property Registers and other types of documents for refugees. The reason for this is that refugees who do not have valid travelling documents are unable to cross the border. Refugees have only access to a wide range of rights in Croatia as long they can show proper documents. In addition, expenses are often too high and fears too strong to return to obtain these documents themselves. Details on the required documents and their use are explained in Annex 1.

This overview points out the importance of the 'Restoration of Rights approach' in seeking sustainable solutions for refugees in the former Yugoslavia. The impossibility of physical return soon after a war should not mean that people lose all the rights that had been acquired in the past. If refugees/IDPs have their rights recognized and respected, they are then given a free choice to either return to their country of origin or to permanently integrate in their host country. The 'Restoration of Rights approach' is an important and fundamental tool in establishing the rule of law and respect for human rights. Based on ILA's experiences most refugees, potential returnees, have not registered for factual return as a result of the discouraging situation in the judiciary and the implementation of legislation. As a rule, refugees need to re-access their rights in Croatia through Court or Administrative procedures.

The general opinion is that the refugee file in Croatia can be closed when the 15% of the refugees who have expressed their interest for factual return will indeed have returned.² Focusing on solving the problems of this minority does not address the

¹ International Legal Alliances is a Dutch organisation, which has been working since 1996 on the reintegration and democratization issues in the former Yugoslavia. ILA has been funded by the Netherlands' Ministry for Foreign Affairs, the European Union and UNHCR. ILA implements the cross-border legal programme to assist the refugees from Croatia now in Serbia-Montenegro (SCG) in the return and access to their property and acquired rights in Croatia. Complementing the cross-border legal programme, ILA has been implementing a Legal Assistance and Capacity Building Programme in Croatia. ILA is working with Croatian lawyers through: 1) its network of lawyers and paralegals throughout Croatia 2) implementing partners: the Humanitarian Centre for Reintegration and Tolerance (HCIT) in SCG and e.g. ToD in Croatia.

² See EU Opinion on Croatia of April 2004, pg. 27-29: "A survey carried out for the OSCE Mission Croatia in the second half of 2003 has yielded a potential for return of 15% of the refugees currently in SaM and BiH, which corresponds into a number of approximately 30,000 individuals. The main issues refugees face upon return are housing, mines, economic re-integration, potential harassment based on "war crimes" allegations and the inhospitable atmosphere within the receiving local communities. In addition there are administrative problems such as non-recognition of pension rights based on working years in the formerly Serb controlled areas. In terms of economic re-integration, the Government has put in place measures for the economic development of the areas of return but with no specific measures intended for returnees."

issue of access to rights of the majority of the refugees, who have not registered to return to Croatia. An additional condition for the successful solution of the refugee issue, besides the improvement of the legal system in Croatia, should be the development of an effective and efficient cross-border mechanism to ensure access and restoration of acquired rights.

2. THE RANGE OF THE PROBLEM (EXECUTIVE SUMMARY)

Number of Population Affected by the Problem

In the 1990s, a total 402,000³ Serbs from Croatia became either refugees (370.000) or IDPs (32.000). The majority of them (330.000) left Croatia for the Federal Republic of Yugoslavia, now Serbia and Montenegro (SCG). According to the census of 1991, members of the Serb minority constituted 12,2% of population of the Republic of Croatia. The census of 2001 set this percentage at 4.5%. By the end of 2003, some 110.000 are registered as having returned to Croatia, while the remainder has not yet returned and are still refugees in SCG and in Bosnia & Herzegovina (BiH). International and Local organizations report that, after a short stay in Croatia, many of the registered returnees depart again for SCG or BiH. The number of permanent stays is estimated at 2/3⁴ of the total return.

Only a small minority of ethnic Serb refugees still has expressed that they would wish to return.

"A recent survey conducted by a Zagreb-based polling agency suggests that a large number of Croatian Serbs still outside Croatia have integrated into their places of exile, primarily as a result of long periods of displacement and the persisting obstacles to their return to Croatia. Around 14% said they are considering returning to Croatia while approximately 42% stated that access to housing would have a positive impact in deciding whether to return."⁵ However, in order to secure sustainable solutions and keeping in mind that voluntarily return should not be time limited, former refugees who obtained citizenship status in SCG and BiH as well as those who kept their refugee status are still in need of recognition and access to their acquired rights in Croatia.

Nature of Legal Problems and Estimated number of Related Cases – An Overview

Reclaim of Private Properties

According to the OSCE, as of 30 July 2004, there are still over 2.000 pending cases of occupied private properties – housing units belonging to refugees, of which there are 55 cases of illegal occupation. When taking into account some additional factors, the number of property that factually has not been returned may be much larger. Many cases of illegal occupation of other kind of properties, as business premises and agriculture land remain problematic and unsolved.

Occupancy/Tenancy Rights (OTR)

According to various sources, between 30.000 and 45.000 ex-occupancy/tenancy rights holders are registered as refugees or war-affected persons in Serbia and Montenegro and elsewhere. Since most former holders of tenancy rights have families, the number of persons affected by this problem is three to four times higher, bearing in mind that an average household has three to four members. Former OTR holders continue to have their rights as pre-war tenants denied as

³ Ibid, pg.27

⁴ OSCE Mission to Croatia, Status report no.13

⁵ OSCE Mission to Croatia, Status report no.14, The PULS agency made these findings on the basis of a sample of 1.000 Croatian Serbs who fled Croatia during and after the armed conflict and who currently reside in SCG

opposed to the situation in BiH where approx 99% of property including OTR have been restored.

Compensation for Properties / Housing Damaged as a result of 'Terrorist Acts'

A large number of Real estate belonging to refugees/IDPs has been destroyed and damaged by 'terrorist acts'. These properties are located in areas that were controlled by Croatian authorities, including the former Krajina Region following operations Flash and Storm in 1995. Exact figures of properties destroyed and damaged by 'terrorist acts' are not available, however based on various estimates the number could be between 30.000 and 40.000. The new Legislation (2003) does not provide for compensation for damaged properties and denies the right of owners of damaged property to claim compensation through court procedures or even to continue procedures started in the past. Instead of providing legal remedies for compensation, the 2003 law refers owners of property damaged by terrorist acts to seek a solution under the Law on Reconstruction, which applies in limited cases only.

Administrative and/or Declaratory Proceedings and War-Related Obligatory Claims

There are hundreds of thousands refugees in need of support for various administrative proceedings. This support is important for the majority of refugees who are in SCG and who are not in a position to start these procedures in Croatia. To have access to property and other rights in Croatia, often a statement of the Court is needed.

Claims related to contractual obligations and some acquired rights (e.g. salary and pension payments) were often denied or not met due to *force majeure* caused by the conflict and war related activities.

War Crimes Prosecutions

Charges are raised and non-transparent criminal proceedings are underway for war crimes and genocide, without legally relevant evidence and without distinction of the concrete acts attributed to a particular defendant. As a result many innocent citizens have spent time in detention units or have been tried *in absentia*. Accurate numbers of war crimes cases under investigation or prosecution are not available; however it is estimated to be several thousand cases. A few hundred persons are actually imprisoned, charged with war crimes, but just the risk of arrest is enough for the majority of Serb males not to return to Croatia.

Document Cases

Potentially there are hundreds of thousands of requests for obtaining various documents from Croatia by the refugees/IDPs currently residing in Serbia and Montenegro (SCG). These documents include Certificate of Citizenship (Domovnica), Birth Certificates, Marriage Certificates, Death Certificates, etc. Those refugees in SCG who wish to legally integrate into the country of exile, have to present Croatian birth certificates and other documents to be able to apply for SCG citizenship.

Concluding remarks and suggestions

- Free legal assistance and documents provided by cross-border programs should be intensified to secure faster refugee returns and restoration of rights strategies for thousands of potential beneficiaries residing outside Croatia and not having an easy access to Croatian public institutions, courts and administrative bodies

- Annex G of the Succession Agreement has been recently ratified by Croatia and offers an excellent basis for a cross-border mechanism for the restoration of rights.
- Special attention by the international community should be very practical, and be focused on providing support for the implementation of regional (cross-border) restoration of rights mechanisms.

