

# REGIONAL LEGAL ASSISTANCE PROGRAMME

Supporting the return of refugees and displaced persons by means of legal assistance

## ANALYSIS

of the access to housing care by refugees and displaced persons, former tenancy right holders, in the Republic of Croatia in 2007

April 2008



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The contents of this analysis reflect standpoints of the authors and are not relatable to official viewpoints of the OSCE Mission to the Republic of Serbia or viewpoints of the Government of the United States of America

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## **ABBREVIATIONS**

<b>B&amp;H</b>	- Bosnia and Herzegovina
<b>ECHR</b>	- European Convention on Human Rights
<b>ECOSOC</b>	- United Nations Economic and Social Council
<b>MSTTD</b>	- Ministry of the Sea, Tourism, Transport and Development
<b>OG</b>	- Official Gazette of the Republic of Croatia
<b>OSCE</b>	- Organization for Security and Co-operation in Europe
<b>ASSC</b>	- Areas of Special State Concern
<b>RLAP</b>	- Regional Legal Assistance Programme
<b>RODPRR</b>	-Regional Office for Displaced Persons, Returnees and Refugees
<b>UN</b>	- United Nations
<b>UNHCR</b>	- United Nations High Commissioner for Refugees
<b>ODPRR</b>	- (Head) Office for Displaced Persons, Returnees and Refugees
<b>LAP</b>	- Law on General Administrative Procedure
<b>LAD</b>	- Law on Administrative Disputes

## 1. Introductory Remarks

This analysis was carried out in the last phase of the Regional Legal Assistance Programme – ‘Supporting the return of refugees and displaced persons through legal aid’ the project that was implemented in the period October 2005-April 2008. The project was implemented by the regional network of twelve non-governmental organizations from Serbia, Croatia, and B&H under the auspices of the OSCE Mission to Serbia and with financial support of the Government of the United States of America.

The primary aim of the regional project was to facilitate the access to rights and local (re)integration of displaced population by providing legal assistance and through permanent monitoring of representative legal cases in selected legal areas. The project was focused on the monitoring of activities aiming to fulfill obligations and observe principles of the regional framework for just and permanent solution to the problem of refugees set by the Sarajevo Ministerial Declaration on Regional Return of Refugees and Displaced Persons signed on January 31, 2005.

The last phase of RLAP, January-April 2008, was implemented by three non-governmental organizations, members of the regional network of RLAP: Humanitarian Centre for Integration and Tolerance from Novi Sad, Serbia; Center for Peace, Legal Advice and Psychosocial Assistance from Vukovar, Croatia; and a regional project *Movimiento por la Paz, el Desarme y la Libertad (MPDL)*, Spain, with offices in B&H, Serbia, and Croatia.

The primary aim of the last phase of RLAP was to monitor and prepare a detailed analysis of the existing programmes for housing care of refugees and displaced former tenancy right holders in the Republic of Croatia and implementation of these programmes in 2007, in conformity with obligations expressed and accepted by the Government of the Republic of Croatia.

### 1.1. Former Tenancy Right Holders

Former tenancy right holders and members of their families, the majority of whom are refugees outside the Republic of Croatia and only few of them are displaced persons on the territory of the Republic of Croatia, make up the largest group of potential (minority) returnees to the Republic of Croatia, mainly to urban areas.

In this analysis former tenancy right holders are all persons who until 1991 had achieved the tenancy right to apartments that were socially-owned and who lived in these apartments alone or together with their family members, but due to various reasons had to leave the mentioned apartments during armed conflicts in the Republic of Croatia 1991-1995 and therefore do not live in these apartments anymore and/or have no valid legal basis for occupying them.

These persons, mostly of Serbian nationality, were denied the tenancy right in two ways:

- in legal proceedings for the termination of tenancy rights due to the vacancy of their apartments in the period longer than 6 months in the areas that were controlled by Croatian authorities; or
- by force of law, in the areas controlled by local Serbs until 1995, ASSC today, as they failed to return to the apartments they had lived in within 90 days<sup>1</sup> from the moment the *Law on Leasing Apartments on the Liberated Territory* came into force<sup>2</sup>.

The facts that there were armed conflicts, direct or indirect pressures on people to move out, or that their fears to return were well founded, were not accepted as legally relevant to justify the absence of tenancy right holders from their apartments.

The total number of cases where tenancy rights were cancelled is estimated at **29,800**, out of which **23,800** on the territory outside ASSC and **6,000** inside ASSC<sup>3</sup>. According to OSCE estimates, around **100,000**<sup>4</sup> people were affected by the cancellation of tenancy rights.

The tenancy right to socially-owned apartments does not exist anymore as a specific legal institution in the Republic of Croatia

The cancellation of tenancy rights and failure to recognize any rights on the basis of former tenancy rights influenced refugees and displaced persons, former tenancy right holders, in two different ways:

1. their return to residential units and/or their places of residence prior to the war was hindered;
2. they were not given, as was the case with other tenancy right holders in the Republic of Croatia, the status of holders of property rights stemming from the institution of a tenancy right, e.g. the right to privatize apartments under privileged conditions.

This practice was contrary to the one applied to the same category of population in B&H<sup>5</sup> and to the *Resolution 1120 of the UN Security Council of 1997*<sup>6</sup> which once again affirmed the right of all refugees and displaced persons originating from the Republic of Croatia to return to their homes of origin in the Republic of Croatia. The authorities of the Republic of Croatia completely ignored some relevant international standards, legally not binding though, of human rights protection contained in the *Resolution 2004/2 on Housing and Property Restitution for Refugees and Displaced Persons* of the UN Sub-Commission for Promotion and Protection of Human Rights<sup>7</sup>, and in UN ECOSOC *Principles on Housing and Property Restitution for Refugees and Displaced Persons* (also known as *the Pinheiro's Principles*) of June 2005<sup>8</sup>.

Under international pressure, after many years of disregard for the issue of the return of former tenancy right holders, the Republic of Croatia took certain measures to enable the housing and return of urban minority population of former tenancy right holders. Two models of housing care were adopted, inside and outside the Area of Special State Concern, for those former tenancy right holders who decided to return to the Republic of Croatia.

The issue of potential financial or other compensation for refugees and displaced tenancy right holders remained one of the open questions within the implementation of the process initiated by the Sarajevo Ministerial Declaration on Regional Return of Refugees and Displaced Persons signed by the Republic of Croatia, B&H, and Serbia and Montenegro on January 31, 2005.

## **1.2. Housing Care of Former Tenancy Right Holders– Existing Legal Framework and Number of Potential Beneficiaries**

### ***Existing legal framework***

The legal framework for housing care of former tenancy right holders in the Republic of Croatia is defined by particular legal acts. The Republic of Croatia is divided into two geographical areas where housing care takes place, and acts of different legal character are applied to these two areas. Housing care in ASSC is regulated by the law adopted by the Croatian Parliament as a legislative body, and the area outside ASSC is regulated by conclusions enacted by the Government of the Republic of Croatia as the executive.

1. Legal framework for the right to housing care in ASSC is made up of:

- *Law on Areas of Special State Concern*<sup>9</sup>,
- *Decree on conditions and criteria for housing care in the areas of special state concern*<sup>10</sup>,
- *Rules on the order of priority for housing care in the areas of special state concern*<sup>11</sup>,
- *Regulation on conditions for purchasing a family house or an apartment owned by the state in the areas of special state concern*<sup>12</sup>,
- *Regulation on granting houses and apartments owned by the Republic of Croatia in the areas of special state concern to Croatian homeland defenders and family members of the killed, imprisoned or missing homeland defenders in the Croatian homeland war*<sup>13</sup>.

The aim or the meaning of this framework is to encourage the return and stay of different categories of population, including former tenancy right holders, in ASSC.

2. Legal framework for achieving the right to housing care outside ASSC is made up of:

- *Conclusion on the way of providing housing care for returnees who do not own a house or an apartment, but used to live in socially-owned apartments (former tenancy right holders) on the territory of the Republic of Croatia, outside ASSC*<sup>14</sup>,
- *Conclusion on the implementation of programmes of housing care of returnees – former tenancy right holders to apartments outside ASSC, published together with the Housing Care Programme*<sup>15</sup>,
- *Implementation plan for providing housing care for returnees who do not own an apartment or a house, but who used to live in social-owned apartments on the territory of the Republic of Croatia which is outside the area of special state concern*<sup>16</sup>,
- *Guidelines for processing applications for housing care outside the area of special state concern*<sup>17</sup>.

The aim or the meaning of this framework is to create conditions for the return and permanent accommodation of persons who do not own an apartment or a house and who used to live in social-owned apartments in areas outside ASSC.

### **Number of potential beneficiaries of housing care**

The procedure for achieving housing care is initiated by the submission of requests/applications for housing care to the Ministry of the Sea, Tourism, Transport and Development, and since January 2008 to the Ministry of Regional Development, Forestry and Water Management – Office for Displaced Persons, Returnees and Refugees.

Until January 2008 the total number of **8,541** requests had been submitted for housing care in ASSC<sup>18</sup>, the majority of which are requests submitted by former tenancy right holders. Official information on the number of requests for housing care submitted by former tenancy right holders categorized by their nationality, current status of displaced persons or some other status, citizenship, the state of current residence etc., have not been published. The deadline for the submission of requests for housing care in ASSC is not set and there is no deadline for submission of requests.

The deadline for the submission of requests for housing care outside ASSC expired on September 30, 2005. Until the deadline expiry, the total of **4,425**<sup>19</sup> requests were submitted, **2,196** of which refer to housing care on the basis of apartment lease contracts, and **2,229** requests refer to housing care by means of apartment purchase.



### 1.3. Specific Goals and Methodology of Analysis Formulation

#### **Specific goals**

- To conduct the analysis of the legal framework which regulates the access to the housing care outside ASSC and its application in practice
- To formulate a comparative analysis of legal frameworks which regulate the access to the housing care inside and outside ASSC and their application in practice
- To determine the quality of the legal framework and the level of legal certainty in access to the housing care outside ASSC
- To determine the progress achieved in the implementation of the housing care programmes inside and outside ASSC, with special emphasis on achievements in 2007, and their impact on the return of former tenancy right holders who are currently living outside the Republic of Croatia

#### **Methodology**

- Formulating a legal analysis of existing frameworks regulating the housing care inside and outside ASSC,
- Formulating a comparative analysis of two different frameworks regulating the housing care inside and outside ASSC,
- Analyzing the extent to which applicable regulations and procedures within the housing care programmes are in line with international instruments and standards for human rights protection, with special emphasis on the European Convention for the Protection of Human Rights and Fundamental Freedoms
- Gathering and analyzing data on the implementation of the housing care programmes from all available sources, including the Government of the Republic of Croatia, non-governmental organizations, applicants for the housing care and international organizations
- Analyzing procedures for access to the housing care as well as the quality and level of implementation
- Gathering data, analyzing and monitoring the situation of the applicants for the housing care that are residing in B&H and Serbia

Due to the lack of the ready available official information and with an aim to make a comprehensive overview of the situation in regard to the housing care and produce a quality and detailed analysis, the project team harmonized the set of questions and on January 31, 2008 sent the request for information to the Ministry of Regional Development, Forestry and Water Management – ODPRR, relying on the relevant provisions of the *Law on the Right to Access Information*<sup>20</sup>. ODPRR did not reply to the sent request within the legal deadline or acted in accordance with the provisions of the mentioned Law. ODPRR did not react even after the note of urgency sent on March 6, 2008. Everything mentioned above indicates that there is a problem of insufficient transparency of the implementation of the housing care in the Republic of Croatia, or the absence of databases with relevant information and/or the lack of willingness in the Government of the Republic of Croatia to make the information available to the wider public.

The request for the right to access to information and the note of urgency sent to the Ministry of Regional Development, Forestry and Water Management – ODPRR are attached to this analysis.

The analysis of the implementation of the housing care programmes outside ASSC partly relies on the information collected in the survey on the status of 262 requests<sup>21</sup> for housing care, which

were gathered by the non-governmental organizations from Croatia, B&H and Serbia. The sample makes up 5.92% of the total number of requests for housing care outside ASSC. The survey was carried out in the period February-March 2008. The form of the survey questionnaire is attached to this analysis.

## **2. Legal Nature of Regulations and Other Legislation Regulating Housing Care outside ASSC**

This chapter gives only the analysis of the legal nature of regulations and other legislation regulating housing care outside ASSC because, unlike the legal framework which is applied to ASSC, it is not regulated by law, but rather by the Government's Conclusion.

