Housing and property restitution in Europe in practice

Case study: Situation in Croatia and Serbia

In 2009, in Serbia, there were approximately 86,000 refugees from the former Yugoslavia left of the 524,000 who were there in 1996. The majority of those 524,000 have been naturalised, and almost 150,000 of them have been repatriated. However, these figures can to some extent be considered as artificial, since the real issue at stake is whether durable solutions have been found for them. Of the returnees, it is unclear how many have successfully reintegrated in their country of origin, just as it is unknown how many refugees remaining in Serbia have achieved full socio-economic integration.

For these reasons, it is hard to comment on the sustainability of these solutions. An analysis of these figures indicated that many refugees had not found a durable solution to their situation, and that only 5% of those still in Serbia are considering returning to their country of origin. It is notable that comparatively many more returnees were from Bosnia and Herzegovina; this is, according to UNHCR, in all probability related to the different property restitution processes concerned. UNHCR considers housing and employment as the two main protection concerns in the region. Reputedly, many refugees claim they do not require government assistance, but that they merely need their property back in order to achieve a sustainable solution.

It seems that, taking into account the facts and figures in Serbia, greater emphasis on property rights as a means of local integration is needed. Although, especially in the context of property restitution, local integration is somewhat neglected as a durable solution in favour of repatriation, it is important to realise that the right to possession of property is crucial to all durable solutions. All countries in the region offer refugees the choice between repatriation and local integration, but if rights to housing, education and work are not recognised by one of the countries involved, one may ask if there is even a real choice.

During the conflict in the Balkans, about 250,00017 ethnic Serbs became displaced outside and inside Croatia. Out of this figure some 30,000 households had been living in socially (collectively) owned apartments as specially protected occupants (lessees) and tenancy rights holders.18 The Constitution of the former Yugoslavia established tenancy rights as a family-legal, social and property-legal category, and it had characteristics of a specific (sui generis) proprietary right. This specially protected occupancy/tenancy right (OTR) might be legally terminated due to unjustified non-use of the apartments for more than six months.

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17 See, for more information, UNHCR, Refugee protection and humanitarian work in Croatia: An overview of UNHCR’s operations in the past 19 years, January 2010.
The majority of ethnic Serbs, former OTR holders, lost their occupancy/tenancy rights during their displacement due to their homes being left vacant for periods of greater than six months – in *in absentia* court proceedings and without their knowledge. Croatian authorities did not accept armed conflicts, justified fear, direct or indirect pressure and threats, and in some cases forced and illegal evictions from the apartments, as well as the non-existence of objective preconditions for the physical return of beneficiaries and similar circumstances as legally relevant facts that justified either the absence of OTR holders from, or their failure to return to, their apartments within the legally prescribed deadline.

It might, in fact, be better to refer to these issues as “property” problems rather than “housing” problems; it should be noted that different countries in the region have reached different solutions in relation to occupants’ rights; in some states these are considered as property rights, in others they are not.\(^{19}\)

After the international community had taken an interest in the matter, the Croatian Government set up two housing programs, which should allow returnees of all ethnic origins to opt for a permanent return and/or stay. UNHCR is still seeking improvement in some areas, having noticed problems regarding the standard and quality of the housing involved. UNHCR is advocating offering those returnees that did not make the deadline in the first instance another opportunity to regain and enforce their occupancy/tenancy rights.

So far, 13,000 families of all ethnic origins have applied and 9,000 applications have been decided positively. While the return of ethnic Croats is mostly completed, provision of housing to former OTR holders of Serb origin continues. The Croatian Government is under an obligation to deliver 1,400 apartments a year, while UNHCR will continue to review and advise on the matter.

The region of South-East Europe still has many problems related to refugees and internally displaced persons. A main concern is the effectiveness of the social and economic rights that have been implemented, and problems with the application of such provisions continue to exist in practice. In addition, if one looks past the issue of housing, there is also, among other problems, the matter of restitution of productive property.

While often essential to establishing a livelihood, restoring productive property to its rightful owner may prove practically impossible, especially if such ownership was never formally registered in the first place.

The matter of housing and property rights for the displaced in the former Yugoslavia extends far beyond its legal dimension. In order to achieve durable solutions, a multifaceted approach is essential. Issues of regional stability, security, peace and cooperation must be taken into account when trying to search for solutions.

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19 Moreover, even if the former is the case, it is still a question whether a right to occupancy would be a right of property or a right to property (see above).

20 See, for more information, UNHCR, *Protection and Assistance of Returnees, IDPs and Refugees*, February 2010.