3. LEGAL CHALLENGES TO REFUGEES RETURN FROM SERBIA & MONTENEGRO TO CROATIA AND RESTORATION OF RIGHTS

PROPERTY/HOUSING

Return largely depends on the fact whether one can return to one's house or flat. Most times this is impossible: houses are destroyed or occupied and tenancy rights are lost. And often houses are sold far under the market value under pressure or abuse of circumstances (see F below). These are important factors impeding the return. But also in cases of not wanting to return or being unable to return, the issue of acquired rights and property restoration in Croatia is important. A return date may be set or foreseen in the (distant) future or property in Croatia may be sold. War should not be a reason for expropriation. Nine years after the end of a war, one can expect the special (war-related) laws to protect the occupants to be withdrawn in favour of the owners.

A/ Reclaim of Private Property

A large number of refugee/IDP homes and other kinds of real estate that were not damaged during the conflict in the 1990s have been, legally or illegally, occupied by third persons.

“ Legal ” Temporary Occupation

The amended law on the Areas of Special State Concern of July 2002 invalidates the Program for Return (1998), dissolves the housing commissions and cancels the temporary occupation decisions, which have been established and issued on the basis of the Law on the temporary takeover and administration of specified property (1995). Furthermore, articles 27 of the amended law provides in an administrative procedure for repossession of property. Either on the basis of a request of the owner, or when there is no request. If no request for repossession is made then the Ministry should ex officio take a decision on the return into possession before 31 December 2002. This deadline for the return of property has been postponed several times and is now until the end of 2004. The OSCE Mission to Croatia anticipates that property repossession will be completed in some municipalities only in mid-2005.⁶

In reality the repossession does not necessarily mean actual repossession of the property, since the temporary user has the right to continue to use the house of the refugee until such time when the Croatian State can offer alternative accommodation. In the case the house remains de facto occupied, the owner – mostly in theory – could receive some compensation. Years after the war, there is no reason why a refugee should be in this position to provide his/her property for free or with symbolic compensation.

Illegal occupation

Illegal occupants are those who have never been provided an administrative decision according to The Law on Temporary Takeover. These occupants are in the majority Croat IDPs or Croat refugees from BiH. Furthermore illegal occupation concerns business premises and agricultural land.

⁶ Ibid

Illegal occupants have no right to housing or alternative (temporary) accommodation, so are required to vacate the temporarily occupied house or apartment. For the eviction and repossession in these cases the amended Law on Areas of Special State Concern (July 2002) provides a procedure. The Ministry of Maritime Affairs, Tourism, Transport and Development (the Ministry) should inform the temporary occupant of the need to vacate the house/apartment. If not vacated the Public Prosecutor's Office should, following the receipt of documents submitted by the Ministry, initiate the eviction process before the Courts.

Many properties are being looted before their repossession and not suitable for physical return of the owner and his/her family. In several of the remaining illegal occupancy cases, occupants counterclaim for the reimbursement of investments made without the consent and knowledge of the owner. As a result, courts have made the physical repossession of property conditional on compensation for such investments in a number of cases.⁷

ILA's Experience

The Cross Border Legal Programme has invoked directly the European Convention on Human Rights and Fundamental Freedoms (Article 1 of Protocol 1) to reclaim 'legally' occupied property. This has resulted in the courts accepting competence in these proceedings, which had not been the case in the past when the courts referred the cases to Administrative Proceedings. Most Municipal Courts were not accepting private lawsuits for eviction due to instructions issued by the Supreme Court in 1999. Nevertheless in some parts of Croatia such as Western Slavonia private lawsuits for eviction have always been accepted by Civil Courts.

For examples – ILA's representative cases on Reclaim of Private Property – see Annex 3

B/ Occupancy/Tenancy Rights

Occupancy/Tenancy rights (OTR) were a special legal construction of the Socialist Federal Republic of Yugoslavia (SFRY). It concerns a very well protected dwelling right with elements of property and has no equivalent in any other post-communist country.

General features of the OTR legal construction:

- one received a flat after working for a few years with a company, but flats were sometimes also provided for social cases
- there was no rent payment (only a symbolic monthly fee), however any worker (also the ones who had not received a flat) made monthly payments directly from his salary (around 3%) in the solidarity fund, from which socially owned flats were constructed and maintained
- one had to stay with the company for a (certain period of time) to enjoy the full tenancy rights, and could stay also after ceasing to work for that company
- tenants enjoyed most elements of property rights, except the right to sell the flat. However, there was a possibility to exchange the flat
- in short the tenancy right holder had many rights similar to property: a) tenancy rights represented the right to durable use of apartment, b) the holder of tenancy right did not pay the market value but a symbolic rent, c) throughout the period of use the holder of tenancy right invested his own funds into the maintenance of the apartment or increase of the value thereof, d) the status of the holder of tenancy rights with identical rights and

⁷ OSCE Mission to Croatia: Background Report on the Return of Illegally Occupied Residential Properties, 30 July 2004, pg.3

responsibilities was enjoyed by both spouses, e) the holder of tenancy rights was allowed to exchange the apartment for another one, f) the holder of tenancy right could let part of the apartment, g) the members of the household or some persons not falling within that category were allowed to continue using the apartment in the same status as the holder of the tenancy rights

The Serbs who had to flee in the period 1991-1995 lost their tenancy rights. This unresolved issue is impeding the return to the urban areas where most refugees used to live in collectively owned flats. According to various sources, between 30.000 and 45.000 ex-occupancy/tenancy rights holders are registered as refugees or war-affected persons in Serbia-Montenegro.

The tenancy right of a citizen to use the socially-owned apartment for an indefinite period was stipulated by the Constitution of SFRY, the Constitution of the Socialist Republic of Croatia and the federal Law on Housing Relations. After 1991 with the disintegration of Yugoslavia, Croatia has arranged OTR in three different manners according to the concerned region of the country.

1. Croatia proper, 1991/95, non-occupied areas.

During the privatisation process, the tenancy rights holders had the right to buy the flat for a price that was much lower than the market value. The Serbs who fled Croatia proper lost their OTR. According to the pre-war Law on Housing Relations regulating tenancy rights, leaving a flat longer than 6 months would lead to termination of the right, unless there was a situation of justified absence, e.g. absence caused by *force majeure*. Actually, more than 23,000 OTR holders / families have lost their tenancy rights in *in absentia* Court proceedings in areas being controlled by Croatian authorities during the conflict. A 'Conclusion' of the Croatian government of June 2003 provides in theory alternative housing possibilities for former OTR holders who register for return before 31 December 2004. This regulation has no clear legal status and does not provide in the restoration of acquired rights.

2. The areas of special state concern (former UNPA zones except sector East)

After the 1995 military operations Flash and Storm the majority of Serb refugees lost their OTR on the basis of the Law on the Lease of Apartments in the Liberated Areas of 27 September 1995. According to this law, tenancy rights ceased to exist if the tenancy rights holders would not have returned within 90 days after this law entered into force (1995). Return at that moment was impossible since the borders were closed and the refugees had no valid travel documents.

Former OTR flats in Areas of Special state Concern have not been privatised yet and should be returned to their former tenancy holders. Serb refugees/IDPs former OTR holders have been given the lowest priority in obtaining housing and are placed below temporary occupiers and Croatian settlers.

3. Eastern Slavonia, under UN temporary administration (1996-98)

OTR have not been terminated neither through individual court procedures nor *ex lege*. Based on the Law on the Lease of Apartments (1996) OTR has been abolished as a legal category and former OTR holders have received the status of protected lessee.

Annex G of the Succession Agreement for the former Yugoslavia, which entered into force on June 3, 2004, mentions in Article 6: 'Domestic legislation of each successor State concerning dwelling rights (*stanarsko pravo*) shall be applied equally to persons who were citizens of the SFRY and who had such rights, without discrimination on any ground such as sex, race, colour, language, religion, political

or other opinion, national or social origin, association with a national minority, property, birth or other status.’

In BiH, OTR has been restored to all and holders of restored OTR had the right to buy the flats. The Human Rights Chamber in BiH has ruled that OTR represents a property interest in the sense of Protocol I of the European Convention for Human Rights.