### **2.1. Legal Nature of the Conclusion of the Government of the Republic of Croatia on Ways of Providing Housing Care for Returnees Who do not Own a House or an Apartment, but Used to Live in Socially-owned Apartments (Former Tenancy Right Holders) on the Territory of the Republic of Croatia which is outside the ASSC**

#### ***The character of the Conclusion of the Government of the Republic of Croatia***

*This Conclusion determines the Government's positions on questions concerning the implementation of the established policy and assigns tasks to public administration bodies.<sup>22</sup> The Conclusion, therefore, does not prescribe some universally valid legal rules, i.e. does not regulate relations as legislation does, but it determines positions and assigns tasks. Thus, the Conclusion does not fall under regulations (like laws, directives, decisions, rulebooks, orders or instructions), but under other legal acts (e.g. recommendations, resolutions, declarations, expert instructions and explanations). The Conclusion is an act through which something is stated and prescribed, but it is not a regulation. As a result, the Conclusion is not a binding legal act (which could be enforced) despite the fact that the public administration bodies are obliged to follow the guidelines contained in it.*

Point 7 of the *Conclusion on ways of providing housing care for returnees, dating from 2003*, states that the *Conclusion* enters into force on the day of its publication in the Official Gazette. However, only laws and other regulations enacted by state bodies are obligatorily published in the Official Gazette before their coming into force.<sup>23</sup> The Conclusion is not a regulation, so it does not enter into force. Therefore, it is not necessary for it to be published in the Official Gazette, which is otherwise a condition to be fulfilled if any regulation is to come into force. Unlike regulations, the Conclusion of the Government of the Republic of Croatia can be published in the Official Gazette if the Government decides so in the course of its adoption.<sup>24</sup>

*The Government's Conclusion* from 2003, despite attempts to invest it with a regulatory character, is not a regulation and is not part of the legal system of the Republic of Croatia.<sup>25</sup>

### **2.2. Legal Nature of the Implementation Plan for Providing Housing Care for Returnees and of the Guidelines for Handling Applications for Housing Care outside ASSC**

#### ***Implementation Plan for Providing Housing Care for Returnees***

The *Implementation Plan for Providing Housing Care for Returnees* is not an implementation regulation, since implementation regulations are rulebooks, orders, and instructions.<sup>26</sup> Since it is not an implemental regulation, it has neither been published<sup>27</sup> in the Official Gazette, nor has it come into force. The Implementation Plan has not been published in some other form of media either, nor is it available on the website of the competent Ministry. The *Implementation Plan* is not a public but rather an internal act, which is not easily accessible to interested parties although Point 2 of

the *Implementation Plan* says that the *Implementation Plan* develops conditions and procedures related to the implementation of the housing care.

From the above mentioned, it is evident that the *Implementation Plan*, which develops conditions and procedures for granting the state-based humanitarian aid in housing of returnees, is not part of the legal system of the Republic of Croatia.

### ***Guidelines for Handling Applications for Housing Care outside ASSC***

*Guidelines for Handling Applications for Housing Care outside ASSC* are also not implementation regulation even though their contents correspond to the instruction which prescribes ways of action within public administration bodies (in this case within RODPRR). Namely, the *Law on Public Administration Structure* prescribes that instructions are passed by the Minister and that they must be published in the Official Gazette with a clearly stated date of their coming into force. *Guidelines for Handling Applications for Housing Care outside ASSC* was passed by the Deputy Minister and they have not been published in the Official Gazette. *Guidelines* have not been published in any other media either, nor have they appeared on the website of the competent Ministry.

Therefore, *Guidelines for Handling Applications for Housing Care outside ASSC* – much as the *Conclusion from 2003*, the *Conclusion from 2006*, and the *Implementation Plan for Providing Housing Care for Returnees* – are not part of the legal system of the Republic of Croatia.

### **2.3. Conclusion**

In terms of housing care for former tenancy right holders, acts of varying legal nature are being applied on the territory of the Republic of Croatia:

- within ASSC, there are regulations (*Law on Areas of Special State Concern*, and by-laws – directives and the *Rulebook*) which are part of the legal system of the Republic of Croatia;
- outside ASSC, no regulations are applied but other legal acts (*Conclusion*, *Implementation Plan*, *Guidelines*) which do not produce legal effect and thus cannot serve as a basis for establishment of a certain right, but rather serve the purpose of provision of the humanitarian housing care for displaced former tenancy right holders, who are mainly of Serbian nationality.

### 3. Material Contents of the Legal Framework for Housing Care

#### 3.1. Material Contents of the Legal Framework for Housing Care inside ASSC

*Law on ASSC* established the right to housing care, which can be enjoyed by a person or members of their family:

- If they do not own or co-own a family house or an apartment on the territory of the Republic of Croatia, or if they have not sold it, given it as a present or in any other way disposed of it as of 8 October 1991, or if they have not been granted the legal position of protected lessee.
- If they do not own or co-own a family house or an apartment on the territory of the states formed in the process of SFRY disintegration, or if they have not sold it, given it as a present or in any other way disposed of it as of 8 October 1991, in other words, if they have not been granted the legal position of protected lessee.<sup>28</sup>

The right to housing care is gained in one of the following five ways, prescribed by *Law*:

- By leasing a state-owned family house or an apartment;
- By leasing a damaged state-owned house and by the allocation of construction material;
- By the allocation of state-owned building land and construction material for the construction of an apartment block with more than one residential unit; the Ministry decides on how these facilities are going to be constructed and financed;
- By the allocation of state-owned building land and construction material for the construction of a family house, or
- By the allocation of construction material for reparation, renovation or reconstruction of a family house or an apartment.<sup>29</sup>

The usable living area of a family house or an apartment, or the amount of obtained construction material is determined according to the conditions and criteria outlined in the *Law on Reconstruction*<sup>30</sup>, that is – 35 m<sup>2</sup> for the first family member, and then 10 m<sup>2</sup> per each additional member.

The legal contracts are entered between the beneficiary and the competent Ministry where their specific type depends on the type of the housing care that is provided:

- Type of housing care: *Leasing a state-owned family house or an apartment.*  
The Ministry and a beneficiary draw up a *lease agreement* in accordance with the propositions of the *Law on Apartment Lease*<sup>31</sup>, where the beneficiary pays a set lease for the living area that he/she owns, whereas a freely determined lease can be formed for the excess area.
- Type of housing care: *Allocation of building land and/or construction material.*  
The Ministry and the beneficiary draw up a *gift agreement*, which contains a term which commits the owner not to dispose of the building land and/or construction material, i.e. the reconstructed or constructed family house or an apartment for another 10 years starting from the date of the conclusion of the agreement, without the Ministry's approval.

The beneficiary, who has gained his right to housing care by being allocated construction material, but performs reconstruction or construction works on his own and with his own means, *is entitled to financial support.*

## **Right to purchase**

The Law on ASSC prescribes that the beneficiary who has gained his right to housing care by leasing the family house or apartment, after 10 years of continuous residence in the state-owned family house or apartment, acquires *the right to purchase* the family house or an apartment under very favourable terms.<sup>32</sup> The criteria, terms of purchase as well as the conditions under which a family house or an apartment lessee may purchase the state-owned family house or the apartment even before the expiry of the 10-year deadline are set by the Republic of Croatia in the *Regulation on conditions for the purchase of a state-owned family house or apartment within the areas of special state concern*.<sup>33</sup>

Beneficiaries who have gained their right to housing care are *exempt from taxation* on real estate turnover whenever a purchase of the real estate (a house or an apartment) means registration or change of residence within ASSC.<sup>34</sup>

## **Possibility of inheritance**

The *Law on ASSC* envisages the possibility of *inheritance*, i.e. in case of the beneficiary's death, his parents, and first-degree heirs may continue, under the same conditions to use the real estate that was allocated.<sup>35</sup>

## **Getting ownership of state-owned apartments for free**

*Among housing care beneficiaries, there are two groups of those who get ownership of state-owned apartments for free. Of about 14,000 state-owned apartments within ASSC, around 3,500 apartments are granted to Croatian defenders according to Regulation on granting apartments and houses owned by the Republic of Croatia in the areas of special state concern to defenders and family members of the killed, imprisoned, and missing Croatian defenders in the Homeland war*<sup>36</sup>. For 1,200 apartments ownership rights are gained according to decisions based on the *Law on Areas of Special State Concern, after 10 years of continuous residence in the apartment*.<sup>37</sup>

## **3.2. Conclusion**

The *Law on ASSC* does not set out precise terms for obtaining the right to housing care, which affects citizens' legal security, and sets too broadly the internal field of 'margin of appreciation belonging to the competent bodies' when deciding about the right to housing care, which enables arbitrariness in operation of the competent bodies. The bodies which are competent to make decisions based on applications for housing care determine the right to housing care by interpreting and applying the legal provision stating that a person or his family members can exercise the right if they do not own or co-own a family house or an apartment on the territory of the Republic of Croatia or on the territory of the states formed in the disintegration process of the former SFRY, or if they have not sold it, given it away as a present, or disposed of it in any other way as of 8 October 1991, at the same time disregarding whether the house or an apartment owned or co-owned by the applicant is fit for living. The legislator failed to phase the mentioned point with precision thus denying applicants the possibility of weighing with certainty the real consequences of this point being applied in their case, and creating grounds for arbitrariness in operation of the competent bodies.

*Ministry of the Sea, Tourism, Transport and Development – Office for Displaced Persons, Returnees and Refugees (Class: 019-06/01-31/1-C4, Reg. no: 530-19-03-07-143164-26914-1), without having conducted the administrative procedure, denied K.G. consent to housing care, because 'they were the owners of the house, which they have then given away as a present', thus rendering void the consent to housing care by leasing a state-owned apartment within ASSC in the City of Vukovar on 5 June 2007. In her complaint / appeal regarding denial of consent to housing care of 12 November 2007, K.G. stated, among other things, that she was a tenancy right*

holder to the apartment in question, that she enjoys the status of protected lessee based on the Law on Apartment Lease from 1996, that her apartment was confiscated neither in court nor in the administrative procedure, and that her status depends on discretionary evaluation of MSTTD. Further in her complaint / appeal she states: 'If I do not fulfill requirements for housing care, a procedure should be initiated and all relevant facts determined, especially whether I had the necessary living conditions in the part of the house that I shared with other heirs. I think that a 35 m<sup>2</sup> house is not big enough for two families. Eventually, I also stated this fact [about inheritance and granting] in the statement that I enclosed in the application [for housing care], and so, based on the above mentioned facts and the statement, I got the consent.'

### 3.3. Material Contents of the Legal Framework for Housing Care outside ASSC

The Conclusion from 2003 does not determine the returnees' right to housing care, but rather the position of the Government of the Republic of Croatia to provide housing care to returnees who want to come back and have permanent residence in the Republic of Croatia on a condition that:

- they do not own or co-own a family house or an apartment on the territory of the Republic of Croatia or on the territory of other states formed in the wake of the former SFRY disintegration, or
- they have not sold it, given it away as a present, or in any other way disposed of the facility as of 8 October 1991, i.e. they did not get the legal status of protected lessee.

According to the Conclusion from 2003, housing care will be carried out in one of the following ways, of returnees' choosing:

- Leasing the state-owned apartment, or
- Purchasing one's own apartment in accordance with the Law on Socially Stimulated Apartment Building, with the possibility of long-term installment-based payment under favourable conditions.

Under the Conclusion from 2006, the competent Ministry is obliged to 'perform the procedure and bring the appropriate decisions on the acknowledgement of the right to housing care based on the applications of returnees'.<sup>38</sup>

Under the Conclusion from 2006 the competent Ministry is, among other things, obliged to '...conclude lease agreements with beneficiaries (returnees) for the apartments with a fixed lease...'<sup>39</sup>, whereas contracting agreements for the purchase of the apartments is not mentioned.

The apartments intended for housing care of returnees will be provided by the construction of 3,600 apartments on the state land according to the Law on Socially Stimulated Apartment Building<sup>40</sup>, while a smaller portion (400 apartments) will be provided through purchase on the market.

The Housing Care Programme for Former Tenancy Right Holders to Apartments outside ASSC, which is an integral part of the Conclusion from 2006, determines in more detail the status of the returnee. Returnees, the future residents who will be entitled to apartments, will have the status of protected lessees and will pay a fixed lease, according to Regulation on conditions and criteria for setting the fixed lease<sup>41</sup>.

Implementation Plan for Providing Housing Care for Returnees determines that the living area should be set according to the Law on Reconstruction, where one person gets 35 m<sup>2</sup>, and every additional member of the family gets 10 m<sup>2</sup>.