The European Court of Human Rights in Strasbourg took the first decision on judicial termination of OTR on 29 June 2004 (case *Blecic vs. Croatia*). The Court did not decide whether or not OTR equals a property interest.⁸ The Court, held that the judicial termination of OTR in the case of Ms Blecic who left her flat before the war to go to Rome was a question of merit and that requires an assessment of facts, which is not the competence of the court. The (OSCE) Mission’s extensive case work experience suggests that many significant factors in the Court’s weighing 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.⁹ The Court had not to address, in this case, the impact of OTR terminations on the return of refugees and displaced persons or the possible discriminatory effect of those terminations.¹⁰ There is a need in each OTR termination case for factual analysis whether abandoning of a home for more than 6 months was result of the *force majeure* and, following it, whether 6 months absence from home could be considered as justified or not.

For example – ILA’s representative cases on Occupancy/Tenancy Rights – see Annex 4

C/ Property/Housing damaged as a result of ‘terrorist acts’: Compensation for Damages vs. Reconstruction

In the course of war real estate was completely or partially destroyed. Depending on the causes, these damaged properties can be divided into two groups: those damaged as a direct result of conflict and war related activities and those damaged by ‘terrorist acts’.

Properties damaged by ‘terrorist acts’ are located in areas that were controlled by Croatian authorities during the war period and mainly belong to Serb refugees/IDPs. The properties were looted and destroyed in order to prevent return. At that time (1995), the regulation¹¹ (Law on Obligations, article 180) stipulating the State’s responsibility for this type of damage was in effect. In order to exclude any possibility for the owners/refugees of damaged property to receive compensation, the Croatian Parliament suspended this provision in 1996 by adopting the ‘Law on changes and amendments of the Law on Civil Obligations’, which suspended provisions prescribing an objective responsibility of the state for compensation from the state when property damage resulted from acts of violence that the state was under duty to prevent.

The European Court of Human Rights held, in two judgements of 2003, that suspension of pending cases before Croatian courts violated the rights of access to

⁸ OSCE Mission to Croatia, Letter to the Chief Editor of Vjesnik daily, 13 August 2004

⁹ OSCE Mission to Croatia, Background Report: Ruling by the European Court of Human Rights on the Blecic v. Croatia case

¹⁰ Ibid.

¹¹ Article 180 paragraph 1 of the Law on Obligations: “Social and political community whose bodies were in charge of preventing such damages shall be held responsible for any damage caused by death, physical injury or damage and destruction of the property belonging to a physical person, made in the act of violence or terror and during public protests and events.”

Court (Article 6 of the European Convention for Human Rights). As a result, in July 2003 Croatian Parliament adopted a set of laws in the field of war damages, but which only provide for compensation in cases of personal injury or death and still do not provide for the possibility to claim compensation for damaged properties. The 2003 Law on Responsibility for Damage caused by Terrorist Acts and Public Demonstrations eliminates the rights of owners to claim compensation for damaged property through court procedure or for the continuation of procedures started in the past. It further refers those who initiated compensation court procedures to seek for a resolution under the Law on Reconstruction.

The new legislation does not provide for material compensation. The issue is only covered by reconstruction provisions, which have a limited scope¹².

As a consequence of the absence of legislation foreseeing damage compensation, all ILA's cases have been suspended or the trials are not scheduled, so complaints are filed in order to exhaust all the legal remedies before the Croatian Courts and thus, open the possibility of appealing to the European Court for Human Rights in Strasbourg.

For examples on ILA's representative cases on Compensation for Damages – see Annex 5

ADMINISTRATIVE PROCEEDINGS

To have access to property and other rights in Croatia, often preliminary proceedings have to be started when it concerns an inheritance or Official Declarations where documentation has been lost or is not recognised. The costs of these proceedings are low and relates mostly to an administrative act. The refugees can in this way access some property and other rights in Croatia, while not returning. This is important for the masses of refugees who are not able to start these procedures across the border in Croatia, no matter whether they decide to return to Croatia or to stay where they are exiled.

D/ Inheritance proceedings

A great number of refugees have died. Their heirs (who are also refugees) need to go to court in Croatia to start inheritance procedures and to obtain a ruling in their inherited property. According to the law, the initiation of inheritance proceedings before the competent municipal courts in order to establish the rights of the legal and other heirs is mandatory (contrary to the practice in most of the Western European countries). Without in-court proceedings and without obtaining valid court decisions on inheritance, defining the subject of inheritance, naming the heirs etc. transfer of rights from a deceased person to the heirs is not possible. Completing inheritance proceeding is a key precondition for the heirs to access and protect the rights mentioned in A, B and C above before the competent courts and administrative institutions.

The main problem with inheritance proceedings is their length. They usually last well over a year although they may be, with good preparations and in cases with no contradictions or disputable facts, completed after one appearance before a court.

E/ Administrative proceedings to create proof

Many relevant documents as well as land registers, birth registers, citizenship registers, death registers etc. have been destroyed during the war period. Thus, as

¹² The Law on Reconstruction stipulates reconstruction under some restricting conditions as: one needs to register for return and live in the house for 10 years, only part of the house will be reconstructed, one may only obtain reconstruction assistance when formally registered as residing in the house in question before the war, the owner has to prepare the ground (thus have to return, but where to stay in the meanwhile?), the deadline for submitting applications has expired on 30 September 2004.

a precondition to have access, for example, to one's property or to start in-court inheritance procedures, often first a declaratory proceeding needs to be started to prove ownership on property or land.

ILA's Programme has started a number of cases to (a) prove death and pronounce missing persons as dead, as a precondition for an inheritance proceeding; and (b) to establish and prove all kinds of evidence, especially with regard to ownership of real estate. Securing evidence is needed in order to create conditions for the initiation of claims for the protection of the right to ownership or compensation: registration and evaluation of real estate and movables, court experts' findings, damages evaluations, etc.

As mentioned under the heritage proceedings, the proceedings take much too long. However, in general, this is a type of case where proceedings are usually validly finalized before the courts within six months.

WAR-RELATED OBLIGATORY CLAIMS: FORCE MAJEURE, ABUSE OF CIRCUMSTANCES, DURESS, DELAYED PAYMENT OF DEBTS ETC.

During the war, contractual obligations and some acquired rights were often not met or exercised due to *force majeure* caused by the conflict and war related activities. This however should not be a reason for contractual obligations not to be respected at all (salary payments, contractual obligations, pension payments etc) or on the other hand to claim the debt with increased high legal interests and penalties (a practice of Slavenska Banka and a few other banks; An ILA paper focusing on this issue is available upon request). According to art. 137 of the Croatian Law on Obligations: when an obligation cannot be fulfilled due to insuperable obstacles, the debtor will have to pay back on the basis of 'unjust enrichment'. Also during the war, circumstances were often used to 'force' obligatory relations and especially unfair real estate transactions.

F/ Annulment of contract cases

The cases concern the request for annulment of contracts in relation to the transfer of real estate, which were concluded under abuse of circumstances or under pressure or duress (forgery, fraud, embezzlement, threats to -family members' - life etc). In the majority of these cases possibilities of invoking legal remedies have expired, so one must prove the existence of a criminal act that led to conclusion of the contracts.

Furthermore, a large number of cases are contracts concluded with the APN (State Agency for the transfer of Real Estate). These contracts were concluded not according to the normal legal procedure and with stipulations that were in direct breach with the law; e.g. the clause whereby the vendor waives his right to refute the contract on the basis of damage amounting to over half of the value *a priori*, which is in direct contravention with the regulations of the Law on Obligations.

The Agreement on Succession for the former Yugoslavia provides for the 'Restoration of Rights' approach. Annex G Article 2 para. a) sub-para 2 states: 'Any purported transfer of rights to movable or immovable property made after 31 December 1990 and concluded under duress or contrary to sub-paragraph (a)¹³ of this Article shall be null and void.'

¹³ " The rights to movable and immovable property located in a successor State and to which citizens or other legal persons of the SFRY were entitled on 31 December 1990 shall be recognised, and protected and restored by that State in accordance with established standards and norms of international law and irrespective of the nationality, citizenship, residence or domicile of those persons. This shall include persons who, after 31 December 1990, acquired the citizenship of or established domicile or residence in a State other than a successor State. Persons unable to realize such rights shall be entitled to compensation in accordance with civil and international legal norms."

In this field, total inconsistency and a variety of judicial practices has been observed as well as an extremely laborious process of proving the facts of a criminal act (fear from taking the stand of the witnesses etc.).

G/ Pensions: Debt payment litigations

The initiated cases are against the Croatian Bureau for Pension and Disabled Insurance, for payment of acquired but not received pension portions in a particular time period in the past.

Although first there was a positive court practice in such cases, it has been noticed lately that the courts in Croatia in general refuse such charges. This concerns acquired rights, which as such, represent private property according to the standards prescribed by the European Convention for Human Rights and confirmed numerous decisions of the European Court of Law in Strasbourg.

ILA has several illustrative cases, where legal remedies have been submitted and final court decisions are expected.

For examples – ILA’s representative cases on Debt Payment Litigations – see Annex 6

H/ Employment relation’s litigations

One of the consequences of the war is that tens of thousands of refugees lost their jobs, and consequently all employment-related rights: outstanding salaries, workbooks, contributions for social and health insurance, disabled allowance, indemnities, etc ceased. Last payments were not made. Irrespective of the number and significance of these cases the ILA took only 5 of these cases, primarily because of the extremely lengthy procedure of collecting documents and complexity of preparation of each of them. Notwithstanding, it is a legal field that no one has worked systematically on, and so many issues related to exercise of employment rights remain unanswered.

A specific problem and an ever-open issue is the fact that very few refugees managed to exercise the rights on the basis of privatisation in companies they worked in until the beginning of the war.

WAR CRIME PROSECUTION AND THE IMPLEMENTATION OF THE AMNESTY LAW

Although war crimes prosecution after a war is important to combat impunity, the obscurity around war crimes prosecution in Croatia and around the implementation of the Amnesty Law is blocking the return, especially of men in the age categories between 25 and 70 and their families. The Amnesty Law, of course, does not cover war crimes and genocide, or regular criminal acts cases.

There is a number of cases in which innocent people have been condemned for war crimes. Although this is not a massive practice in Croatia, it keeps the pressure constant. Great numbers of lists with names of ‘war criminals’ circulate and sometimes at unpredictable places and times, some of these lists lead to massive indictments. Milos Horvat was in Germany during the war but got sentenced for war crimes (see ILA’s report of 1998 on the Amnesty Law, available upon request). There are more recent arrests and sentences for -often- irrelevant reasons, this practice has not ceased, and is even on the up rise.

In violation with the basic provisions of the Law on Criminal Proceedings, charges are raised and criminal proceedings are underway for grave criminal acts, often without legally relevant evidence and without distinction of concrete acts attributed

to a particular defendant. Along with mandatory detention, this practice resulted in many innocent citizens spending their time in jails or being tried *in absentia*.

Mostly, the charges are against civilians. This criminal act has been extremely broadly defined in the (basic) Criminal Law of the Republic of Croatia (it covers even 45 different incriminations), which has resulted in difficult consequences in the court practices.

For examples on ILA's representative cases on War Crime Prosecution – see Annex 7

Annex 1 International Legal Alliances Cross-Border Legal Programme 2001-2003: An overview

1. CROSS BORDER COURT REPRESENTATION AND OBTAINING OF DOCUMENTS

The cross border legal programme has an office in Novi Sad (SCG) where it is receiving requests for court representation and the obtaining of documents from refugees in SCG through the field programme in Vojvodina and referral. The files of the refugees are brought to the Vukovar office (Croatia) from where they are dispatched to and taken by the network of attorneys and paralegals all over Croatia. The lawyers' network has met regularly over the last 3 years in conferences in which often representatives of the courts, prosecution and relevant Croatian also participated.

The refugees are facing double obstacles in having their rights in Croatia returned. They have to undertake various types of legal and administrative procedures across the border in Croatia. Once when procedures are initiated they face a great number of obstacles in the legal system in Croatia, which is not only inefficient in general but is functioning in a discriminatory way towards the refugees.

Due to limited financial and human resources ILA has not been able to provide support to all clients in need. Selection of legal cases that were assisted by ILAs partner lawyers and represented before the Croatian courts has been done by ILAs coordinators and partner organizations attorneys based on agreed criteria as positive legal diagnosis and nature of a case; difficulty of violated right and consequences for a client; social position of a client; expected expenses and length of a procedure etc.

In this context, to have the greatest return on investment, the Programme has been trying to select and deal with the various kinds of cases in a balanced manner.

As on 31 May 2004, the Programme had prepared 283 cases for court cases in Croatia.

The legal structure of cases is as follows:

Housing

a/ reclaim of property/house	98	or	34.60 %
b/ tenancy Rights	27	or	9.50 %
c/ compensation for the damage cases	26	or	9.20 %

Declaratory proceedings

d/ inheritance proceedings	66	or	23.30 %
e/ extra-judicial proceedings	14	or	4.90 %

War related obligatory claims: Force Majeure/abuse of circumstances/duress

f/ annulment of the contracts cases	11	or	3.80 %
g/ pension debt payment litigations	18	or	6.30 %
h/ employment relations	5	or	1.70 %
i/ war crime prosecution	18	or	6.30 %

By now, 63 cases have been finalized by the valid decision of the first-instance court or in some other way, of which 47 was solved in favour of ILA's clients; 16 received a negative verdict. Out of 47 positively resolved cases, 20 were related to reclaiming house/property, 18 were inheritance proceedings, 2 extra-judicial proceedings, 2 criminal, 2 tenancy rights and 1 compensation for damages, 1 debt repayment and 1 employment relations case. Other cases are still ongoing as the first instance proceedings or proceedings before higher instances (County courts,

Supreme court of the Republic of Croatia, Constitutional court of the Republic of Croatia) that are continuously followed up.

The effect of the cases can be expected to be much more important than the simple adding up of these single cases. A considerable caseload closed / won may have as effect a weakening of the resistance / bias in the Croat courts until the point that they give up their obstruction. It could also have an effect on the other refugees, who had given up on regaining their rights, in recuperating them. Test cases taken to and won before the European Court for Human Rights could contribute in solving the legal matter for the entire group. The cases, which are dragging and/or discriminatory form concrete examples of the problems in the legal system in Croatia, which is determined to become member of the EU. Perspective on EU membership may be an incentive to solve these problems.

2. ISSUANCE OF ADMINISTRATIVE DOCUMENTS (*administrative cases*)

Through powers of attorney and the paralegal network in Croatia 10.488 documents were obtained for refugees from Croatia in SCG in the period 15 February 2001 to 31 October 2004. The breakdown per type is as follows:

- Citizenship certificates (Domovnica)	3.100	29.56%
- Birth certificates	3.909	37.27%
- Ownership certificates	341	3.25%
- Death certificates	59	0.56%
- Marriage certificates	407	3.88%
- Various attestations and certificates	2.214	21.11%
- Working booklets	300	2.86%
- School diplomas	158	1.51%
TOTAL	10.488	100.00%

In the same period paralegals obtained also 1394 written return information /certificates/, for cases where there is no data in registry books or where the registry books have been destroyed, damaged or missing. On the basis of this information new requests for entry into the registries are made, and relevant documentation can be obtained. Thus, the total is: 11.882 documents, including these informative certificates.

This element of the Legal Programme is exceptionally significant as it represents the only way for a (still) large number of refugees to obtain basic documents since the beneficiaries who do not hold travel documents and/or are objectively not in position to obtain needed documents personally. Especially important are birth and citizenship certificates as a precondition for legal resolution of rights secured for those with the citizenship status. Bearing in mind that citizenship represents the elementary public and legal relationship between the state and an individual, opening the doors to exercise of all private, political, economic and other rights based in the law, the Legal Program provides a large number of refugees realistic legal assumptions to resolve fundamental civic rights and freedoms before the competent bodies in the republic of Croatia, resolution of property rights and finally the right to return. Namely, one cannot appear as party in any proceedings before the state bodies, courts or institutions in Croatia without these documents.