In Guidelines for Handling Applications for Housing Care outside Areas of Special State Concern, which was passed as an internal act by the Deputy Minister in 2006, it is stated that all persons who still do not have personal documents issued by the Republic of Croatia (currently valid Croatian citizenship document or a document issued to foreigners with permanent residence), should be warned that they will not have the right to housing care

*accommodation. Meanwhile, they can be issued consent on the right to housing care without a permanent address indicated.*

### **3.4. Conclusion**

In the *Conclusion from 2006*, the Government of the Republic of Croatia failed to oblige the competent Ministry to contract sales agreements for the purchase of apartments with the returnees who, as part of housing care programme, decided to purchase their own apartment. This failure, however, should not affect the possibility to receive housing care through purchase of individual apartment, which has been regulated by the *Conclusion from 2003* as one of the two ways of housing care outside the ASSC. This is confirmed by point 21, sub-point 6 of the *Implementation plan for providing housing care for returnees who do not own or co-own an apartment or a house, but used to live in social-owned apartments on the territory of the Republic of Croatia which is outside ASSC, and which was adopted together with the Conclusion from 2003*, where it is stated that housing care is *formally solved* by signing of the lease agreements or the sales agreements.

As a result of this failure the way of signing sales agreements on purchasing your own apartment is still questionable, as well as the commitment of the competent Ministry to conclude these agreements.

Neither under *the Conclusion from 2003*, nor under the *Law on ASSC* are conditions for obtaining the right to housing care regulated precisely enough, which renders the internal field of margin of appreciation belonging to the competent bodies when reaching decisions too broad and thus has negative effect on the legal security of the applicant.

If the legislator intended to empower the competent body with the discretionary decision-making power, the scope of the discretionary power should have been stated as well.



## 4. Procedural Contents of the Legal Framework for Housing Care

### 4.1. Procedural Contents of the Legal Framework for Housing Care inside ASSC

*Law on ASSC* does not contain procedural provisions which would regulate the action of the competent body, after a person has submitted a request for the housing care. When deciding on housing care requests, one is to proceed in keeping with provisions of the LAP since the *Law on ASSC* does not contain provisions that would regulate certain procedural issues in a different way.

*LAP prescribes that bodies of state administration and other state bodies as well as bodies with public powers are to proceed in accordance with the LAP 'when in administrative matters, through direct enforcement of legislation, they decide on rights, duties, or legal interests of citizens...'*<sup>42</sup>

### 4.2. Procedural Contents of the Legal Framework for Housing Care outside ASSC

Procedural contents of the legal framework for the housing care outside ASSC are regulated by means of various legal acts of public and internal character. According to the *Conclusion* adopted in 2003, the competent Ministry is in charge of elaborating conditions and procedures for the realization of housing care, which was what the Ministry did in 2003 with the adoption of its internal act – *Implementation Plan for Providing Housing Care for Returnees*.

- In point 15, among actions programmed for the purpose of realization of housing care needs, the following is listed as well : d) request processing and verification, and approval of the housing care, and e) establishment of a transparent appeal procedure (objection procedure initiated by an applicant).
- Point 17 sets out who is eligible to submit a request, who is the request to be submitted to, in what way, and which is the deadline for submission.
- Point 18 specifies what a housing care request must contain.
- Point 19 elaborates the procedure for processing a housing care request once it has been submitted.

Requests are to be dealt with promptly and by respecting the order of the receipt of the request. If an applicant has not presented all necessary documents or data, ODPRR shall ask the applicant to supplement the request **within fixed time limit of 30 days as of the day an official letter has been received**. If the applicant does not present requested data or documents within the set period, the request proceedings will stay until these have been presented. During the proceedings the status, property, and residence of an applicant are to be ascertained as well as other facts of crucial importance for addressing the housing care issue. Once relevant facts have been established, provided that the applicant meets requirements, through a *letter* (a written notice) they will be informed that they will be housed and that they have been included in the state flat leasing list, i.e. the purchase list depending on the housing care means they opted for. In case that an applicant does not meet housing care requirements, they will be informed through a letter about the request rejection, whereby it is obligatory to provide explanation meaning statement on the grounds for rejection. At the first instance the ODPRR is making decision on the housing care request. If a housing care request has been rejected at the first instance, an applicant is entitled to *plead* to the Advisory Commission **within fixed time limit of 60 days as of the day a written notice has been received**. After the plea

has been considered by the Advisory Commission and with the *recommendation* of the Advisory Commission, the request is decided on at the second level through a Minister's *decision*, i.e. the decision of the Deputy Minister. In case of a request being rejected by the competent Ministry at the first level, an applicant is not obliged to address Advisory Commission first, but he *rather has the proceedings before the competent court at his disposal*.

- Point 20 determines the composition of Advisory Commission (Advisory Commission is appointed by the competent Minister), its counseling role, the way of operating and decision making process which ends with adoption of *recommendation for solving a case*, as well as the fact that the Commission is entitled to summon an applicant for an interview in the course of the fact-finding procedure.
- Point 21, sub-point 2 sets out that ODP RR creates *a relevant list* of applicants and their families who should be housed; it also stipulates means of housing care (ownership or lease), and determines housing care areas, i.e. a list of municipalities and towns where a number of apartments need to be secured/provided. Sub-point 6 regulates that housing care issues are *formally settled* through signing of a leasing contract or a contract on the sale of an apartment.

*Guidelines for Handling of Applications for Housing Care outside ASSC* of 2006 alters and supplements the outlined procedural framework for the housing care of returnees outside ASSC.

The procedure for processing and deciding on housing care requests involves regional offices for displaced persons, returnees, and refugees too. They compile the *File Note* of an application for housing care outside ASSC (in the *Implementation Plan* from 2003 the term housing care request, and not housing care application is used), which can show whether the file has been completed.

If a request (an application) has not been completed, RODPRR shall compose the *Request for Application Completion* for the housing care outside ASSC to specify which documents or data are missing. The request is dispatched by ODP RR that delivers it to the party. Once the file has been completed, the competent RODPRR compiles a *Recommendation on the Right to Housing Care outside ASSC*.

**If an applicant has not presented required supplements to the application within 60 days as of the day of the delivery of the request for the application completion, RODPRR is to present ODP RR with a *Recommendation for Request Rejection and File Closure*.**

The *Statement on Waiving the Right to Housing Care* is to be filled in and signed by applicant in all cases where applicants call off their housing care requests during the interview in the competent RODPRR. If the party contacted the RODPRR by telephone or informed it thereof in writing, the statement is to be sent by mail and signed within two months. After the stipulated time has expired, an applicant is deemed to have given up his housing care request. If an applicant has presented a written statement on desisting from the request or if they are deemed to have desisted from an application after a two-month period has expired, RODPRR delivers ODP RR the *Recommendation on Application Rejection*, i.e. *Proposal for Case Closure*.

- Point 5 of the *Guidelines* lays down that if an applicant meets the prescribed requirements, ODP RR shall issue *housing care consent* (in the *Implementation Plan* the term *written notice* is used). In addition, this point sets out that in cases when applicants are before eviction under a court verdict or are in a particularly difficult social position, RODPRR can ask ODP RR to undertake *priority housing care*. Such a request is to be supported by appropriate evidence.
- Point 8 of the *Guidelines* says that it is not envisaged for an applicant to be represented by a third party during the procedure for ascertaining the right to housing care.
- Point 6 of the *Guidelines* sets out that the adequate living surface to which the applicant is entitled to is to be ascertained by taking into account the number of the applicant's family members listed in the application (regardless of whether they were members of the

applicant's family back in 1991), and in accordance with the valid regulations on apartments built out of socially stimulated apartment building.

As it has been said before, the *Conclusion* adopted in 2006 obliges the competent Ministry to carry out proceedings and pass adequate *decisions* on recognition of the right to housing care following submitted requests of returnees.<sup>43</sup>

## 5. Comparative Analysis of Material and Procedural Contents of the Legal Framework for Housing Care within and outside ASSC

### 5.1. Material Contents

The table below: Comparative review of material contents of the legal framework for housing care within and outside ASSC

Beneficiaries of housing care within ASSC have:	Beneficiaries of housing care outside ASSC have:
- the right to housing care, as prescribed by the law	- a position of the Government of the Republic of Croatia, to house them, with certain conditions being fulfilled, through the lease of a state-owned apartment or through their purchasing of an apartment pursuant to the Law on Socially Stimulated Apartment Building
- an opportunity to exercise the right to housing care in one of five ways prescribed by the <i>Law</i>	
- the right to purchase a family house or a flat under very favourable conditions	
- the right to financial assistance, depending on the means of housing care	
- the right to be granted construction land and/or construction material free of charge, depending on the type of the housing care provided	
- the right to obtain ownership of state-owned apartments free of charge which applies to a specific group of beneficiaries	
- the right to donate an apartment or a house owned by the Republic of Croatia to Croatian defenders or family members of killed, detained, or missing Croatian defenders	
- the right to be exempted from the obligation to pay real estate trade tax within ASSC	
- entitlement to inherit the right to use the allocated real estate, under equal conditions	

It is clear from the table above that through particular regulations and acts different (unequal) legal regimes have been introduced for housing care beneficiaries, depending on whether their housing care is realized within ASSC or outside ASSC.

An unequal legal regime is established through the housing care being regulated by means of acts that have diverse legal characters depending on the area they refer to:

- housing care within ASSC by virtue of the Law on ASSC and sub-legal regulations, and

- housing care outside ASSC by virtue of legal acts that do not have the character of a regulation, nor consequently legal force.<sup>44</sup>

There are also major discrepancies in terms of the substance and scope of rights between beneficiaries of housing care within ASSC and outside ASSC. For instance, housing care beneficiaries within ASSC have a legally determined right to be housed, while housing care beneficiaries outside ASSC have a stance of the Government of the Republic of Croatia that, with certain conditions being fulfilled, they will be housed too.

## **5.2. Procedural Contents**

### ***Legal character of the housing care decision***

A decision on the request for housing care within ASSC has a character of an administrative act since in administrative proceedings a competent administrative body, through direct enforcement of the Law on ASSC and other sub-legal regulations, is to decide whether to recognize the right to housing care or not.

A decision on the request for housing care outside ASSC does not have a character of an administrative act since it is not based on a law or any other regulation based on a law, but rather on a conclusion which is not a regulatory act. *Constitution of the Republic of Croatia* stipulates that each single act of state administration and bodies that have public powers must be based on the law.<sup>45</sup>

### ***Rules of procedure for deciding on housing care request (application)***

A decision on the request for housing care within ASSC is to be made in administrative proceedings stipulated by virtue of the LAP.

*Enforcement of some provisions of the LAP can be derogated from only in case when a procedural issue is regulated differently by the way of a special law.<sup>46</sup> Since a special law has not been passed, the obligation to implement proceedings set out by the LAP holds.*

A decision on the application for housing care outside ASSC is not to be reached in administrative proceedings. Administrative proceedings can be prescribed only by virtue of a law, therefore not by a sub-legal regulation.<sup>47</sup> Requirements and procedures related to implementation of housing care outside ASSC are elaborated in the *Implementation Plan*, which is neither a law nor an implementation regulation, and since it has not been published it does not have the character of a public act either. Therefore the public and interested persons are not guaranteed the availability of documents that stipulate conditions and the procedure for implementation of the housing care.

Consequently, interested persons, i.e. those who submit a request/an application are not in a position to participate in and respond to procedural requirements actively and in a proper way since they are ignorant of the procedure itself and of the rules that are applied to their case, which in accordance with principles of the rule of law and legal certainty they ought to be familiar with.

### ***Legal remedies***

#### ***Within ASSC***

The competent Ministry decides on the request for housing care within ASSC. Against a first instance decision of the competent Ministry one cannot lodge a complaint. A complaint could be

lodged had the possibility of lodging a complaint been envisaged and an agency in charge of deciding on the complaint been stipulated by the Law on ASSC. As these pre-conditions do not exist than the administrative dispute can be instituted immediately.<sup>48</sup>

### ***Outside ASSC***

Against a decision on the application for housing care outside ASSC, since it is not an administrative act, one can neither lodge a complaint nor initiate administrative dispute.<sup>49</sup> A housing care applicant does not have the right of appeal against a negative letter in administrative proceedings, but has an opportunity to file a plea to Advisory Commission which has still not been constituted.

*Constitution of the Republic of Croatia guarantees the right of appeal against individual legal acts.<sup>50</sup> A letter (a written notification) is not an individual legal act but rather a document without the legal force that regulates an issue of a humanitarian character, therefore the right of appeal is excluded.*

### ***Legality control***

Instructions contained in the *Implementation Plan for Providing Housing Care for Returnees* according to which a person that has submitted a housing care request can appeal to the competent court in case of their request having been rejected by the competent Ministry are not based on law. Namely, an individual has the right to initiate administrative dispute before Administrative Court of the Republic of Croatia if they believe that an administrative act directly violates any of their rights or a personal interest based on law.<sup>51</sup> As it has been stated, a letter (a written notification) is not an administrative act that decides on the right to housing care, therefore it is not subject to the judicial control of legality.