Citizenship documents are issued by the registry offices in the municipalities of origin or by the Croatian Consulates if one resides abroad. Despite the fact that the Croatian Ministry of Foreign Affairs has guaranteed, in a letter of January 2004, to UNHCR that its consular offices in SCG are providing these documents, in reality this has not been the case. Pressure should be put on Croatian authorities to create efficient technical possibilities for obtaining and issuing citizenship documentation at Croatian consulates in SCG.

At present, the most efficient way to arrange documentation is through the power of attorney. So far no specific problems and obstacles have been noticed in ILA's activities in this area, rather significant results and success have been achieved.

Annex 2 TEXT OF THE SUCCESSION AGREEMENT AND ANNEX G

AGREEMENT ON SUCCESSION ISSUES

Bosnia and Herzegovina, the Republic of Croatia, the [former Yugoslav] Republic of Macedonia, the Republic of Slovenia and the Federal Republic of Yugoslavia [Serbia and Montenegro], being in sovereign equality the five successor States to the former Socialist Federal Republic of Yugoslavia,

Mindful of the need, in the interests of all successor States and their citizens and in the interests of stability in the region and their mutual good relations, to resolve questions of State succession arising upon the break-up of the former Socialist Federal Republic of Yugoslavia,

Having held discussions and negotiations under the auspices of the International Conference on Former Yugoslavia and the High Representative with a view to identifying and determining the equitable distribution amongst themselves of rights, obligations, assets and liabilities of the former Socialist Federal Republic of Yugoslavia,

Acting within the framework of the mandate given to the High Representative by the Decision of the Peace Implementation Conference held in London, 8-9 December 1995, and in the light of agreements between the successor States and the Declarations adopted by the Peace Implementation Council and its Steering Board,

Bearing in mind the acknowledgement by the Security Council in its Resolution 1022(1995) of the desirability of a consensual solution to outstanding succession issues,

Confirming the decision reached on 10 April 2001 concerning the distribution of the former SFRY's assets held at the Bank for International Settlements (the text of which decision is appended to this Agreement),

Demonstrating their readiness to co-operate in resolving outstanding succession issues in accordance with international law,

Have agreed as follows:

Article 1

For the purposes of this Agreement »SFRY« means the former Socialist Federal Republic of Yugoslavia.

Article 2

Each successor State acknowledges the principle that it must at all times take the necessary measures to prevent loss, damage or destruction to State archives, State property and assets of the SFRY in which, in accordance with the provisions of this Agreement, one or more of the other successor States have an interest.

Article 3

The Annexes listed below set out the terms on which the subject matter of each Annex is settled:

- Annex A: Movable and immovable property;
- Annex B: Diplomatic and consular properties;

Annex C: Financial assets and liabilities (other than those dealt with in the Appendix to this Agreement);
Annex D: Archives;
Annex E: Pensions;
Annex F: Other rights, interests, and liabilities;
Annex G: Private property and acquired rights.

Article 4

(1) A Standing Joint Committee of senior representatives of each successor State, who may be assisted by experts, is hereby established.

(2) This Committee shall have as its principal tasks the monitoring of the effective implementation of this Agreement and serving as a forum in which issues arising in the course of its implementation may be discussed. The Committee may as necessary make appropriate recommendations to the Governments of the successor States.

(3) The first formal meeting of the Standing Joint Committee shall be convened, at the initiative of the Government of the Republic of Macedonia, within two months of the entry into force of this Agreement. The Committee may meet informally, and on a provisional basis, at any times convenient to the successor States after the signature of this Agreement.

(4) The Committee shall establish its own rules of procedure.

Article 5

(1) Differences which may arise over the interpretation and application of this Agreement shall, in the first place, be resolved in discussion among the States concerned.

(2) If the differences cannot be resolved in such discussions within one month of the first communication in the discussion the States concerned shall either

(a) refer the matter to an independent person of their choice, with a view to obtaining a speedy and authoritative determination of the matter which shall be respected and which may, as appropriate, indicate specific time-limits for actions to be taken; or

(b) Refer the matter to the Standing Joint Committee established by Article 4 of this Agreement for resolution.

(3) Differences which may arise in practice over the interpretation of the terms used in this Agreement or in any subsequent agreement called for in implementation of the Annexes to this Agreement may, additionally, be referred at the initiative of any State concerned to binding expert solution, conducted by a single expert (who shall not be a national of any party to this Agreement) to be appointed by agreement between the parties in dispute or, in the absence of agreement, by the President of the Court of Conciliation and Arbitration within the OSCE. The expert shall determine all questions of procedure, after consulting the parties seeking such expert solution if the expert considers it appropriate to do so, with the firm intention of securing a speedy and effective resolution of the difference.

(4) The procedure provided for in paragraph (3) of this Article shall be strictly limited to the interpretation of terms used in the agreements in question and shall in no circumstances permit the expert to determine the practical application of any of those agreements. In particular the procedure referred to shall not apply to

(a) The Appendix to this Agreement;

(b) Articles 1, 3 and 4 of Annex B;

(c) Articles 4 and 5(1) of Annex C;

(d) Article 6 of Annex D.

(5) Nothing in the preceding paragraphs of this Article shall affect the rights or obligations of the Parties to the present Agreement under any provision in force binding them with regard to the settlement of disputes.

Article 6

The Annexes to this Agreement and the Appendices to the Agreement and Annexes are an integral part of the Agreement.

Article 7

This Agreement, together with any subsequent agreements called for in implementation of the Annexes to this Agreement, finally settles the mutual rights and obligations of the successor States in respect of succession issues covered by this Agreement. The fact that it does not deal with certain other non-succession matters is without prejudice to the rights and obligations of the States parties to this Agreement in relation to those other matters.

Article 8

Each successor State, on the basis of reciprocity, shall take the necessary measures in accordance with its internal law to ensure that the provisions of this Agreement are recognised and effective in its courts, administrative tribunals and agencies, and that the other successor States and their nationals have access to those courts, tribunals and agencies to secure the implementation of this Agreement.

Article 9

This Agreement shall be implemented by the successor States in good faith in conformity with the Charter of the United Nations and in accordance with international law.

Article 10

No reservations may be made to this Agreement.

Article 11

(1) This Agreement shall be subject to ratification.

(2) Instruments of ratification shall be lodged as soon as possible with the Depositary identified in Article 13 of this Agreement. The Depositary shall inform the successor States and the Office of the High Representative of the date of deposit of each instrument of ratification.

Article 12

(1) This Agreement shall enter into force thirty days after the deposit of the fifth instrument of ratification. The Depositary shall notify the successor States, and the Office of the High Representative, of the date of entry into force.

(2) Notwithstanding paragraph (1) of this Article, Article 4 (3) of this Agreement, Article 5 of Annex A, Articles 1 and 5-6 of Annex B, and Article 6 of, and the Appendix to, Annex C, shall be provisionally applied after the date of signature of this Agreement, in accordance with their terms.

Article 13

(1) One original copy of this Agreement shall be deposited by the High Representative with the Secretary-General of the United Nations, who shall act as Depositary.

(2) The Depositary shall, upon entry into force of this Agreement, ensure its registration in accordance with Article 102 of the Charter of the United Nations.

Done at Vienna on 29 June 2001 in seven originals in the English language, one to be retained by each successor State, one by the Office of the High Representative, and one to be deposited with the Depositary.

For Bosnia and Herzegovina Zlatko Lagundžija

For the Republic of Croatia Tonino Picula

For the Republic of Macedonia Ilija Filipovski

For the Republic of Slovenia Dimitrij Rupel

ANNEX G

PRIVATE PROPERTY AND ACQUIRED RIGHTS

Article 1

Private property and acquired rights of citizens and other legal persons of the SFRY shall be protected by successor States in accordance with the provisions of this Annex.

Article 2

(1) (a) The rights to movable and immovable property located in a successor State and to which citizens or other legal persons of the SFRY were entitled on 31 December 1990 shall be recognised, and protected and restored by that State in accordance with established standards and norms of international law and irrespective of the nationality, citizenship, residence or domicile of those persons. This shall include persons who, after 31 December 1990, acquired the citizenship of or established domicile or residence in a State other than a successor State. Persons unable to realize such rights shall be entitled to compensation in accordance with civil and international legal norms.

(b) Any purported transfer of rights to movable or immovable property made after 31 December 1990 and concluded under duress or contrary to sub-paragraph (a) of this Article shall be null and void.

(2) All contracts concluded by citizens or other legal persons of the SFRY as of 31 December 1990, including those concluded by public enterprises, shall be respected on a non-discriminatory basis. The successor States shall provide for the carrying out of obligations under such contracts, where the performance of such contracts was prevented by the break-up of the SFRY.

Article 3

The successor States shall respect and protect rights of all natural and juridical persons of the SFRY to intellectual property, including patents, trade marks, copyrights, and other allied rights (e.g., royalties) and shall comply with international conventions in that regard.

Article 4

The successor States shall take such action as may be required by general principles of law and otherwise appropriate to ensure the effective application of the principles set out in this Annex, such as concluding bilateral agreements and notifying their courts and other competent authorities.

Article 5

Nothing in the foregoing provisions of this Annex shall derogate from the provisions of bilateral agreements concluded on the same matter between successor States which, in particular areas, may be conclusive as between those States.

Article 6

Domestic legislation of each successor State concerning dwelling rights («stanarsko pravo / stanovanjska pravica / stanarsko pravo») shall be applied equally to persons who were citizens of the SFRY and who had such rights, without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 7

All natural and legal persons from each successor State shall, on the basis of reciprocity, have the same right of access to the courts, administrative tribunals and agencies, of that State and of the other successor States for the purpose of realising the protection of their rights.

Article 8

The foregoing provisions of this Annex are without prejudice to any guarantees of non-discrimination related to private property and acquired rights that exist in the domestic legislation of the successor States.

Annex 3 ILA's representative cases on Reclaim of Private Property – examples

Case No.1

Beneficiary: M.L.

Competent court: Municipal court in Biograd n/m

Presentation of a case:

The beneficiary was the owner of the family house in Pakoštani, Biograd n/m municipality. Due to threats and fear for his life and the lives of his family, he was forced to leave his own house in December 1990. Since then, he has been living in Serbia Montenegro as the country of asylum. When the war ended and after he obtained personal documents and a travel document, he went to Croatia in August 1998. There he found out that a new owner of his house, registered as such in the land books, is J. Š. from Zagreb, whom our beneficiary has never seen or known. The beneficiary was erased as the owner from the land books on the basis of the Verdict of the Municipal court in Biograd n/m, number P. --, from July 1997. The beneficiary submitted a Proposal for reopening of the case. The court accepted the proposal and determined in a renewed proceeding that erasing of the ownership right of the beneficiary was illegal and obtained on the basis of the false statements of the mentioned J. Š. and his witness S. V.. Criminal charges were brought against two of them for the criminal act of giving the false statement on the basis of which the real owner lost the ownership right, by the Legal Charges of the Municipal State Attorney in Zadar, no.: DO-K- -- from April 2000.

In the reopened proceeding, an illegal court decision was annulled, and the ownership right to the controversial family house was certified to the beneficiary. Thus, this case was positively finalized by the decision in effect of the Municipal court in Biograd n/m number: P.-- from February 1999. In this way, there have been created preconditions for the beneficiary to finally enter his house and decide for the option either to return to Croatia or to freely handle his property in any other way. After finalization of the case and the relevant decision on the ownership right to the controversial real estate, the beneficiary still had to go through several proceedings in order to legally reclaim all the illegal consequences of the annulled court decision of the Municipal court in Biograd n/m.

The reason for accepting the case

The case satisfies all the set criteria, i.e. a positive legal diagnosis, difficult material and health situation of the beneficiary, an enormous value of the deprived property (it is a big building immediately next to the coast with business premises on the ground floor and rooms for rent on the second floor). With the repossession of this property there would be created all preconditions for the family of the beneficiary to return to Croatia if they want, and to freely handle his property.

Organizations involved in the case: HCIT, ILA, UNHCR

Existential situation of the beneficiary:

A beneficiary and his family are refugees in Belgrade, living as subtenants. He does not have any movable or real estate property, or any regular income. He is elderly, with deteriorated health condition. Due to high costs for living (he must pay a significant amount of money for the monthly rent, medicines and basic existential needs), his family is on the verge of poverty. Due to loss of the property that had an enormous value and long and expensive court proceedings, the beneficiary is in very serious psychological condition of depression.

Legal obstacles, effects on beneficiaries and proposals how to react:

A concrete case has been positively finalized by the court decision in effect. This case is an illustrative example how there were different illegal ways, often with abuse of power of the state bodies, to take real estates of the refugees.

How to accelerate the solution of a concrete case:

The concrete case has been positively finalized by the court decision in effect.

Case No. 2

Beneficiary: M.V.

Competent court: Municipal court in Sibenik

Presentation of a case:

The beneficiary owned two-floor, four-bedroom plus kitchen, living room and additional premises building in Vodice. Above properties were illegally occupied by Mr. P. C. from Vodice. The beneficiary, through our lawyer, initiated court proceedings registered under no. P -- before the Municipal Court in Sibenik for the establishment of the ownership right and property hand over. After the proceedings were finalised, the Municipal Court in Sibenik, in May 1999 brought a verdict in case no. P --. Upon our client's appeal, County Court in Sibenik brought a decision no. -- in March, 2000, acknowledging the appeal, abolishing the verdict in question and ordering for the proceedings to continue before the first instance court in Sibenik under no. --. However, since the court for many years failed to undertake necessary steps and, beyond all reasonable deadlines, still did not bring even a first instance decision, our client lodged an appeal to the European Court for Human Rights in Strasbourg on October 9, 2002 for violation of the article 6 of the European Convention on Fundamental Human Rights and Freedoms.

The reason for accepting the case:

The case has been accepted since it fulfils all set criteria of the Legal Project, i.e. a positive legal diagnosis, and a social criteria (since the beneficiary lives on the edge of social existence), the value of the deprived properties. After these proceedings are finalized, refugee problem of the beneficiary's family will have every opportunity to be permanently solved. They will be able to return to their home in case they decide to return or to sell or to handle their house in another way in case they decide to integrate into SCG, the country of their asylum.

Organisations involved in the case: HCIT, UNHCR, ILA.

Existential situation of beneficiaries:

Beneficiary still lives in SCG. Solving of this case would protect the ownership over her property in Croatia and establish the obligation for these properties to be handed over to her. In that way, the beneficiary would be in a position to initiate the proceedings of forced court procedure and, finally, to enter her home which would create all legal and real preconditions for the return of this family to the Republic of Croatia.

Legal obstacles, consequences on beneficiaries and proposals how to react:

In this case the problems are inadequate court practice and wrongfully applied legislation, especially the fact that the court, without any valid reason, simply isn't bringing the decision. Such a behaviour, in the end, resulted in initiating the procedure before the European Court.

How to accelerate the solution of a concrete case:

Facing the situation of extremely high number of cases pending before the Municipal Court in Sibenik and what has already become traditional lack of accuracy

and slowness of the courts, it is necessary to constantly pressure the presidents of the courts by sending them urging letters and the Ministry of Justice of the Republic of Croatia by sending them different memos, especially taking under consideration significance of this case and the consequences the beneficiaries suffer.

Annex 4 ILA's representative cases on Occupation / Tenancy Rights – examples

Case No.1

Beneficiary: N.R.

Competent court: Municipal Court in Zadar

Presentation of a case:

The beneficiary was a tenancy rights holder over two-room apartment of 63,30 square meters in Zadar. The beneficiary acquired his tenancy right on the basis of the Contract on Use of the apartment signed on June 11, 1983. On October 16, 1991 he was arrested as a civilian while performing his duties at work. He was released on November 2, 1991, on the intervention of the International Red Cross. As a citizen of Serb ethnicity, he was exchanged in Drnis checkpoint on the basis of the "all for all" principle. The beneficiary, through our lawyer, initiated court proceedings against the city of Zadar before the Municipal Court in Zadar for privatization of his apartment while the City of Zadar claimed that the beneficiary left the apartment willingly. Upon completed investigation procedure, the Municipal Court in Zadar brought a decision In February, 2003 under case no. P -- by which the court recognized the right to apartment privatization.