## **5.3. Final Word on Diverse Material and Procedural Contents of Legal Frameworks for the Housing Care within and outside ASSC**

Introduction of unequal legal regimes for beneficiaries of the housing care within and outside ASSC undermines the constitutional principle of equality of citizens before the law and legal certainty, particularly with respect to availability of effective legal remedies and possibility of a court protection.<sup>52</sup> Namely, *the principle of equality of citizens before the law* requires that juridical relations, i.e. a legal regime for persons that are in the same legal position must be regulated by law in a way that provides equity for all.<sup>53</sup> It is apparent that all housing care beneficiaries, former tenancy right holders whose right has been cancelled, are in the same legal situation. However, for this group the housing care issue is regulated in a different (unequal) manner in the areas within ASSC and outside ASSC. As a consequence of this the existing rights vary in substance and scope, but also this creates discrepancies in terms of availability of legal remedies.

It is unquestionable that legislation may provide advantages to vulnerable social groups. Having said that, in order to achieve the so-called *positive discrimination*, rational or unbiased justification for differential treatment is needed as well as a compelling, plausible, or highly serious reasons for such an approach, which again must be regulated by law. For differential legal treatment of persons who are in a similar position there must be 'reasonable and unbiased justification'. Otherwise what we will have is a discriminatory approach, i.e. a part of one group is given preferential treatment that is not being justified by or based on law – those are former holders of tenancy rights that are beneficiaries of the housing care within ASSC that are accorded preferential position in relation to former tenancy rights holders that are beneficiaries of the housing care outside ASSC.

## 6. Analysis of the Process of Deciding on Housing Care Requests (Applications)

Since specificities of the housing care outside ASSC have been analyzed earlier in the text, this chapter largely focuses on the process of deciding on requests (applications) for the housing care in those areas, while on the process of deciding on requests (applications) for housing care within ASSC only several basic remarks are included.

### 6.1. Analysis of the Process of Deciding on Requests (Applications) for Housing Care within ASSC

#### 6.1.1. Consent instead of decision

The Report on Work of the Ombudsman for 2006 states:

*'Although in these procedures it is decided on the right of a party, in practice neither administrative procedure is applied on the basis of these requests nor is an administrative act issued... Consent is not issued after conducting a complete and regular administrative procedure, it has no character of an administrative act, and, even though other legal remedies are not available, it does not give an opportunity to an applicant to seek protection through regular legal remedies (an appeal) nor is the court control of legality of an individual act of administrative authorities made available (article 18 and article 19, paragraph 2 of the Constitution).'<sup>54</sup>*

Given that the Law on ASSC does not contain procedural provisions in accordance with which the competent body is to proceed once a request for housing care has been submitted, provisions of the LAP must be applied.

The decision on a housing care request is to be made by virtue of an act named *Consent to temporary housing care through the lease of an apartment within ASSC*.

Still, an administrative act has to be marked as a *decision*.<sup>55</sup> Exceptionally, by virtue of special legislation it can be envisaged that a decision be named differently. The competent Ministry has not acted in accordance with the LAP, but rather, with no special regulation having been enacted, arbitrarily ruled that an act settling a housing care request instead of a decision will be named consent, and that consent will not contain an instruction on legal remedy that is a mandatory part of the administrative act.

*However, the term decision denoting an administrative act refers not only to the administrative act that, in an administrative procedure, is issued under the name of a decision, but also to all other acts of an administrative body by means of which it is authoritatively decided on a party's request since with this act a right of a party is recognized or denied through immediate enforcement of a law or a law-based regulation. Therefore one could claim that the consent is indeed an administrative act since it is issued by a state administrative body in an administrative matter, i.e. when for a particular case that belongs to a certain administrative area it rules on a particular right and because it decides on (settles) the right to housing care, meaning recognizes or denies the right to housing care.. Consent by means of which it is decided on recognition or denial of the right to housing care contains all substantial elements of an administrative act as are prescribed by the LAD.'<sup>56</sup>*

The competent Ministry, which is obliged to enforce laws and other regulations, decided arbitrarily not to comply with some provisions of the Law on ASSC and LAP that are of

importance for the exercising of rights of citizens and their legal security when deciding on housing care requests.

Nevertheless, if such arbitrariness is an obstacle for enjoyment of legal protection against individual legal acts issued in a first instance procedure (consent, i.e. denial of consent), including the court control of legality of these acts through initiation of administrative dispute, such practice would represent breach of articles 18 and 19 of the Constitution of the Republic of Croatia as well as violation of the right to an effective legal remedy and access to court authorities guaranteed by virtue of articles 13 and 6 of ECHR.

### **6.1.2. Absence of instruction on legal remedy**

Housing care *consent* does not contain an instruction on legal remedy although the LAP stipulates it is the integral part of the administrative act.<sup>57</sup>

*Through an instruction on legal remedy a party is informed if it is able to lodge an appeal against a decision (an administrative act) or institute administrative dispute or to initiate any other proceedings before a court.*<sup>58</sup>

Based on the fact that *consent* does not contain an instruction on legal remedy, a person that submitted a request for housing care can proceed in accordance with provisions of the LAP, i.e. they can initiate administrative dispute by filing a lawsuit within 30 days as of the day an administrative act has been issued in line with provisions of the LAD<sup>59</sup>. An applicant cannot lodge an appeal since against first instance decisions of ministries and other state administrative bodies a complaint can be lodged only in cases envisaged by law.<sup>60</sup> Instead of instituting administrative dispute immediately, a person that submitted a housing care request can within three months ask the competent Ministry to supplement consent if the consent does not contain any instructions on a legal remedy. In this case the deadline for a lawsuit starts to expire as of the day supplemented consent has been delivered.<sup>61</sup>

If the competent Ministry has not issued consent within a month as of the day a regular request has been submitted, i.e. within two months in case a special investigation procedure is needed or if there are other reasons why the consent cannot be issued without delay, a person that has submitted a request for housing care cannot lodge an appeal, but can institute administrative dispute by means of a lawsuit. An applicant can initiate administrative dispute because of the so-called *silence of administration* provided that the competent Ministry has not issued consent event within further 7 days as of the day an applicant has for the second time requested the ministry to do so.<sup>62</sup>

*The way the competent Ministry, i.e. ODPRR has acted so far in cases of appeals lodged due to the silence of administration, or in cases when decisions on the right to housing care on ASSC have not been reached within time limits prescribed by the LAP, indicates unfamiliarity with the law or intentional non-enforcement of the law on the part of ODPRR. Namely, when it comes to these appeals in practice statements of the competent Ministry have been registered in which the Ministry expresses its opinion that there are no grounds for an appeal having in mind that the legal matter in hand is regulated by the Law on ASSC<sup>63</sup> However, the problem related to such performance of the ministry lays in the fact that the Law on ASSC does not provide the right to legal remedy.*

### **6.1.3. Non-transparency of the process of making a list of priorities**

The order of priority is set by virtue of the *Law on ASSC*<sup>64</sup> and *Rules on the order of priority for housing care in ASSC*<sup>65</sup>. The *Rules* for the 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> order of priority sets criteria on the basis of which scoring will be done in the process of establishing the order of priority.

The total of 5 categories of people have been determined, divided into 5 orders of priority:



1. temporary users of someone else's property the owner asked to possess and to use;
2. other temporary users of someone else's property;
3. persons accommodated in refugee settlements and other facilities for organized accommodation;
4. persons returning to their former places of residence or settling down in Areas of Special State Concern, and
5. users of apartments the tenancy rights over which has ceased in line with the Act on Lease of the Apartments on Liberated Territories (OG, no 73/95).

*The right to housing care is exercised on the basis of the order of priority for one or more units of local self-government in areas of special state concern, depending on the available state-owned real estate fund, state budget resources, and other sources.<sup>66</sup>*

*As an exception to the order of priority, for persons of certain (deficient) vocations and occupations for whose work there is a high demand on the part of units of local self-government on these territories, the competent Ministry will ensure their housing care in line with the available state-owned real estate fund, state budget resources, and other sources.<sup>67</sup>*

Constitutional Court of the Republic of Croatia took a stand that groups of people, listed in orders of priority, 'do not compete with each other, as groups, in allocation of the available housing care fund, but solely persons of the same status, within one and the same group, compete with each other according to the criterion of the satisfaction of criteria set for determination of the order of priority within that specific group'.<sup>68</sup>

The process of determining the list of priorities for the housing care is non-transparent because data on the way of making scoring lists of priorities as well as on the ranking of priorities are not available to the public. A person that has submitted a request for the housing care does not know when they will be housed and what their rankings on the list of requests are.

*In practice there were cases of unequal treatment exercised by competent state authorities in deciding on rankings on the list of priorities of persons that occupy an equal position. The network of RLAP in the course of 2006 and 2007 registered not a small number of cases of giving state-owned resident units for enjoyment to persons who have already exercised their right to housing care in other resident units owned by the state or who possess their own resident units; or, on the other hand, these are people that fled from Bosnia and Herzegovina and whose property in Bosnia and Herzegovina has been returned to them, or who sold the property, or who own property in Croatia, which is all contrary to article 38 of the Law on ASSC.<sup>69</sup>*

#### **6.1.4. Case analysis**

From the Report on Work of the Ombudsman for 2006:

*The greatest number of files in the Ombudsman's Office in the field of housing care is identical and can be described in the following way. Applicants addressed the Ombudsman after waiting for 2-5 years for their request to be decided, with no information whatsoever on the status of their file presented to them. At intervention of the Ombudsman, the competent Office for Displaced Persons delivers a note on an applicant's file, stating that:*

- a) the request was registered (under a number), the Office does not avail itself of a sufficient number of housing care units, and that the applicant will be housed pursuant to valid legislation, or that*
- b) an applicant does not meet legal requirements for housing care.*

*In spite of several warnings that such a practice is not in line with the Law on General Administrative Procedure and that it is necessary to conduct an administrative procedure on the requests, the Office has not changed its manner of acting in these cases.'*

From the Report on Work of the Ombudsman for 2007:

*'Having in mind that the manner of acting of the Office for Displaced Persons, Returnees and Refugees has not changed since the last report to the Croatian Parliament, assessment and remarks of the Ombudsman on its work are almost identical in this report. Except for severe irregularities in the work of the Office, seriousness of the situation in the area the Office deals with is contributed to by poor legislation, its frequent alteration, long-standing and inconsistent acting of regular courts and of the Constitutional Court of the Republic of Croatia...'*

Practical examples of the regional NGO network:

### **Case 1**

ODPRR delivered to a housing care applicant a letter in the form of statement (Class: 019-06/07-24/125, Reg. no: 530-19-04-07-2 of 18.04.2007).

ODPRR on a housing care request, that is on (non-)recognition of the right to housing care has not decided through a decision, as the LAP lays down, but made a negative decision on the request in the form of a letter of statement in which it states that 'due to the fact ascertained through inspection in the field that the facility is not damaged, this Office does not find any grounds for meeting your request'.

A written statement is not issued in the form of an administrative act and does not contain introduction and an instruction on legal remedy, which are both compulsory components of an administrative act. Purview should have been quite clear – the right to housing care is either recognized or not recognized.

*The letter of statement contains the following text too: 'This Office received your letter in which you ask for the housing care application you submitted to this Office to be settled...'* Written addressing of an administrative body by a party is not a letter, as named by the Office, but a submission<sup>70</sup>, which shows that officials of ODPRR are either not familiar with relevant provisions of the LAP or do not apply relevant legal terms precisely. Letters are, namely, documents and acts (summons, notifications, statements, decisions, conclusions, and other official acts) which an administrative body delivers to a party.<sup>71</sup>

As regards a complaint of a person who submitted a housing care request to the Ombudsman about the work of ODPRR, the Ombudsman requested a statement of ODPRR on reasons why a decision containing an instruction on legal remedy has not been issued. ODPRR in its response (CLASS: 019-06/07-24/125, Reg. no: 530-19-04-07-2 of 30.10.2007) informs the Ombudsman that a person that submitted a request for housing care 'through repeated addressing asked for the issuing of a decision by means of which their application is rejected, so that he would be able to lodge an appeal'. ODPRR also reports 'that an administrative procedure will be carried out afterwards and that it will end in a decision so that' – an applicant – 'would be able to exercise the right to regular legal means of protecting their own legal interests, i.e. to lodge an appeal'.

This can lead to conclusion that ODPRR, in general, does not administer administrative proceedings, except in case an applicant requests this repeatedly and explicitly, and upon the intervention of the Ombudsman. Besides, a person that submitted a request for housing care cannot lodge an appeal, as in its statement to the Ombudsman ODPRR falsely claimed, but can institute administrative dispute.

## Case 2

ODPRR to a person who submitted an application for the housing care delivered a *letter* in the form of a statement on the submission (Class: 019-16/06-24/1101, Reg. no: 530-11-03-04-4 of 06.12.2006).

In the statement it is said that ODPRR received a request of a housing care applicant and that, in line with the statement of RODPRR – Vukovar, a *negative recommendation* for the housing care was issued for reasons stated further in the statement.