This proceeding is registered as positively completed in favour of our client.

The reason for accepting the case:

The case has been accepted since it fulfils all set criteria of the Legal Project, i.e. a positive legal diagnosis. The elements that were taken into consideration were the severity of the violated right, damage for beneficiaries, type of case, very difficult social situation facing this family. Due to the type of case, the case may be also a test case for the European Court in Strasbourg.

Organizations involved in the case: HCIT, UNHCR, ILA.

Existential situation of beneficiaries:

As these proceedings are being finalized, the beneficiary became eligible to request for taking over and repossession of the apartment in case he decides to return to Croatia; or to request for compensation of the market value of the apartment in case he decides to integrate in his country of asylum.

Legal obstacles, consequences on beneficiaries and proposals how to react:

This case was finalized with the court verdict that went into effect and was passed in favour of our client; therefore, it is not necessary to fill in this section.

Case No. 2**Beneficiary:** N.P.**Competent court:** Administrative Court of the Croatia in Zagreb**Presentation of a case:**

The beneficiary was a tenancy rights holder over three-room apartment of 67,77 square meters apartment in Osijek. The Faculty of Economy from Osijek gave her the apartment. Under threats and for the fear for her own and the lives of her family members, she has left the apartment on September 22, 1991 for Belgrade, SCG. Right away, her apartment was given on temporary use to M.G. The beneficiary initiated administrative procedure before the Administrative Court of the Republic of Croatia in Zagreb for eviction of the temporary user and restitution of the apartment. This procedure is registered under no. Us --. The proceedings are in process.

The reason for accepting the case:

The case fulfils all set criteria of the Legal Project, i.e. current interests, significance, number of tenancy rights related cases. The case has passed all phases and, as such, is a potential case to be submitted before the European Court in Strasbourg.

Organizations involved in the case: HCIT, ILA, UNHCR**Existential situation of beneficiaries:**

Together with her family, the beneficiary still lives as a refugee in Belgrade. They live in a difficult financial situation. They are renting an apartment and the only regular income they have are their pensions.

Legal obstacles, effects on the beneficiary and a proposal how to react:

The Republic of Croatia abolished the legal institute of tenancy right at the end of 1995, leaving almost 40.000 families homeless and without any properties, giving them no legal possibility to exercise those rights or to be compensated in any way. It was necessary to bring legal solutions that would be corresponding to the European legal standards and the way the same right were regulated in B&H.

How to accelerate solution of a concrete case: Facing the situation of extremely high number of cases pending before the Municipal Court in Osijek and what has already become traditional lack of accuracy and slowness of the courts, it is necessary to constantly pressure the presidents of the courts by sending them urging letters and the Ministry of Justice of the Republic of Croatia by sending them different memos, especially taking under consideration significance of this case and the consequences the beneficiaries suffer.

Annex 5 ILA's representative cases on Compensation for Damages – examples

Case No.1

Name of beneficiary: S., D. and J. A.

Competent court: Municipal court in Osijek

Presentation of a case:

Beneficiaries were the owners of the family house in Osijek. In the night between 28 and 29 March 1992, about midnight, it was mined with a strong explosive and totally destroyed. At the moment of mining, there was the wife i.e. mother of the beneficiary in the house. She died due to severe wounds and her body was found in the ruins, where she was identified thanks to the personal belongings. Her neighbour R. A. was also killed on that occasion. The perpetrators of the crime have never been found. On 31 August 2001, the beneficiaries brought criminal charges against N.N. (unknown person) for the criminal act of terrorism, before the County State Attorney in Osijek and charges for the compensation for the material and non-material damage against the Republic of Croatia. The proceeding is in the phase of pending before the first-instance court, Municipal court in Osijek.

The reason for accepting the case:

The case has been accepted since it fulfils all set criteria of the Legal Project, i.e. a positive legal diagnosis, and a social criteria, since the family of a beneficiary belongs to the extremely socially imperilled category of refugees. The elements that were taken into consideration were the severity of the violated right, and an enormous damage for beneficiaries. Due to the type of case, the case may be also a test case for the European Court in Strasbourg, which has already brought positive decisions in several identical situations.

Organizations involved in the case: HCIT, ILA, UNHCR.

Existential situation of beneficiaries:

The family of beneficiaries lives in several places, in very difficult material situation. Currently, S. and D. live in Elemir, Serbia, with their families, while J. lives in Croatia in one village near Osijek with his family. Being left without any property, which they acquired during their entire life, and without any money, they would resolve their existential problems with the realization of the right to compensation for the damage, which would also open the possibility for the sustainable solution for this refugee family, either over the intended return into the Republic of Croatia or the local integration.

Legal obstacles, effects on the beneficiary and a proposal how to react:

The Republic of Croatia has adopted a number of law amendments, which both formally-legally and actually-legally disabled its citizens, whose property was destroyed in the period between 17 August 1990 and 30 June 1996, to exercise their right to the compensation for the damage by the court or any other legal remedy. Having in mind a huge number of destroyed properties in that period, it has permanent and irreparable harmful consequences for the victims.

The Republic of Croatia should finally bring the legal solutions in this legal field, which would satisfy the international legal standards set by the numerous international documents and conventions, like the European Convention on Fundamental Human Rights and Freedoms.

How to accelerate solution of a concrete case:

In the situation of extremely big number of pending cases before the Municipal court in Osijek, and already traditional inefficiency and slowness of the courts, it is necessary to put the continuous pressure by urging the presidents of the courts and letters to the Ministry of Judiciary of the Republic of Croatia, especially when the

importance of the case and consequences that the beneficiaries have been suffering are taken into consideration.

Case No. 2

Name of the beneficiary: M. and Ž.V.

Competent court: Municipal court in Zadar

Presentation of the case:

Beneficiaries were owners of the family house in Zadar. At the beginning of 1992, their house was robbed and then mined, i.e. it was totally destroyed as a result of this. On 11 August, the owners brought charges for the compensation for the damage before the Municipal court in Zadar against the insurance company "Croatia", since the building was insured at the mentioned insurance company, as well as against the Republic of Croatia on the basis of the Article 180 of the Law on Civil Obligations.

On 20 September 2002, the Municipal court in Zadar stopped the proceeding related to the Republic of Croatia according to the Law from 1999. The beneficiaries lodged the appeal against the decision, on the basis of which decision upon the appeal is pending before the County court in Zadar. The proceeding related to the insurance company "Croatia Osiguranje" is pending before the first-instance court.

On 29 November 2001, the beneficiaries lodged the Application to the European Court in Strasbourg due to violation of a right from the Article 6, paragraph 1, and the Article 13 of the Convention, claiming that they did not have an efficient legal remedy for realization of their right to compensation for the damage, since the Article 180 of the Law on Civil Obligations, which law regulates responsibility of the state for the damage made by the terrorist act, was revoked.

On its session from 11 December 2003, the European Court in Strasbourg brought a final decision that the application is allowed and accepted, so the case is in the second phase of deciding on the merit.

The reason for accepting the case:

The case has been accepted since it fulfils all set criteria of the Legal Project. Namely, the case got a positive legal diagnosis. The elements that were taken into consideration were the severity of the violated right, consequences on the beneficiaries, type of the case, and especially difficult social situation of this family. At the same time, this is a test case for the European Court in Strasbourg.

Organizations involved in the case: HCIT, ILA, UNHCR

Existential situation of beneficiaries:

The beneficiaries suffer an enormous material and a non-material damage for many years, since their house was totally destroyed already in 1992. They have been living without their home in the elderly age of their lives in Belgrade, in an extremely bad material situation. They have been living as subtenants for many years, and there are no basic preconditions for this family to return to Zadar.

Legal obstacles, effects on the beneficiary and the proposals how to react:

The Republic of Croatia has adopted a number of law amendments, which both formally-legally and actually-legally disabled its citizens, whose property was destroyed in the period between 17 August 1990 and 30 June 1996, to exercise their right to the compensation for the damage by the court or any other legal remedy. Having in mind a huge number of destroyed properties in that period, it has permanent and irreparable harmful consequences for the victims.