It is not quite clear who issued a negative recommendation, whether ODPRR or RODPRR. One could assume it was issued by RODPRR, which is to present the recommendation to ODPRR for further processing related to deciding on the housing care request. Thus it can be inferred that it was not ODPRR at all that issued an act deciding on the housing care request.

For this reason the Ombudsman addressed ODPRR with a letter number PP-568/07-2 of 17.01.2007, with a recommendation for a decision to be reached on the request for housing care of an applicant, against which the applicant is entitled to use legal remedies.

In a response to the Ombudsman ODPRR agrees with the recommendation on the issuing of a decision on the request for housing care and at the same time informs him that ‘ODPRR is being involved in realization of the procedure of issuing decisions to applicants for the housing care on ASSC, so that they would be able to use legal remedies, pursuant to provisions of the LAP’.

### 6.2. Analysis of the Process of Deciding on Requests (Applications) for Housing Care outside ASSC

The analysis of legal aspects of the process of housing care outside ASSC is to a great extent limited by the fact that the process of housing care outside ASSC is primarily a humanitarian activity and not an activity of legal character that would be regulated by virtue of generally binding legislation. This ensues from the standing of the Government of the Republic of Croatia that ‘there is no legal obligation whatsoever towards former holders of tenancy rights’.<sup>72</sup>

However, there is a tendency to make this activity appear as administrative proceedings in which it is decided on the recognition of a certain right. Thus, for instance, by virtue of point 5 of the *Conclusion* adopted in 2006 the MSTTD is obliged to ascertain needs and locations for building apartments with the view of implementation of the *Housing Care Programme*, and to implement the procedure and issue adequate *decisions on the recognition of the right to housing care* after requests submitted by returnees.

Primarily humanitarian character of the process of housing care outside ASSC limits the application of legal standards, principles, and criteria in determining qualities of internal rules, but it also prevents the possibility of investigating the legality of decisions within the housing care decision-making process. Practically the whole process is to a large extent shifted from the zone of law to the zone of humanitarian aid with specific ‘legal institutes and remedies’.

#### 6.2.1. Excessive length of the process of deciding on housing care requests

Requests for the housing care outside ASSC were to be submitted within the period from June 17 2003 to September 30 2005.

Pursuant to the *Conclusion* adopted in 2003, the initially set time limit for realization of the housing care was by the end of 2006. In the meantime, MSTTD on several occasions announced in the public new deadlines for completion of the housing care process...

- *MSTTD in its report of January 7 2005 stated that ‘the programme is expected to be finished by the end of 2006 (building and leasing of apartments)’.*<sup>73</sup>

- *In the report of MSTTD of January 16 2006 the deadline was extended by 2008.*
- *In the report of April 12 2006 the deadline was extended by the mid of 2011.*
- *In line with the Conclusion adopted in 2006 the deadline was extended by the end of 2011.*
- *Meanwhile, 'with the view of speeding up the process of housing care of former holders of tenancy rights within and outside ASSC, the Republic of Croatia assumed an obligation to settle all remaining cases of the housing care within and outside ASSC by the end of 2009 following the turnkey method....'<sup>74</sup>*

... and completion of administrative procedures for the housing care outside ASSC.

- *In the report of MSTTD of September 7 2006 it was stated that administrative settling of the largest number of housing care requests was envisaged to take place by the end of 2006;*
- *In the report of MSTTD of July 15 2007 it is stated that 'by the end of 2007 the Ministry plans to finish the administrative procedure of ascertaining the right to housing care for 4,500 requests for the housing care outside ASSC'.*

As a rule, persons who submitted housing care requests wait for their application to be settled for at least two years, some of them even longer, without being given any information whatsoever on the status of their file.

*Lj.C. submitted a request for the housing care outside ASSC on March 3 2004 (Acknowledgement of Receipt of the Regional Office in Osijek, Class: 019-06/04-08/1, Reg. no: 519-12-12-04-82). In the meantime she submitted a request for the supplement of her housing care application. 4 years had passed since the day she submitted a housing care application and she still had not received any response whatsoever.*

*D.S. submitted a housing care request on September 9 2004. In a submission of March 4 2007 he informed MSTTD on the change of the address of residence. More than three and a half years passed since he submitted his housing care request and he still had not received any notification.*

## **6.2.2. Problems with completion of housing care applications**

Through requests for completion of an application for the housing care outside ASSC, which ODPRR delivers to persons who submitted requests (applications), an applicant is most often asked to:

- certify an application with a public notary if they reside in Croatia, or with the competent municipal court if they reside abroad;
- certify individual statements (for each family member) that they do not own or co-own a family house or a flat on the territory of the Republic of Croatia, or on the territory of states that came into being after the ex-SFRY disintegrated, or that they have not sold, donated, or in any other way disposed of this property after October 8 1991, i.e. that they have not obtained a legal position of a protected lessee, along with a statement that they wish to return and reside in an allocated apartment;
- present proof on the apartment in social ownership that had been occupied before (a contract or a decision on giving the apartment for usage, that is assigning of the tenancy right, a court decision, etc.);
- present copies of personal documents of the Republic of Croatia for adults, or a copy of a birth certificate or a citizenship certificate for minor family members, and if they do not possess personal documents of the Republic of Croatia they are to present copies of valid personal documents (e.g. refugee ID card, etc.);

- present a statement on the status of residence and ownership of the housing care facility at the address of residence abroad, and in some cases, along with the statement, the proprietary certificate is required too;
- present a statement and a decision on temporary usage of accommodation at the address of residence abroad;
- present a statement on the ownership of land in the Republic of Croatia;
- present proof on custody of a family member;
- fill in a new application with all family members included and certify it if one desires to introduce new family members;
- present a decision on divorce;
- present a decision on inheritance;
- present a signed and certified statement on desisting from housing care of a family member;
- present a statement on the place where an applicant would like to realize the housing care;
- present a death certificate for the housing care applicant, etc.

### *Setting of additional requirements for the housing care*

The practice of ODPRR is not unified, so there are cases when it set additional requirements for the exercising of the right to housing care.

Thus, for example, the request to present a statement on the ownership of land in the Republic of Croatia surpasses the framework of requirements set out in the *Conclusion* of 2003.

Namely, the requirement set out in the *Conclusion* goes that applicants do not have in their ownership or co-ownership a family house or a flat, and not land, on the territory of the Republic of Croatia, or on the territory of states that came into being after the disintegration of the former SFRY, or that they have not sold, donated, or in any other way disposed of this property.

### *Reducing the range of acceptable proof*

In practice there were cases of reduction of the range of acceptable proof, which sometimes creates insurmountable obstacles to housing care.

For example, a person who submitted a request for the housing care and their family are asked by some RODPRR to present a copy of an identity card of the Republic of Croatia. In these cases RODPRR as administrative bodies that are to implement, and not to establish regulations, impose an additional requirement for the exercising of the right to housing care which valid regulations do not contain. Such incidents, as a rule, happen when RODPRR do not act in accordance with *Guidelines for Handling Applications for Housing Care*, so instead of delivering the request for completion of an application to ODPRR, which then delivers it to the applicant, RODPRR communicate with the party directly.

*B.A. submitted a housing care request within fixed time. After the applicant made a phone enquiry with RODPRR Gospić, when he asked for information about what he is supposed to present to the office apart from certified statements of adult family members, a female employee of RODPRR Gospić requested that all applicant's family members should present her with copies of Croatian identity cards so that the applicant's request could be settled.*

*Z.T. was summoned by RODPRR Zagreb on August 30 2007 to call in to RODPRR Zagreb in person for the purpose of a statement on the request for housing care and to bring along her identity card and copies of valid identity cards of other family members.*

### ***Submission of personal documents***

In *Guidelines for Handling Applications for Housing Care* it is stated that along with an application for the housing care one must, among other things, present a copy of personal documents for adults, i.e. a copy of a birth certificate or nationality certificate for minor family members, and that: valid personal documents of RH, i.e. if they do not possess Croatian documents a copy of valid personal documents of the state where they reside or whose citizens they are (an identity card or a refugee ID, i.e. a birth certificate for minor family members). Consequently, an identity card (under which, due to lack of additional instructions, applicants invariably understand only an identity card of the Republic of Croatia) is not the only acceptable personal document.

In addition, the *Guidelines* lay down that even without valid Croatian documents (a valid personal document of a Croatian citizen or a foreigner with permanent residence) a housing care application can be settled (through issued consent on the right to housing care), but without a housing care address specified, i.e. with a warning given to beneficiaries that they will not be allocated accommodation for enjoyment as long as they have not obtained valid Croatian papers.

### ***Verification of an application***

There were cases that RODPRR, though not authorized to do so, directly addresses housing care applicants who have residence abroad. By doing so, RODPRR does not act in accordance with the *Guidelines* and *standardized notification forms* and request, in some cases, that the application be certified with a public notary in the Republic of Croatia or, in other cases, 'to certify required papers with international seals' in states where applicants are currently residing. This practice of RODPRR is incompatible with international bilateral agreements which the Republic of Croatia concluded with the Republic of Serbia and Bosnia and Herzegovina, and which provide for a possibility of certifying documents with e.g. competent municipal courts in the Republic of Croatia and Bosnia and Herzegovina.

### ***Non-acceptance of valid proof***

Although the *Guidelines* and a standardized form of request for the completion of an application for the housing care outside ASSC state that a court decision too, i.e. an effective judgment of the competent court on cancellation of tenancy rights can serve as proof on accommodation in social ownership, in practice there were cases that these papers were not accepted as valid proof.

*Z.D., a refuge from Duga Resa, is a former tenancy right holder in the Republic of Croatia. The donator of an apartment for usage was 'Cotton Industry Duga Resa'. The applicant cannot exercise the right to housing care since he has not kept the contract on usage of the apartment with which he could prove he was a former tenancy right holder. However, he possesses the judgment of the Municipal Court on cancellation of the residence right that competent RODPRR does not consider valid proof.*

### ***Incompatibility of the Housing Care Guidelines with the Implementation Plan***

At the end of the form of a request for completion of an application for the housing care outside ASSC there is a warning for an applicant saying that if within 60 days at the latest as of the day a request for completion of an application has been received an applicant does not supplement his application in a way specified in the completion request, it will be deemed 'the request has not been submitted', i.e. that an applicant 'abandoned the application for the housing care'. The *Guidelines* lay down an obligation of RODPRR, in case that an applicant does not present required application supplements in given time, to deliver to ODPRR a recommendation to reject the request and close the case.

This warning is not in line with point 19 of the *Implementation Plan for Providing Housing Care for Returnees*, which states that ODP RR, if an applicant has not presented necessary documents or data, asks an applicant to supplement their request within the fixed period of 30 days as of the day the note is received. If the applicant does not present requested data or documents within the given time, the request proceedings will stay until these have been presented. So, instead of ‘rejecting the request’<sup>75</sup> and ‘closing the case’, according to the *Implementation Plan* ‘the request proceedings should stay’.

### ***Practices contrary to provisions of the LAP***

Regardless of the type of document that is missing in the housing care application, e.g. an application contains a formal flaw that prevents its processing, or is incomprehensible or incomplete the typified form contains the same warning: it will be deemed that, unless an applicant within specified time removes all defects, the application has not been submitted at all. Such a practice is incompatible with the LAP.<sup>76</sup> Namely, if an applicant has not submitted proof on which their request is based, this cannot be grounds for rejection of a request (an application) through a conclusion since the proof an applicant is supposed to submit along with a housing care application is not a component of a submission (an application), but serves as a tool for ascertaining facts on the basis of which consent (‘a decision’) is issued. ODP RR is, therefore, obliged to ‘continue the procedure and, in line with rules of procedure and material legislation, settle the administrative matter’<sup>77</sup>, by reaching an authoritative decision, and not to reject an application, especially having in mind the fact that deadlines for submission of applications for the housing care outside ASSC expired.

### **6.2.3. Communication between administration bodies and applicants**

The *Guidelines for Handling Applications for Housing Care outside ASSC* adopted in 2006 states that all persons who submitted a request and opted for the housing care model of an apartment leasing received notifications to appear in the competent ROD PRR.

*The survey conducted during the period February-March 2008 shows that competent authorities, ODP RR and/or ROD PRR, contacted about 2/3 of surveyed persons who submitted a request for the housing care outside ASSC. About 3/4 of the surveyed was contacted in writing, while others were contacted by phone.*

*The survey also shows that slightly less than 1/3 of the surveyed changed their address of residence compared to the one they stated in the request – of which 1/3 informed the competent body about this change.*

In a typified ‘call for an interview’ an applicant is asked to contact, in person or by phone, the ROD PRR that is in charge of the place where the applicant wants to be housed within two months as of the day the call has been delivered for the purpose of ‘request examination and ascertaining of the right to housing care’. At the end of the call an applicant is warned that unless they contact the competent ROD PRR within the given time, they will lose priority in the priority list.

Although the call explicitly states that an applicant is entitled to choose how they will communicate with the responsible ROD PRR (whether they will come in person or call), there were cases registered that some ROD PRR (e.g. in Zagreb, Osijek) insist that an applicant should come in person to an interview in ROD PRR.

So, some ROD PRR, without being authorized to do so, excluded the possibility of phone communication, despite the fact this type of communication is explicitly listed in the typified form of ODP RR.

Such acting of ROD PRR is not in keeping with the LAP. Namely, according to article 70 of the LAP the body administering the procedure is authorized to summon a person whose presence is required in the procedure, provided that the person resides in the area of its competence.

Exceptionally, a person that resides beyond the territory of the authority administering the procedure can be invited to oral debate if such an action speeds up or streamlines the procedure, and the arrival of the invited does not incur substantial costs or cause major waste of time to them.

When it comes to the housing care, housing care applicants, as a rule, reside not only beyond the territory of the competent RODPRR, but they also frequently reside abroad. It is indubitable that for a great majority of them their arrival incurs substantial costs and causes major waste of time. Therefore, none of the requirements for summoning parties laid down by the LAP is met, which means that such acting is not in accordance with the law.

#### **6.2.4. Non-transparency of the priority list**

The *Housing Care Implementation Plan* sets out that requests for the housing care shall be processed promptly after the order of receipt,<sup>78</sup> and that the ODPRR shall compile a *relevant list* of persons and their families that are to be housed<sup>79</sup>. It is not quite clear whether this list is a priority list or simply a list of persons and families that should be housed. If this is a priority list, a question is raised as to criteria on the basis of which it is compiled and whether the main criterion is the order of receipt of housing care applications or indeed some other. The conclusion that this is a priority list is indicated by the note at the end of the form in which an applicant is warned that if they do not contact the RODPRR in charge within the given time, 'they will lose their priority in the priority list'. On the other hand, the *Guidelines for Handling Applications for Housing Care outside ASSC* state that in case of applicants, i.e. beneficiaries of the housing care that are before eviction after a court judgment or are in a particularly adverse social position, RODPRR is entitled to demand priority housing care by ODPRR. Such a request needs to be supported by proper proof. From all that has been said, and from the practical experience of the work on relevant cases, one can infer there is no transparency in setting the order of housing care, and that the existence of the priority list is questionable and, if there is such a list, it is not available to the public.

#### **6.2.5. Consent (letter of notification, decision) to the housing care outside ASSC**

On getting insight into a file and determining whether an applicant for the housing care with his family members meets requirements for the housing care set out<sup>80</sup> in the *Conclusion* adopted in 2003 and the *Conclusion* adopted in 2006, ODPRR issues *housing care consent*.

If adequate accommodation has already been ensured, *housing care consent* states that an applicant and their family members exercise the right to housing care through allocation of specific accommodation in state ownership on the territory of a specific county and a town, with the address of accommodation and the total housing care area indicated. The lines of the *consent* read it serves the purpose of housing care of an applicant and their family members. After having moved into the allocated accommodation, a lease contract will be signed with beneficiaries of the housing care. In an accompanying note an applicant is invited to pick up the original consent and keys of allocated accommodation.

If adequate accommodation has not been ensured, then the *consent* states that an applicant with their family members exercises the right to the housing care through being allocated accommodation in state ownership on the territory of a specific county and a specific town, being entitled to the total housing care area determined in accordance with the criterion of 35m<sup>2</sup> + 10m<sup>2</sup> for each of their family members. It is also stated that insurance of adequate accommodation on the territory of the given town/municipality is under way through building up, i.e. purchasing adequate accommodation in line with the *Programme of Providing Housing Care of Returnees*.



At the end of the *consent* it is stated that a *plea* against it is allowed to be submitted to the competent Ministry, i.e. to ODPRR, but the time within which the *plea* can be submitted is not stated. As opposed to this, the *Implementation Plan for Providing Housing Care for Returnees*, which is not available to the public, states the fixed deadline for submission of the *plea* to Advisory Commission, which has still not been constituted, of 60 days as of the day a *written notification* has been received.

In practice it is not clear who is to decide on the plea and whether the procedure set out in the *Implementation Plan* is to be administered. The Plan lays down that Advisory Commission is to consider the plea first and to issue *recommendation*, while a *decision* is to be reached by the Minister, i.e. Deputy Minister.

Legal security of citizens is particularly threatened by the fact that in case of a negative decision on a housing care request the decision is not delivered in written form so that they could plead. Even if this is nothing but humanitarian aid, since it is provided by state authorities, the aid would have to be regulated not only in a transparent way, but also in a way that ensures legality of actions of state authorities when granting such aid, equality of citizens, and their legal security.

The analysis of acts that ‘regulate’ the process of deciding on an application for the housing care outside ASSC and the practice itself makes it clear that the process is not ‘regulated’ by means of simple and unequivocal rules, but by means of rules that are mutually inconsistent, sometimes even contradictory, which reflects negatively on the legal security of citizens.

For example, ODPRR decides on a housing care application by means of an act it calls *consent* (the name is set in the *Guidelines for Handling Applications for Housing Care outside ASSC* developed by Deputy Minister).

In the *Implementation plan for providing housing care for returnees who do not own an apartment or a house, but used to live in social-owned apartments on the territory of the Republic of Croatia which is outside ASSC* (developed by the Minister), the act is termed a *letter of notification*.

In the *Conclusion on the implementation of programmes of housing care of returnees – former tenancy right holders to apartments outside ASSC* (adopted by the Government of the Republic of Croatia), this act is termed a *decision* on recognition of the right to housing care by submitted requests of returnees. The hierarchy of acts has thus been determined headlong – the act of Deputy Minister is stronger than the act of Minister and the act of the Government itself.

#### **6.2.6. Signing of the contract on apartment lease**

The *Implementation plan for providing housing care for returnees who do not own an apartment or a house, but used to live in social-owned apartments on the territory of the Republic of Croatia which is outside ASSC* lays down that the housing care is formally to be settled through signing a contract on apartment lease.<sup>81</sup>

By early 2008 not one case of the signing of a contract on apartment lease had been registered.

### **6.3. Results of Implementation of the Housing Care Programme within and outside ASSC in 2007**

For the monitoring and analyzing of implementation results of the programme of housing care within and outside ASSC in 2007, the project team fixed indicators that are in keeping with commitments of the Government of the Republic of Croatia and with what it presented as its commitments before the international community.<sup>82</sup>

*Key commitments of the Government of the Republic of Croatia related to implementation of the housing care programme in 2007:*

- *by the end of 2007 to house 1,400 former tenancy right holders and members of their families, of which 1,000 within ASSC and 400 outside ASSC, and*
- *by the end of 2007 to finalize all administrative procedures linked to requests for housing care within and outside ASSC, after which a precise number of beneficiaries that will have been housed by the end of 2009 is to be determined.*

The quality monitoring and analyzing have, to a large extent, been hindered due to lack of transparency of the housing care process, in the sense of inexistent and/or undisclosed detailed information on beneficiaries, but also because of contradictory available data that had been released by various sources. In favour of non-transparency is the fact that, as it has already been mentioned, the competent Ministry has not issued any response to a written request of the project team for dissemination of information and data that would enable insight into details of the housing care process, whereby Ministry's duties laid down in provisions of the *Access to Information Act* have entirely been neglected.

### **6.3.1. Results of implementation of the housing care programme within ASSC**

According to data released by the UNHCR in January 2008<sup>83</sup>, out of 8,541 submitted requests for the housing care within ASSC, there were 7,095 positive decisions (83.07%), 1,150 requests were rejected (13.46%), while there were still 296 requests (3.47%) in the decision-making process.

Until January 2008, by one of the ways of housing care, housing care beneficiaries were allocated the total off 4,312 housing units, while allocation of housing units by 2,783 requests was under way.

In 2007 beneficiaries of the housing care within ASSC were allocated the total of 739 housing units. However, data on the number of former tenancy right holders – housing care beneficiaries is not available. In addition, neither data on ethnicity of beneficiaries nor data on their previous status, states where they had resided before they realized housing care, etc. are available, which is why it is impossible to assess to what extent implementation of the programme of housing care within ASSC contributes to the return of refugees from the Republic of Croatia. For the same reason it is very hard or even impossible to carry out assessment of housing care performances in terms of implementation of the Sarajevo Ministerial Declaration on Regional Return of Refugees and Displaced Persons.

*According to some unofficial information from the UNHCR, the share of minority beneficiaries (of Serbian nationality) in the total number of beneficiaries to whom housing units were allocated in 2007 was, at end 2007, around 33%.<sup>84</sup>*

Unavailable are also the data on the number of persons whose requests were positively settled and to whom accommodation was allocated in housing units in which they had previously been living or which they had never left in the first place. For instance, former holders of tenancy rights in Vukovar that had all the time been living in apartments to which they once used to have the tenancy right, which had legally been cancelled, who eventually on the basis of the request for housing care became beneficiaries of housing care in these particular apartments. Therefore, for this reason it is impossible to assess to what extent implementation of the programme of housing care within ASSC contributes to return of displaced persons.

It is also questionable how many housing care beneficiaries, who became owners of and moved into housing units designed for housing care, exercised their right to housing care through signing a lease contract, pursuant to the Law on ASSC.

There were cases of housing care (a signed contract on the lease of a state-owned apartment) in inadequate housing units or those units that do not match the square area that, depending on the number of family members, needs to be ensured in line with the Law on Reconstruction – 35 m<sup>2</sup> for the first member and 10 m<sup>2</sup> for each remaining family member.

*D.B., a former displaced person from Gradiška, signed on May 11 2006 a Contract on Apartment Lease in Vukovar, Borovo naselje. The beneficiary was housed in an apartment of 20.60 m<sup>2</sup> together with her husband. On July 31 2006 D.B. sent to MSTTD ODPRR an application for allocation of an apartment of adequate square area. In its statement of January 10 2007, Class: 019-06/06-24/878, Reg. no: 530-19-03-07-4 MSTTD ODPRR states: 'RODPRR will have your application in mind and if an opportunity arises for replacement of the apartment for the one of adequate square area, you will be duly informed about it by RODPRR'. Meanwhile, RODPRR contacted D.B. and offered her new housing units of inadequate square area, so to the day D.B. has not exercised her legal right.*

As an extreme example of legal insecurity, arbitrary actions, and non-enforcement of the LAP by ODPRR and RODPRR Vukovar in the process of denying the already granted consent for the housing care, hereby we present the following case:

*To D.M., a former holder of the tenancy right to an apartment in Vukovar, MSTTD–ODPRR issued on May 19 2004 consent to housing care through the lease of a state-owned apartment within ASSC in Vukovar (Class: 019-06/01-31/1-C4, Reg. no: 530-19-03-04-115252-8896), but on June 29 2004 MSTTD–ODPRR denied the consent stating that 'under the implemented procedure it was ascertained that family M. waives their right to housing care...'. In his submission to MSTTD–ODPRR of October 25 2007 D.M. states: '...I have never waived my right either to accommodation or to housing care. During administration of the procedure, I was not heard, nor did I or my proxy put our signature ...Because of the fact that I was occasionally absent for financial reasons, my sister D.K. represented me on the basis of regularly certified mandate. After the building was reconstructed, with no elaboration on the potential invalidity of the mandate, they prevented a female employee of RODPRR in Vukovar from giving keys of the apartment to D.K., but they rather allocated the apartment to other family. My lawyer tried to resolve the dispute in a peaceful way; it was in vain, however, because of the state secretary of ODPRR who opposed this, saying I lived in France...What I am interested to know is whether in other cases too people were not allocated apartments because of temporary residence abroad or, perhaps, those who had private property got an apartment too?... When I returned to Vukovar I couldn't enter my apartment, and I did not get a job either, so I had to find a job and make my living in other country. I believe nobody can prevent me from moving freely if I need to provide for myself and my family...'*

*A few days after he submitted his petition, D.M. was contacted in oral by RODPRR Vukovar and keys of state-owned apartment were given to him, so again without administrative procedure having been carried out.*

Taking into account all of the previously said, it is apparent that commitment of the Government of the Republic of Croatia to house 1,000 former tenancy right holders as well as members of their families in 2007 is far from being fulfilled.

### **6.3.2. Results of implementation of the housing care programme outside ASSC**

According to the data released by the UNHCR in January 2008<sup>85</sup>, of 4,548<sup>86</sup> submitted requests for housing care outside ASSC, by December 2007 there were 1,263 (27.77%) positive recommendations, 825 (18,14%) negative recommendations (?), and 2,460 (54.09%) requests in the process of consideration.