The Republic of Croatia should finally bring the legal solutions in this legal field, which would satisfy the international legal standards set by the numerous international documents and conventions, like the European Convention on Fundamental Human Rights and Freedoms.

How to accelerate solution of the concrete case:

In the concrete case, there were used all available legal and lawful remedies to finally solve this case after 12 years since the damage was made. Since the case is pending in the second phase before the European Court in Strasbourg, it is not possible to take any measures up to finalization of the pending proceeding.

Annex 6 ILA's representative cases on Debt Payment Litigations

Case No. 1

Beneficiary: N.V.

Competent court: Administrative Court of the Republic of Croatia

Presentation of the case:

The beneficiary acquired the right to an old-age pension. Payments of his pension were, without any legal reason, stopped on January 14, 1992. The payments restarted upon his request on February 1, 1998. His request for the payment of matured but unpaid pensions for the 6-year period (from January 14, 1992 to February 1, 1998) was refused by the decision of the HZMO (Croatian Institute for Health and Pension Insurance), Central Office in Zagreb, no. -- from June, 2002. Beneficiary has initiated an administrative dispute against this decision before the Administrative Court of the Republic of Croatia in Zagreb.

The reason for accepting the case:

The case fulfils all set criteria. The nature of violated right (acquired right to a pension) and extremely high number of such cases were especially taken into consideration. Solving of this case would significantly improve financial and social situation of beneficiary and his family.

Organisations involved in the case: HCIT, ILA., UNHCR

Existential situation of beneficiaries:

Beneficiary still lives, together with his family, in SCG, as a refugee. He lives in rented apartment and is already rather old. The only income he has is his pension that is not high enough even to cover the most basic needs. If he would be in a position to exercise his right, in other words, if this case would be solved in his favour, preconditions would be created for initiating proceedings for the protection of the ownership over the building in Vodice that has been illegally occupied and deprived from him and for the return of his family to the Republic of Croatia.

Legal obstacles, consequences on beneficiaries and proposals how to react:

According to the positive legislation of the Republic of Croatia relating to this area, since this is a classical debtor-creditor relation, relevant provisions of the Law on Obligations should be applied. However, in practice, courts in the Republic of Croatia decline competency in such disputes and, in most cases, direct to administrative bodies and provisions of the Law on Administrative Procedures and the Law on Pension Insurance. In such way, these people are automatically being denied this fundamental human right to acquired pensions and are suffering from enormous financial losses. It is necessary to pressure competent judicial and legislative bodies in the Republic of Croatia with the aim to establish correct implementation of system Law on Obligations in practice, meaning that the courts should take over the competency in such disputes applying usual legal standards in the Republic of Croatia as well as the standards Croatia is obliged to apply in accordance with the European Convention on Fundamental Human Rights and Freedoms.

How to accelerate solution of the concrete case:

The proceedings are in a regular procedure and are to be decided within, already settled, unnecessarily long timelines.

Annex 7 ILA's representative cases on War Crime Proceedings – examples

Case No. 1

Name of beneficiary: S.K.

Competent court: County court in Gospić

Presentation of a case:

On 27 February 2003, after conclusion of previous investigation proceeding, S. K. was indicted before the County court in Gospić for two acts of the war crime against war prisoners, based on the provisions of the Article 122 of the Basic Criminal Law of the Republic of Croatia, on the basis of which he has been detained since 31 October 2002. After five hearings for the main trial, our beneficiary was proclaimed as guilty for both acts on the basis of the verdict no. K. -- from July 2003. and sentenced to a unique legal sentence of 13 years of prison. After he received a written copy of a court order of the first-instance verdict, a defender of the defendant lodged an appeal to the Supreme court of the Republic of Croatia, as a second-instance court, which cancelled the verdict as illegal and turned the case back to a renewed deciding, but now before another County court, due to suspicion on partiality of the County court in Gospić. A renewed trial will be held in Karlovac, and the first hearing for the main trial of a procedural nature has been already held. In the course of the first-instance proceeding, there were made numerous procedural mistakes by the competent authorities, especially during the investigation, when there was prevented any act of recognition during the hearing of witness in presence of the defendant. Furthermore, the court exclusively trusted the damaged persons, eliminating an importance of statements of a significant number of remaining witnesses, including former war prisoners. It is indicative that two other persons were previously indicted and sentenced for the same injuries before the court in Gospić, for which reason a question is placed for overlapping of the indictments and sentencing more persons for the same identical acts.

Reasons for accepting the case:

The case satisfies all the criteria for its acceptance, especially having in mind that the beneficiary is a returnee to Croatia, who after several years of refuge in Serbia returned to Croatia, wishing to stay there for good. Also, the beneficiary is in detention and it can be hardly expected that he will be released to defend himself from freedom until the finalization of the criminal proceeding.

Organizations involved in the case: ILA, HCIT, UNHCR, TOD

Existential situation of a beneficiary:

A beneficiary is detained at the moment, he is married, a father of two adult children. Before his detention, he was unemployed, earning for living exclusively from temporary, part-time and season works he managed to find. His wife is also unemployed, living in their family house without regular income. Both of them are in very difficult material situation.

Legal obstacles, effects on beneficiaries and proposals how to react:

In this case, the biggest obstacle for its fair and efficient solution has been removed, because verdict was annulled after the appeal of the defender and handed over to another court for processing, which could be able to bring unbiased decision without pressure of the local milieu. We must specially point to the fact that during the proceeding there was established a contact with media, which carefully followed the case (when the verdict was brought, the most popular daily newspapers in Croatia, Jutarnji List, published a very critical article on the verdict on the whole page).

How to accelerate solution of the concrete case:

Since the contact with media has been already made, and a communication with the Supreme Court of Croatia has been established, we think that the concrete case will be solved within reasonable and acceptable deadlines in the reopened proceeding before the first-instance court, and that the Supreme Court of Croatia will efficiently decide upon the potential appeal against the verdict (which will be lodged anyway by any of the losing party).

Case No. 2

Name of beneficiary: M.S.

Competent court: Municipal court in Benkovac

Presentation of a case:

Municipal State Attorney in Benkovac brought charges no. DO-K- --, against the beneficiary, M. S., PhD professor of history from Benkovac, on 11 January 1999. He was charged with damaging, destroying and illegal taking away the cultural heritage from the Republic of Croatia, what was described and punishable according to the Article 325, paragraphs 2 and 3 of the Criminal Law of the Republic of Croatia. After the evidence proceeding and several hearings, which took place on 04 January 2001, M.S. was proclaimed guilty at the main public hearing for the criminal act, which he was charged for by the Attorney's Office, and sentenced to four years of prison according to the Verdict of the Municipal court in Benkovac, no.: K. -- from January 2001. The beneficiary lodged the appeal against the Verdict, through his lawyer, to the County court in Zadar, on 04 October 2001. The appeal was accepted by the County court in Zadar, according to the decision of the court from 08 January 2004.

Reasons for accepting the case:

The case was accepted since it satisfied all set criteria of the Program. The beneficiary was a refugee, without any property, living as a subtenant in Belgrade. We especially took in consideration a circumstance that a serious criminal proceeding was initiated against the beneficiary, and that the court brought very severe verdict by sentencing him with four years of jail without any valid court evidence.

Organizations involved in the case: HCIT, ILA, UNHCR

Existential situation of beneficiaries:

Initiation of the criminal proceeding and sending out of the warrant for the beneficiary brought the beneficiary and his family not only to a very difficult material and social situation, but also to a very sensitive situation of a great danger for his safety and the safety of his family. He was disabled to move freely, and due to ungrounded and illegal criminal persecution and the determined sentence to prison, he lived in fear for many years. Due to pursuing this criminal proceeding, his family was deprived of realization of any fundamental human rights and freedoms (a right to documents, a right to protection of property, a right to return, freedom of movement, etc.). A positive result of the proceeding, the acquittal, finally created basic preconditions for a new start and a normal life of this refugee family.

Legal obstacles, consequences on beneficiaries and proposals how to react:

The case has been positively resolved. Therefore this is not applicable.