In 2007 the state bought 408 apartments intended for housing care outside ASSC, of which ODPRR took over 243. In the same period housing care beneficiaries were allocated the total of 155 housing units, which became the property of beneficiaries. In addition, on the basis of

knowledge of the project team, in the Republic of Croatia in 2007 not one person signed a contract on the lease of an apartment outside ASSC, which means that, formally, they were not housed in accordance with provisions of the *Implementation plan for providing housing care for returnees who do not own an apartment or a house, but used to live in social-owned apartments on the territory of the Republic of Croatia which is outside ASSC*.<sup>87</sup>

*The Survey conducted during the period February-March 2008 shows that none of surveyed applicants for the housing care outside ASSC, who took over apartments allocated to them, had concluded a contract on the lease of an apartment.*

An advisory body for consideration of objections to actions of the competent Ministry, and thus a body in charge of pleas filed against negative recommendations (?), has not been established. Therefore there is not a body that would consider pleas against negative recommendations for the housing care issued by ODPRR.

And on the territory outside ASSC there were registered cases that applicants and their family members are allocated an apartment for usage the total resident area of which is smaller than the area set out by virtue of the *Law on Reconstruction* (35 m<sup>2</sup> plus 10 m<sup>2</sup> for each of remaining family members).

*The family of the applicant M.J., 'who has the right to housing care', on the basis of consent Class: 019-06/07-08/27-S2, Reg. no: 530-19-07-202661-1362 of 12.12.2007, was allocated for enjoyment an apartment of the total housing area of 61.91 m<sup>2</sup>, although in accordance with legally determined criterion they are entitled to 85 m<sup>2</sup>.*

*The survey conducted during the period February-March 2008 shows that 2/3 of surveyed applicants for housing care outside ASSC who embraced apartments allocated to them find the allocated accommodation convenient, and 1/3 finds it inconvenient.*

The Government of the Republic of Croatia, therefore, in 2007 did not fulfill the assumed obligation to house 400 persons who submitted a request (an application) for housing care outside ASSC.

## **7. General Conclusions on the Approach to Housing Care of Refugees and Displaced Persons, Former Tenancy Right Holders in the Republic of Croatia**

Housing care of refugees and displaced persons, former tenancy right holders in the Republic of Croatia, is not regulated in a uniform manner but rather by means of regulations and acts of different legal force, which makes the whole structure complicated, incomplete, and fragmented. Consequently, much obscurity, confusion, vagueness, and contradiction occurs both in regulations and acts, but also in actions of competent administration bodies that handle housing care within and outside ASSC.

The model of housing care outside ASSC is not clear enough and is not based on and in harmony with legislative-legal framework of the Republic of Croatia. Non-transparency and arbitrary, illicit, volatile, and unprofessional acting of competent bodies of public administration; not abiding by valid national legislation; the absence and the impossibility of enforcing adequate legal remedies, lack of control, etc. are some of the key characteristics of implementation of existing housing care models in the Republic of Croatia, for which reason legal security of citizens and observation of principles of the rule of law are severely undermined.

When it comes to the housing care of former tenancy right holders, acts of various legal characters are enforced: within ASSC regulations that are part of the legal order of the Republic of Croatia are enforced, while outside ASSC other legal acts that do not produce legal effects are enforced which, therefore, cannot serve as a basis for establishment of a right, but serve for humanitarian accommodation of displaced former tenancy right holders the great majority of whom belong to the Serbian national minority. Such an approach undermines a constitutional principle of equality of citizens before the law and legal security of citizens, especially with the view of availability of effective legal remedies and possibility of court protection. Deadlines for finalization of the housing care process are frequently altered, but commitments that the Government of the Republic of Croatia declaratory assumed are not fulfilled within stated deadlines, which is what makes the final deadline for completion of the housing care process uncertain.

Non-transparency of actions and too broadly defined an internal field of margin of appreciation are contrary to basic principles of ECHR and enable total arbitrariness of actions undertaken by the competent authorities and officials. Such actions are often subject to criticism and complaints of potential housing care beneficiaries that at the same time, as stated in the Report of the Ombudsman for 2007, 'express their doubts about reasons for such actions (favoritism, corruption, arbitrariness, nationality)'.

Commitments that the Republic of Croatia in 2007 assumed as to the housing care of former tenancy right holders have not been fulfilled, and that to a large extent. Declaratory campaigning for solving of the problem of housing care for former tenancy right holders is inadequately supported by practical deeds.

Existing housing care models obviously do not represent adequate mechanisms which would enable that the issue of former tenancy right holders is resolved permanently and within reasonable time frame, pursuant to principles of the Sarajevo Ministerial Declaration on Regional Return of Refugees and Displaced Persons.

## **Appendix 1**

### **Request to the Ministry of Regional Development, Forestry and Water Management – Office for Displaced Persons, Returnees and Refugees with the aim of exercising of the right to access information**

APPLICANT: Center for Peace, Legal Advice and Psychosocial Assistance - Vukovar, 32000 Vukovar, 32 Fra. Antuna Tomaševića

STATE ADMINISTRATION BODY: Ministry of Regional Development, Forestry and Water Management – Office for Displaced Persons, Returnees and Refugees, Zagreb, 22 Radnička cesta

#### REQUEST

With the aim of: exercising of the right to information access

Pursuant to article 4, paragraph 1 and article 11, paragraph 1 of the Law on the Right to Access Information (OG, 172/03); hereby I demand that the body stated above should provide me with the following information:

- 1) The number of submitted requests for housing care of former tenancy right holders, OUTSIDE THE AREA OF SPECIAL STATE CONCERN (ASSC) broken down by states from which requests were submitted – how many requests from BiH, RC, and Republic of Serbia?
- 2) The total number of settled requests/applications for housing care on the territory OUTSIDE ASSC and on the AREA of SPECIAL STATE CONCERN (ASSC) as well as the number of settled requests/applications that exclusively refer to former tenancy right holders. What is the total number of positive, and what is the total number of negative decisions within and outside ASSC for all applicant categories? What is the total number of positive, and what is the total number of negative decisions within and outside ASSC that refer exclusively to former tenancy right holders?
- 3) What was the status of persons who submitted a request/an application at the time of submission of the request/application? How many applicants had the status of a refugee outside the Republic of Croatia, how many had the status of an expatriated person, and how many of an internally displaced person?
- 4) The number of persons who submitted a request/an application who were housed and truly accommodated in housing units outside ASSC and on the territory of ASSC in 2007, by 31 December 2007 inclusive.
- 5) The number of persons who submitted a request/an application who were housed and truly accommodated in residential units outside ASSC in 2007, by 31 December 2007 inclusive, broken down by towns where they were housed.
- 6) What is the number of accommodated beneficiaries in 2007 on the territory outside ASSC and within ASSC that, immediately before moving in, had been displaced beyond the territory of the Republic of Croatia (BiH, Republic of Serbia, other)?;
- 7) Status of a request/an application in the sense of completion:
  - a) How many applications/requests were entirely completed?
  - b) Are persons who submitted a request/an application issued the confirmation on the submission of documents required for the file completion?
- 8) How many persons who submitted a request/an application were taken off the housing care list because they missed the deadline (60 days) for the file completion?

9) What is the regulation that sets out the time limit (60 days) for the file completion and in what way were applicants informed about it?

10) Which legal remedy do persons who submit a request/an application have at their disposal in case of missing the deadline for the file completion and do applicants receive an instruction on the legal remedy?;

11) In what way does the Office communicate with persons who submitted a request/an application? Is evidence on the realized communication, date and reason for communication registered in the file of each applicant?

12) Do applicants inform you regularly on the change of address of residence?

13) How many positive, and how many negative recommendations for housing care, within ASSC and outside ASSC, did the Office issue?

14) Who reaches a decision on the contents of a recommendation and what serves as a legal basis for reaching a decision?

15) If a recommendation is positive, does it contain some other elements apart from a positive statement of the state administration body on the application of an applicant (e.g. indication of a place of return, data on an allocated residential unit, etc.)?;

16) In case of a negative recommendation, which legal remedy does a person who submitted an application/a request have at their disposal?

17) When does a negative recommendation become final?

18) Is a positive recommendation delivered to a person who submitted a request/an application together with housing care consent as an accompanying document?;

19) What is a legal basis for issuing consent and does consent by all means contain an instruction on a legal remedy?

20) Please provide us with the *Implementation plan for providing housing care for returnees who do not own an apartment or a house, but used to live in social-owned apartments on the territory of the RC which is outside areas of special state concern* (cannot be found on the webpage of the Government of RH).

Means of providing required information:

- 1) questions 1-19 are to be responded to in written form;
- 2) under item 20 provide a copy of the *Implementation Plan*.

All incurred costs related to this request will be borne by the applicant on the basis of a regularly delivered receipt.

In Vukovar, 31.01.2008

On behalf of the applicant

Ankica Mikić – Legal Advisor

## **Appendix 2**

### **Note of urgency at the request of Ministry of Regional Development, Forestry and Water Management – Office for Displaced Persons, Returnees and Refugees with the aim of exercising of the right to access information**

C-6/08-1

In Vukovar, 04.03.2008

MINISTRY OF REGIONAL DEVELOPMENT,  
FORESTRY AND WATER MANAGEMENT  
Office for Displaced Persons, Returnees and Refugees

To the Attention of State Secretary Mr Mikulić

Zagreb, 22/1 Radnička cesta

Subject: Right to Access Information  
Note of Urgency

Dear Mr Mikulić,

Center for Peace, Legal Advice and Psychosocial Assistance Vukovar from Vukovar, as the applicant, submitted a written request under the number of C-6/08 of 31.01.2008 to the state administration body, Ministry of Regional Development, Forestry and Water Management, Office for Displaced Persons, Returnees and Refugees Zagreb, with the aim of exercising of the right of access to information stated in the request, and pursuant to article 4 and article 11, paragraph 1 of the Law on the Right to Access Information (OG, 172/03).

Given that more than 15 days have passed since the request was submitted (the request received on 04.02.2008), and the state administration body, Ministry of Regional Development, Forestry and Water Management, Office for Displaced Persons, Returnees and Refugees Zagreb, has not enabled the applicant to access required information within obligatory legal time limit, nor has the request been rejected by means of a decision, nor has the applicant been asked to supplement or correct the request, nor has extension of the deadline been asked, hereby we are asking that requested information is urgently made available or provided to the applicant.

If the request fails to be processed, pursuant to provisions of article 9 of the Law on the Right to Access Information the applicant will continue the procedure according to the Law on General Administrative Procedure.

Yours faithfully

Ankica Mikić

Legal Adviser at Center for Peace Vukovar



## Appendix 3

### SURVEY QUESTIONNAIRE FOR HOUSING CARE APPLICANTS

<b>Personal data about the applicant</b> - data will be used for verification of collected information and not for other purposes, nor will the data be presented to third parties				
Name and surname				
Address of residence before displacement				
Current address of residence / abode				
Contact phone no				
<b>Date of request submission</b> (if the applicant has submitted more than one request, they should enter the date of submission of the first and most recent request)				
<b>Request submitted through:</b>	<b>local NGO</b>	<b>consulate/embassy of RC</b>	<b>UNHCR</b>	<b>personally</b> (by post, delivery)
<b>Request submitted for:</b>	<b>apartment lease</b>		<b>apartment purchase</b>	
<b>Current status of the applicant</b> (refugee, former refugee (lost an official refugee status in the state of displacement), displaced person, returnee; please indicate whether the change of the status has occurred since the day the request was submitted)				
<b>Is the applicant a citizen of the Republic of Croatia?</b>	<b>YES</b>		<b>NO</b>	
<b>Has the competent body (Office, RODPRR) contacted the applicant?</b> (for the purpose of supplementing the request, checking the applicant's status, obtaining further information, etc.)	<b>YES</b>		<b>NO</b>	
<b>If YES, how?</b>	<b>By phone</b>		<b>In writing</b>	
<b>If YES, can you indicate the date(s)?</b>				
<b>Has the applicant changed their address of residence compared to the one stated in the request?</b>	<b>YES</b>		<b>NO</b>	
<b>If YES, have they informed the competent body thereof?</b>	<b>YES</b>		<b>NO</b>	
<b>Has the applicant received any notifications on the settlement of the request?</b>	<b>YES</b>		<b>NO</b>	
<b>If YES, what kind of a notification?</b> (there may be more than one answer)	<b>request for the request supplement</b>		<b>statement</b>	<b>consent</b>
<b>Has the request been finally settled?</b>	<b>YES</b>		<b>NO</b>	
<b>If YES and if the decision is negative / positive, has the applicant lodged an appeal?</b>	<b>YES</b>		<b>NO</b>	
<b>If the applicant has lodged an appeal, to which body?</b>	<b>Office</b>		<b>competent RODPRR</b>	
<b>If the applicant has lodged an appeal, has he asked for legal assistance?</b>	<b>YES</b>		<b>NO</b>	
<b>If legal assistance was asked, who provided it?</b>	<b>not provided</b>		<b>NGO</b>	<b>lawyer</b>
<b>Has the competent body settled the appeal?</b>	<b>YES</b>		<b>NO</b>	
<b>If the competent body has not settled the appeal, how long has the applicant been waiting for it to be settled?</b>	<b>1 month</b>	<b>2 months</b>	<b>more than 2 months</b>	
<b>If the request has finally been settled positively, has the applicant taken over an apartment?</b>	<b>YES</b>		<b>NO</b>	
<b>If YES, does the applicant find the apartment convenient?</b> (size relative to the number of household members, infrastructure, etc.)	<b>YES</b>		<b>NO</b>	
<b>If YES, has the applicant concluded a contract on the lease of an apartment?</b>	<b>YES</b>		<b>NO</b>	
<b>Notes:</b>				
Name and surname of the surveyor:		Date of survey:		

## Notes

<sup>1</sup> It was generally well known, to the Croatian legislator too when enacting this law, that there were no conditions for displaced Serbs to return to their apartments within the shortened deadline of 90 days from the moment this law came into force and that they would lose their tenancy rights to these apartments.

<sup>2</sup> 'Official Gazette', No 73/95

<sup>3</sup> According to data from the Ministry of Justice of the Republic of Croatia, taken from UNHCR Representation in the Republic of Croatia – Summary Statistics on Refugee / Return and Reintegration, January 1, 2008

<sup>4</sup> OSCE Mission to the Republic of Croatia, Report: Options for the housing care of former tenancy right holders, April 2005

<sup>5</sup> According to Article 1 of the Annex VII of General Framework Agreement for Peace in Bosnia and Herzegovina, persons who left their apartments between April 30, 1991 and April 4, 1998 are considered refugees and displaced persons and have the right to return to their homes, i.e. become owners of the apartments they have tenancy rights to. All administrative, legal, and other acts that cancelled the tenancy rights of former holders were officially revoked.

<sup>6</sup> "...3. Reaffirms the right of all refugees and displaced persons originating from the Republic of Croatia to return to their homes of origin throughout the Republic of Croatia;..." (RESOLUTION 1120 (1997) Adopted by the Security Council at its 3800th meeting, on 14 July 1997)

<sup>7</sup> E/CN.4/2005/2; E/CN.4/Sub.2/2004/48, In the preamble of the Resolution 2004/2 'Housing and Property Restitution', UN Sub-Commission on the Promotion and Protection of Human Rights repeats that it is the right of all refugees and displaced persons to return freely to their countries and that their residential units and property taken away from them must be returned to them or they must be compensated for the property that cannot be returned.

<sup>8</sup> E/CN.4/Sub.2/2005/17, Point 16 Principles – refers to the rights of apartment tenants and other non-owners and states that countries must ensure the recognition of rights of apartment tenants, tenancy right holders to apartments owned by the state and other legal tenants within the restitution programme. Countries should, in the widest possible scope, ensure the restitution, ownership and occupancy of their residential units, land and property in a way similar to the one applied with formal owners.

<sup>9</sup> 'Official Gazette', No 44/96, 57/96, 124/97, 73/00, 87/00, 69/01, 94/01, 88/02, 26/03 (revised text), 42/05 and 90/05

<sup>10</sup> 'Official Gazette', No 10/01

<sup>11</sup> 'Official Gazette', No 116/02

<sup>12</sup> 'Official Gazette', No 48/03, 68/07

<sup>13</sup> 'Official Gazette', No 142/06

<sup>14</sup> 'Official Gazette', No 100/03, 179/04, 79/05

<sup>15</sup> 'Official Gazette', No 96/06

<sup>16</sup> Class: 019-01/03-01/24; Reg. no: 516-01-03-2 of October 24, 2003

<sup>17</sup> Class: 019-06/06-08/46; Reg. no: 530-19-06-4 of December 17, 2006

<sup>18</sup> UNHCR Representation in the Republic of Croatia – Summary Statistics on Refugee / Return and Reintegration, January 2008

<sup>19</sup> Data from the Ministry of the Sea, Tourism, Transport and Development

<sup>20</sup> 'Official Gazette', No 172/03

<sup>21</sup> Out of which there are 53 requests submitted by potential beneficiaries who are currently living in B&H, 153 in Serbia, and 58 in the Republic of Croatia

<sup>22</sup> According to Article 30, paragraph 3 of the Law on the Government of the Republic of Croatia, 'Official Gazette', No 101/98, 15/00, 117/01, 199/03, and 30/04

<sup>23</sup> According to Article 89, paragraph 1 of the Constitution of the Republic of Croatia

<sup>24</sup> Article 31, paragraph 2 of the Law on the Government of the Republic of Croatia

<sup>25</sup> Legal order represents a set of regulations (universally binding legal rules) that are inter-related on a hierarchical basis.

<sup>26</sup> According to the Article 17 of the Law on Public Administration Structure, 'Official Gazette', No 75/93, 92/96, 48/99, 15/00, 127/00, 59/01, 199/03 and 79/07, for the application of laws and other regulations Ministers and other managers of state authority organizations adopt, especially when they are authorized and acting within their competence, the following implementation regulations: rulebooks, orders and instructions. Article 18, paragraph 4 of the Law prescribes that rulebooks, orders and instructions are published in the 'Official Gazette', and that they come into effect as early as eight days after having been published, unless these regulations particularly state that they come into effect on the day of publishing, due to some extremely important reasons.

<sup>27</sup> Publishing is an assumption of knowledge and application of law. Publishing provides everyone with an access to rights on regulating certain relations, on ways and conditions of getting and losing certain rights, on commitments stemming from certain relations, on sanctions for performing certain actions and failure to act, on competences of the state bodies and other questions regulated by the legislation.

<sup>28</sup> Article 7, paragraph 3 of the Law on ASSC

<sup>29</sup> Article 7, paragraph 2 of the Law on ASSC

<sup>30</sup> 'Official Gazette', No 24/96, 54/96, 87/96 and 57/00

<sup>31</sup> 'Official Gazette', No 91/96 and 48/98

<sup>32</sup> The range of sales prices for an average apartment of 60 m<sup>2</sup> is about € 7,000 – 14,000, whereas an average house of 100 m<sup>2</sup> costs from € 8,700 to € 23,500.

<sup>33</sup> 'Official Gazette', No 48/03 and 68/07

<sup>34</sup> Article 13 of the Law on ASSC

<sup>35</sup> Article 10, paragraph 2 of the Law on ASSC

<sup>36</sup> 'Official Gazette', No 142/06

<sup>37</sup> Under The Law on ASSC ('Official Gazette', No 44/96) residents within ASSC, who were given by the competent Ministry an apartment or a family house inside ASSC to use, after 10 years of continuous residence in that house or apartment should become owners. This right was abolished by coming into force of the Law on Amendments to the Law on ASSC as of 29 July 2000 ('Official Gazette', No 73/00).

<sup>38</sup> Point 5 of the Conclusion

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<sup>39</sup> Point 7 of the Conclusion

<sup>40</sup> 'Official Gazette', No 109/2001 and 82/2004

<sup>41</sup> 'Official Gazette', No 40/97 and 117/2005

<sup>42</sup> Article 1 of the Law on General Administrative Procedure

<sup>43</sup> Point 5 of the Conclusion

<sup>44</sup> Rights, duties, and legal interests arise from material legislation that regulates some administrative issues, i.e. from the material regulation on the basis of which a specific administrative matter is settled. Given that the *Conclusion* adopted in 2003 is not a material-administrative regulation, the right to housing care cannot be ascertained on the basis of it. Rights, conditions, and the procedure for exercising of the right are prescribed by legislation, and not by acts which are not regulations and that do not have a universally binding character.

<sup>45</sup> Article 19, paragraph 2 of the Constitution of the Republic of Croatia

<sup>46</sup> Articles 2 and 3 of the Law on General Administrative Procedure

<sup>47</sup> Pursuant to article 2 of the LAP, which sets out that some issues of the procedure related to an administrative field can be regulated by means of a special law differently than they are regulated by the LAP, it is clear that administrative proceedings can be regulated only by means of a law, and not by a sub-legal regulation.

<sup>48</sup> Article 224, paragraph 1 of the LAP, and article 7, paragraph 2 of the Law on Administrative Disputes

<sup>49</sup> Article 6, paragraph 1 of the LAD

<sup>50</sup> Article 18 of the Constitution of the Republic of Croatia

<sup>51</sup> Article 2 of the LAD

<sup>52</sup> 'By virtue of article 14, paragraph 2 of the Constitution equality before the law is guaranteed to everyone. The stated constitutional guarantee provides protection from arbitrary decisions of courts, i.e. other state bodies and bodies with public powers, the protection being based, among other things, on the principle that competent bodies should in identical cases decide equally, i.e. that enforcement of the same valid legislation to fundamentally the same factual and legal matter cannot have fundamentally different legal outcome relative to rights and duties of subjects in the same legal position.' Decision of the Constitutional Court of the Republic of Croatia, number: U-III-4675/2005 of October 25 2006.

<sup>53</sup> Decision of the Constitutional Court of the Republic of Croatia, number: U-I-534/2002 of July 9 2003

<sup>54</sup> The Ombudsman: Report on Work for 2006, p. 75

<sup>55</sup> Article 206, paragraph 1 of the LAP

<sup>56</sup> Article 6, paragraph 2 of the LAD lays down that an administrative act is an act with which a state body or an organization that exercises public powers decides on a fundamental right or an obligation of an individual or an organization in any administrative matter.

<sup>57</sup> Article 206, paragraph 3 of the LAP

<sup>58</sup> Article 210, paragraph 1 of the LAP

<sup>59</sup> Article 24, paragraph 1 of the LAD

<sup>60</sup> Article 224 of the LAP

<sup>61</sup> Article 210, paragraph 5 of the LAP

<sup>62</sup> Article 26, paragraphs 1 and 2 of the LAD

<sup>63</sup> E.g. the case of M.B., a displaced person from Vinkovci with residence in Vukovar, a notification of MSTTD of June 13 2006 (Center for Peace, Legal Advice and Psychosocial Assistance – Vukovar)

<sup>64</sup> Article 9 of the Law on ASSC

<sup>65</sup> 'Official Gazette', no 116/02

<sup>66</sup> Article 3 of the Rules on the order of priority of housing care within ASSC

<sup>67</sup> Article 4 of the Rules on the order of priority of housing care within ASSC

<sup>68</sup> Explanation of the Decision of the Constitutional Court of the Republic of Croatia, no U-II/3255/2004 of November 10 2004

<sup>69</sup> RLAP, Analysis: Approach to Due Rights and (Re)Integration of Displaced Population in Croatia, Bosnia and Herzegovina, and Serbia in 2006 – National Political-Legal Frameworks and their Practical Implementation, March 2007

<sup>70</sup> Namely, according to article 64, paragraph 1 of the LAP, a submission is a term that refers to various statements through which parties address administrative authorities such as, for instance, requests, forms used for automatic data processing, proposals, applications, petitions, appeals, pleas, etc.

<sup>71</sup> Article 81, paragraph 1 of the LAP

<sup>72</sup> Report of the Human Rights Watch: Croatian Broken Promises: Obstacles to the Return of Refugees, September 2003, Vol. 15, No. 5(D)

<sup>73</sup> Report of MSTTD: 'Return of Displaced Persons and Refugees in Croatia' of January 7 2005

<sup>74</sup> Republic of Croatia, Right to Reply of 27 September 2007 at OSCE Annual HDIM (HDIM.DEL/217/07)

<sup>75</sup> ODP RR made a mistake since the *denial* of a request cannot be the case here, as wrongly legally stated in a typified form of ODP RR, but it is rather *rejection*, since it is not validity of the matter that is decided on.

<sup>76</sup> With article 68 and article 137, paragraph 3 of the LAP

<sup>77</sup> Article 137, paragraph 3 of the LAP

<sup>78</sup> Point 19 of the Implementation Plan for Providing Housing Care

<sup>79</sup> Point 21, sub-point 2 of the Implementation Plan of the Housing care

<sup>80</sup> In consent the term 'prescribed' is used, although a conclusion does not prescribe but defines viewpoints and tasks for administration bodies.

<sup>81</sup> By virtue of point 21, sub-point 6 of the Implementation Plan

<sup>82</sup> Republic of Croatia, Right to Reply of 27 September 2007 at OSCE Annual HDIM (HDIM.DEL/217/07)

<sup>83</sup> UNHCR Representation in the Republic of Croatia – Summary Statistics on Refugee / Return and Reintegration, January 1 2008

<sup>84</sup> A note of the Center for Peace, Legal Advice and Psychosocial Assistance - Vukovar

<sup>85</sup> Identical as the previous

<sup>86</sup> Identical as the previous; this data for the first time appears in January 2008 – by then the total number of requests had been 4,425

<sup>87</sup> Point 21, sub-point 8 of the Implementation Plan for Providing Housing Care for Returnees states: 'Housing care is formally settled through signing a contract on the lease of an apartment or a contract on the contract of sale of an apartment.'